

RESOLUTION NO. 4178

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO
DENYING AN APPEAL, AND UPHOLDING THE PLANNING COMMISSION APPROVAL OF A USE
PERMIT AND DESIGN REVIEW FOR MODIFICATION OF EXISTING WIRELESS FACILITIES
AND INSTALLATION OF 3 ADDITIONAL ANTENNAE FOR T-MOBILE/METRO PCS AT
1509 SIR FRANCIS DRAKE BOULEVARD, APN 005-153-03**

WHEREAS, T-Mobile/Metro PCS filed an application with the Town of San Anselmo on January 14, 2016, requesting approval of conditional use permit and design review to modify existing wireless facilities and to add three new antennae (Application No. PRO2016-0008) at 1509 Sir Francis Drake Boulevard (“the Project”); and

WHEREAS, on February 1, 2016, the Planning Commission of the Town of San Anselmo (“Planning Commission”) held a noticed public hearing to consider the Project and all interested parties were given a full opportunity to be heard and present evidence, the application was fully studied, discussed and deliberated, and the Planning Commission continued the public hearing; and

WHEREAS, on August 29, 2016, the Planning Commission held a noticed public hearing to consider the Project and all interested parties were given a full opportunity to be heard and present evidence and the application was fully studied, discussed and deliberated and the Planning Commission voted 5-0 (Planning Commissioners Brasler and Pipkin absent) to approve the Project; and

WHEREAS, On September 7, 2016, Michael Mayock, who owns property immediately west of the Project site, filed an appeal of the Planning Commission decision; and

WHEREAS, on October 25, 2016, the Town Council held a duly noticed public hearing on the appeal and all interested parties were given a full opportunity to be heard and present evidence, and adopted this Resolution, upholding the decision of the Planning Commission decision based on the findings and conditions of approval in this Resolution.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO DOES HEREBY RESOLVE AS FOLLOWS that the Town Council has considered the project plans; the associated reports; staff reports; correspondence; public testimony received at three public hearings, Town Zoning Code and General Plan regulations; prior meeting videos and documents; and other information in the public record; and finds:

1. On September 7, 2016, Michael Mayock filed an appeal of the Planning Commission’s August 29, 2016 decision to approve the Project and the Town Council considered the appeal at a hearing on October 25, 2016.

2. The primary arguments raised by the appellant were that the Project would decrease property values; that radiofrequency exposure is damaging the health and wellbeing of neighbors; the accessory building and cabinets are not compliant with Town setback requirements; the applicant has not followed through with past requirements on previous permits such as yearly radiofrequency (RF) readings and reporting; that the Project is not a colocation, modification or replacement but an expansion of existing equipment; and that no scientific study has been done to qualify that the expansion is needed.

3. After taking public comment and considering all of the evidence in the record, the Town Council denied the appeal and upheld the Planning Commission decision because it found the project to be an eligible facility request for a modification of an existing wireless base station to add three new panel antennas to existing equipment under Section 6409(a) of the Spectrum Act (Codified in Section 1455(a) of the Telecommunications Act), and the Project does not change the physical dimensions or exterior appearance of the base station.

4. The proposed wireless facilities and modification of existing equipment, combined with existing wireless facilities at the site, would comply with the Federal Communication Commission (FCC) maximum RF exposure limits based on an independent RF study.

5. The project is Categorical Exempt from the California Environmental Quality Act (CEQA), pursuant to Title 14 of the California Code of Regulations, Chapter 3, Article 19, Section 15301, which allows alterations to existing facilities, and Section 15303 which allows conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. No exception set forth in Section 15300.2 of the CEQA Guidelines applies to the project including, but not limited to, Subsection (a), which relates to impacts on environmental resources (since there are no sensitive species known to inhabit the site, which is not near a creek or other areas where sensitive or protected plant and animal species are typically found); (b), which relates to cumulative impacts (This is the only project currently proposed in this district and the project falls within FCC limits for RF exposure.); Subsection (c), which relates to unusual circumstances (the wireless facility is a typical size and not unusual); or Subsection (f), which relates to historical resources (no exterior changes are proposed and the building would not be considered a historic resource).

6. The modifications of the existing antennas within the church steeple, addition of three new antennae and the modifications of the existing ground equipment will not be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of the proposed use, or be detrimental or injurious to property or improvements in the neighborhood or to the general welfare of the Town. The modifications do not involve a change in the exterior appearance of the site. The applicant provided a Radio Frequency Report prepared by Hammett & Edison, Inc., which concluded that the new antennas will comply with the prevailing standards for limiting public exposure to radio frequency energy and therefore, will not cause a significant impact on the environment. The report further states that the maximum calculated Radio Frequency level is significantly less than the human exposure limit for health and safety set forth by the FCC. The Town retained a consultant that approved the conclusions in the report. The improvements are not expected to

reduce property values, as property values would reflect the existing wireless equipment. Any associated equipment must comply with Town noise regulations. A building permit will be required for the project and it must meet current building code requirements.

7. The establishment or expansion of this facility is, or has demonstrated a significant and reasonable attempt to minimize stand-alone facilities, and is designed to protect the visual quality of the Town. The project is completely within the existing building and existing equipment cabinets. There will be no visual impact.

8. The establishment or expansion of this facility will not cause individual or cumulative levels of electromagnetic field (EMF) radiation, which exceed those levels allowed by Federal law. The applicant has provided an evaluation of the proposed project for compliance with appropriate guidelines limiting human exposure to radio frequency ("RF") electromagnetic fields. The report concludes that that project will comply with the prevailing standards for limiting public exposure to radio frequency energy and therefore, will not for this reason cause a significant impact on the environment. The Town obtained a peer review of the report with supported this conclusion.

9. The project is consistent, in agreement or in harmony with the Town General Plan and Zoning Code policies and goals for the Neighborhood Commercial zoning district. The project is not within any ridge zone as defined in the Town's General Plan.

10. The project will be functionally and aesthetically compatible with the existing improvements and the natural elements in the surrounding area. No exterior construction is proposed and the building will remain similar to what is existing.

11. The use will provide for protection against noise, odors, and other factors that may make the environment less desirable. The proposed use will not alter noise, odors, or other environmental factors at the site.

12. The proposed use will not tend to cause the surrounding area to depreciate materially in appearance or value or otherwise discourage occupancy, investment, or orderly development in the area. The modifications proposed will not be noticeable to the public or neighbors. The site already has four base stations for cellular equipment and the project would only modify one of the stations.

13. The site will have satisfactory access by emergency vehicles and personnel and traffic will not increase over existing conditions due to the project.

14. The use may not be expected to adversely affect the health or safety of persons using the improvement or endanger property located in the surrounding area for the reasons set forth above.

15. No exterior modifications are proposed. The project will not be detrimental to the existing facade(s) of buildings constructed prior to January 1, 1960. (SAMC Sections 10-3.1505(a) and (f))

16. The Town Council denies the appeal and upholds the Planning Commission decision to approve the use permit and design review application subject to the following conditions:

a. The project shall substantially comply with plans for T Mobile West by Zon Architects, dated 9/15/15 and received by the San Anselmo Planning Department 1/4/2016.

b. The carrier (and successor in interest) shall properly maintain and ultimately remove, if required, the approved wireless communications facilities in compliance with the provisions of these conditions of permit approval.

c. Entitlements for wireless communications facilities shall be valid for a period of one (1) year from the date of final approval and may be renewed for one additional year prior to expiration. Applications for renewal shall be submitted to the Planning Department no later than thirty (30) days prior to expiration of the initial one-year entitlement period. The initial one-year period may be extended by the Town if applications for renewal have been properly filed and are pending. The initial one-year period may also be extended for up to one additional year if the Planning Director determines that the project is in complete compliance with the Town's telecommunications policies and regulations, as amended. This includes, but is not limited to, the final standards and criteria, and other pertinent Town land use regulations. If the project is in compliance, new or modified conditions of permit approval may be required. In addition, a permit application may not be renewed if the facility is not upgraded to minimize its impacts, including land use compatibility, visual resources, public safety or other factors addressed by CEQA, to the greatest extent permitted by technology which exists at the time of renewal and is consistent with the provisions of adequate service at affordable rates.

d. Wireless communications facilities operating alone and in conjunction with other telecommunications facilities shall not generate electromagnetic frequency radiation in excess of the standards for permissible human exposure to radio frequency radiation (RFR) as adopted by the Federal Communications Commission (FCC). The Town may require one or more (periodic) post-construction RFR reports to verify that actual levels of RFR emitted by the approved facilities, operating alone and in combination with other approved facilities, substantially conform to the pre-approved RFR report and do not exceed current standards for permissible human exposure to RFR as adopted by the FCC.

e. Wireless communications facilities shall be constructed and operated in such a manner as to minimize noise and traffic impacts on nearby residents and public. Noise and traffic reduction shall be accomplished through the following measures:

1. Wireless communications facilities shall operate in compliance with the noise exposure standard contained in the San Anselmo Municipal Code. In all areas, a maximum allowable exterior noise level of 45 dB Ldn at the property line and a maximum interior noise level of 45 dB Ldn must not be exceeded.

2. Normal testing and maintenance activities shall occur between the hours of 7:00 a.m. and 5:00 p.m., Monday through Saturday excluding emergency repairs. Normal testing and maintenance activities, which do not involve the use or operation of telecommunications and maintenance equipment that is audible from residences and other nearby sensitive receptors, may occur at all other times.

3. Backup generators shall comply with the same noise standards referenced above and shall only be operated during power outages, emergency occurrences, or for testing and maintenance in accordance with the condition above.

4. Traffic resulting from operation and maintenance of a wireless communications facility must be kept to a minimum.

f. The applicants and/or owners shall comply with all recommendations of the October 5, 2015 Hammett & Edison, Inc., Consulting Engineers, RF Report.

g. Signage shall be limited to what is legally required for the existing and proposed base stations and equipment. The property owner shall remove all signage related to cellular equipment that is not legally required shall be removed within 90 days.

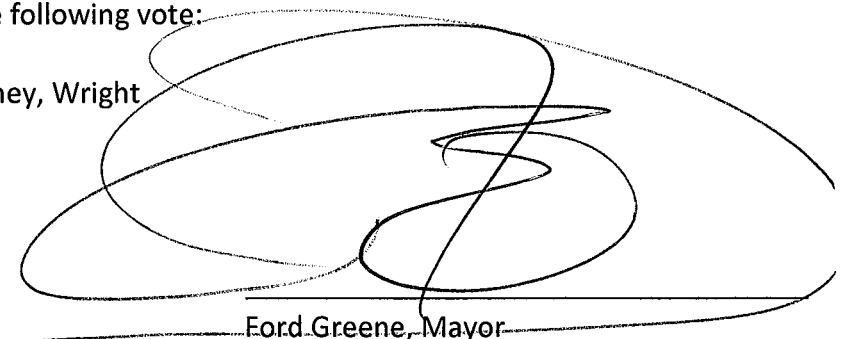
h. The property owner shall provide required RF reports on a periodic basis as required by prior use permit conditions for the site.

i. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with the Town Council and Town boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding ("action") against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or alleging any other liability or damages based upon, caused by, or related to the approval of the project. The Town shall promptly notify the applicants and/or owners of any action. The Town, in its sole discretion, may tender the defense of the action to the applicants and/or owners or the Town may defend the action with attorneys of the Town's choice, with all attorney's fees and litigation costs incurred by the Town in either case paid for by the applicant and/or owners.

THEREFORE BE IT FURTHER RESOLVED that the Town Council denies the appeal and upholds the Planning Commission's decision and findings of August 29, 2016.

The foregoing Resolution was adopted at the regular meeting of the San Anselmo Town Council held on October 25, 2016, by the following vote:

AYES: Coleman, McInerney, Wright
NOES: Greene, Brown
ABSENT: None
ABSTAIN: None



Ford Greene, Mayor

ATTEST:

Carla Kacmar, Town Clerk