

NOTICE OF APPEAL TO THE BOARD OF ADJUSTMENT

Under AMC 21.30.030, an appeal to the Board of Adjustment must be perfected by (1) the applicant, (2) any governmental agency, or (3) any person adversely affected by a decision of the Planning and Zoning Commission, the Platting Board, or the Urban Design Commission no later than **20 days** after the date that the written *Findings of Fact and Decision* is approved, on the record, and becomes final. To perfect the appeal, the appellant must file a *Notice of Appeal to the Board of Adjustment* with the Municipal Clerk's Office and pay the appeal fee and cost bond.

General Identity of Action Being Appealed:

Planning Department File Number: Date of Action:

Name of Project or Subdivision:

Appellant's Information:

Last Name: First Name:

Address: City: State: Zip:

Phone Number: E-mail:

Relationship to Action: Applicant Agent of Applicant Government Agency Other Person Adversely Affected

Applicant's Information: Same as Appellant

Last Name: First Name:

Address: City: State: Zip:

NOTE: If you are not the applicant or his/her agent, you must give notice to the applicant by certified mail at his/her last known address within **three days** of filing this *Notice of Appeal to the Board of Adjustment*.

Specifics of Appeal Certification

An appeal may be considered for the following three causes, singly or in combination:

- 1. Procedural Error** - If you allege procedural error, specify those patterns which constitute the error and the manner in which the alleged error resulted in prejudice to your interest.
- 2. Error in Application of Law** - If you allege legal error, specify the manner in which principles of law were incorrectly applied. Include reference to any ordinance, statute, or other codified law upon which the allegation of legal error is based.
- 3. Findings or Conclusions that were Not Supported by Evidence** - If you allege that findings or conclusions are not supported by the evidence that was presented, specify and explain those findings or conclusions which lacked evidentiary support at the time of the action.

An appeal, for any cause, must be explained; and a reason must be given for why the appeal should be granted. Explain what corrective decision is desired by this appeal. A written statement of cause and reason for granting the appeal must accompany this notice to be considered.

I (we) hereby certify that I am (we are) qualified to make this appeal and that my (our) statement of cause and reason is true and correct to the best of my (our) knowledge.

Signature: Date: *nunc pro tunc*

Statement Attached: _____ Appeal Fee (\$1080): _____ Cost Bond (\$50): _____ Preparation (\$1.70 per page): _____

Date: 11.26.14 Cash: _____ Check: Credit Card: _____ Receipt: 486358 Total Paid: \$1080.00

2014
NOV 15
PM 3:10
MUNICIPAL CLERK'S OFFICE

NOTICE OF APPEAL TO THE BOARD OF ADJUSTMENT

Planning Department File Number: 2014-0119

Specifics of Appeal Certification

Failure of Procedural Due Process: The purported public hearing on a Variance, under AMC 21.45.265A, as to the reduction or elimination of a minimum separation distance: 1. was conducted prior to any formal request for such variance by the Appellant; 2. was conducted without adequate notice that the issue was to be heard by the Commission on its own motion at that time; and 3. was thus conducted without the opportunity for prior preparation and submission of specific evidence on the issue, adequate for the Commission to make an informed decision, depriving the Appellant of its meaningful right to be heard. Failure to Produce Adequate Written Decision: The Commission, following its purported hearing and decision on a Variance, failed to provide an adequate written decision supported by substantial evidence in the record as to why a waiver was not appropriate for use of an existing electric transmission tower that already impinged on the minimum separation distance(s) as a matter of fact.

To: AWN, The Alaska Wireless Network
6831 Arctic Boulevard
Anchorage AK 99518



December 5, 2014

RE: Applicant: AWN, The Alaska Wireless Network
Case 2014-0119, Conditional Use Permit Application for ML&P/13th&"E" Street

Notice To File an Appeal

This letter is to inform AWN, The Alaska Wireless Network that GCI is filing for an appeal to the decision made by the Planning and Zoning Commission held on October 13, 2014, Case # 2014-0119.

On October 13, 2014, the Planning and Zoning Commission held a public hearing on the above referenced Conditional Use Permit application. After hearing testimony and making certain findings of fact and actions the committee voted upon on a motion to approve the Conditional Use Permit and a motion to approve the height variance. The motion to approve the Conditional Use Permit passed and the motion to approve a waiver in separation distance failed. Without a pass of both motions, the application was unapproved.

The following was submitted as the "Detailed and specific allegation(s) of error":

"Failure of Procedural Due Process: The purported public hearing on a Variance, under AMC 21.45.265A, as to the reduction or elimination of a minimum separation distance: 1. was conducted prior to any formal request for such variance by the Appellant; 2. was conducted without adequate notice that the issue was to be heard by the Commission on its own motion at that time; and 3. was thus conducted without the opportunity for prior preparation and submission of specific evidence on the issue, adequate for the Commission to make an informed decision, depriving the Appellant of its meaningful right to be heard. Failure to Produce Adequate Written Decision: The Commission, following its purported hearing and decision on a Variance, failed to provide an adequate written decision supported by substantial evidence in the record as to why a waiver was not appropriate for use of an existing electric transmission tower that already impinged on the minimum separation distance(s) as a matter of fact."

Sincerely,

A handwritten signature in blue ink, appearing to read 'David J. Baker', with a long horizontal line extending to the right.

David J. Baker

Site Acquisition & Construction Manager

GCI – Wireless Initiatives

NOTICE OF APPEAL TO THE ZONING BOARD OF EXAMINERS AND APPEALS

Planning Division Case File Number: 2014-0119

Date of Action: Nov. 10, 2014

Legal Description of Property Involved: South Addition Blk:22C Lot:4A



Detailed and specific allegation(s) of error:

Failure of Procedural Due Process: The purported public hearing on a Variance, under AMC 21.45.265A, as to the reduction or elimination of a minimum separation distance: 1. was conducted prior to any formal request for such variance by the Appellant; 2. was conducted without adequate notice that the issue was to be heard by the Commission on its own motion at that time; and 3. was thus conducted without the opportunity for prior preparation and submission of specific evidence on the issue, adequate for the Commission to make an informed decision, depriving the Appellant of its meaningful right to be heard. Failure to Produce Adequate Written Decision: The Commission, following its purported hearing and decision on a Variance, failed to provide an adequate written decision supported by substantial evidence in the record as to why a waiver was not appropriate for use of an existing electric transmission tower that already impinged on the minimum separation distance(s) as a matter of fact.

MUNICIPALITY OF ANCHORAGE
PLANNING AND ZONING COMMISSION RESOLUTION NO. 2014-058

A RESOLUTION APPROVING A REQUEST FOR A CONDITIONAL USE TO ALLOW FOR A 10-FOOT EXTENSION TO AN EXISTING +/- 68' TALL UTILITY POLE FOR CELLULAR COMMUNICATIONS EQUIPMENT IN THE R-2M (MULTIPLE-FAMILY) DISTRICT, AND DENYING A REQUEST TO REDUCE OR ELIMINATE THE MINIMUM SEPARATION DISTANCE REQUIRED BY AMC 21.45.265A.16. FOR A TOWER IN A RESIDENTIAL DISTRICT; GENERALLY LOCATED WITHIN THE ALLEY RIGHT-OF-WAY AT THE NORTHWEST CORNER OF 13TH AVENUE AND E STREET, IN ANCHORAGE.

(Case 2014-0119; Parcel ID No. 002-144-51)

WHEREAS, a request was received from Alaska Wireless Network (AWN) for a conditional use to allow a 10-foot extension to an existing +/- 68' tall utility pole for cellular communications equipment in the R-2M district, generally located within the alley right-of-way at the Northwest corner of 13th Avenue and E Street, in Anchorage, and

WHEREAS, AMC 21.45.265A.16.c. states that the administrative official may reduce or eliminate the minimum separation distance required from principal residential structures on residentially zoned lands after giving due consideration to the comments of the applicant, the property owner, and the local community council; and

WHEREAS, the Planning and Zoning Commission was acting as the administrative official through their role in reviewing and deciding on the conditional use; and

WHEREAS, public hearing notices were published, posted, and mailed, and a public hearing was held before the Planning and Zoning Commission on October 13, 2014.

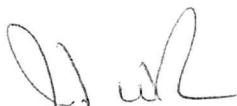
NOW, THEREFORE, BE IT RESOLVED by the Anchorage Planning and Zoning Commission that:

- A. The Commission makes the following findings of fact:
1. The structural concerns have been identified and thoroughly explained through the staff packet and petitioner and are satisfied.
 2. Some commissioners found that the applicant recognized the neighborhood concerns by collocating on the existing utility pole instead of building a new monopole that would have given them optimal performance. AWN looked at sacrificing performance for neighborhood concerns over view sheds and quality of life. AWN identified collocating in this community as an efficient way of development to provide the surrounding property with advanced wireless communication capability and adding to the utility pole is not going to substantially detract more from the view shed than the existing pole.

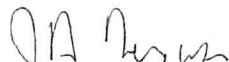
3. Some commissioners expressed the following concerns of a waiver for separation from protected land uses found in AMC 21.45.265A.16.:
 - a. The proposed tower is in the backyard of residential structures in the alley.
 - b. There is almost no separation distance from the tower to a protected land use. The separation distance is not anywhere near the two-hundred percent of tower height; almost no separation distance would exist. Essentially the Commission would be waiving the ordinance.
 - c. The petitioner did not gain support of the community council.
- B. The Commission passed the motion to approve the conditional use by a vote of 6 ayes and 2 nays. The Commission failed to pass the motion to approve the waiver for separation from protected land uses to allow a monopole or wireless communication tower. The vote was 4 ayes and 4 nays. The favorable vote of four ayes was not a majority of the full membership required by AMCR 21.10.203B., and thus the waiver of separation from protected land uses is denied.

DENIED by the Anchorage Planning and Zoning Commission on the 13th day of October 2014.

ADOPTED by the Anchorage Planning and Zoning Commission this 10th day of November, 2014. This written decision/resolution of the Planning and Zoning Commission is final and any party may appeal it within twenty (20) days to the Board of Adjustment pursuant to Anchorage Municipal Code 21.30.030.



Jerry T. Weaver, Jr.
Secretary



J.A. Fergusson
Chair

(Case 2014-0119; Parcel ID No. 002-144-51)

CASH RECEIPT

486358

Municipality of Anchorage
 P.O. Box 196650 • Anchorage, AK 99519-6650



FINANCE DEPARTMENT

Date of Payment (MMDDYY)

11.26.14

Received from GCI

Receiving Department Remarks Appeal filing fee

Amount of Payment

\$ 1,080.00

710775

Payment type (select only one)

- ACH MLP AWWU
 Cash/Check Credit Card Debit Card Other

Employee ID

62844

Coll. Dept ID

1020

Deposit ID

ACCOUNTING INFORMATION

LN#	\$ AMOUNT	FUND	ACCOUNT	DEPT ID	PROGRAM	CLASS	BDGT PERIOD	PROJECT/GRANT
	ACTIVITY ID		RES TYPE	RES CAT	OPEN ITEM		DESCRIPTION	
1	1080.00	101	9794	1020	6000	000	294	102000 Appeal to Zoning Bd.
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								

RECEIPT 486358

Prepared by (please print):

Jamie

Date prepared:

11.26.14

Phone no:

74316

CASH RECEIPT

486359

Municipality of Anchorage
 P.O. Box 196650 • Anchorage, AK 99519-6650



FINANCE DEPARTMENT

Date of Payment (MMDDYY)

11-26-14

Received from GCI

Receiving Department Remarks Appeal Bond
↳ Notice of Intent

Amount of Payment

\$ 50.00

\$ 710774

Payment type (select only one)

- ACH MLP AWWU
 Cash/Check Credit Card Debit Card Other

Employee ID

62844

Coll. Dept ID

1020

Deposit ID

ACCOUNTING INFORMATION

LN#	\$ AMOUNT	FUND	ACCOUNT	DEPT ID	PROGRAM	CLASS	BDGT PERIOD	PROJECT/GRANT
	ACTIVITY ID		RES TYPE	RES CAT	OPEN ITEM		DESCRIPTION	
1	50.00	101	9718	1020	0000	000	2014	102000 Notice of Intent
2	.							
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RECEIPT 486359

Prepared by (please print): Jamie

Date prepared: X 11/26/14

Phone no: X4316