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**BEFORE THE MUNICIPALITY OF ANCHORAGE  
BOARD OF ADJUSTMENT**

CLERK'S OFFICE

In Re: )  
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Resolution No. 2014-058 Related Case 2014-0119, )  
General Communications (sic) Inc. Conditional )  
Use Permit Request for a conditional use to allow for ) Planning and Zoning  
a 10-foot extension to an existing +/- 68' tall utility ) Commission Resolution  
pole for cellular telecommunications equipment in ) No. 2014-058;  
the R-2M (Multiple-Family) District, generally ) Related Case 2014-0119  
located within the alley right-of-way at the northwest ) Parcel ID No. 002-144-51  
corner of 13th Avenue and E Street, in Anchorage. )  
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)  
)  
General Communication Inc. ("GCI") dba the Alaska )  
Wireless Network, )  
)  
)  
Appellant. )  
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**MOTION FOR RECONSIDERATION**

The Municipality of Anchorage, by and through its undersigned attorney, hereby requests reconsideration of the Board of Adjustment's Findings and Decision dated June 1, 2015. Pursuant to AMC 3.60.060, a person may seek reconsideration of a quasijudicial decision of a board, commission, or official within 15 days of the decision when certain conditions are met. In this case, the Municipality believes the Board of Adjustment committed "substantial procedural error" in the original proceeding and the Board should reconsider its decision or rehear the case if necessary.

**BACKGROUND**

General Communications Incorporated ("GCI") appealed Planning and Zoning Commission Resolution No 2014-058 denying a conditional use permit for a 10-foot

extension for a telecommunications tower. The Board of Adjustment considered the appeal on April 29, 2015. The Board issued its findings and conclusions of law on June 1, 2015, and the document was distributed on June 2<sup>nd</sup>.

The Planning and Zoning Commission was tasked with making two approvals – a conditional use permit and an administrative waiver to reduce or eliminate the minimum separation distance from nearby land uses. Following public testimony and discussion, the Commission voted to approve the conditional use, but deny the administrative waiver. This resulted in an overall denial of GCI's application.

On appeal to the Board of Adjustment, GCI argued that the Planning and Zoning Commission's consideration of the administrative waiver was improper. The administrative waiver approval can be found under Anchorage Municipal Code (Title 21, "old code") in the supplementary district regulations for land uses in this particular zoning district (R-2M). AMC 21.45.265A.16.c. Under that code provision, telecommunication towers must be located a minimum distance away from nearby protected land uses, but the "administrative official" may waive or reduce the minimum distance required.

The Board of Adjustment determined that the Planning and Zoning Commission made a mistake of law by acting as the administrative official for deciding on the waiver of the minimum separation distance. The Board further found that it was incapable of remanding the decision back to the Planning and Zoning Commission because the Commission does not have the authority to make a decision on the administrative waiver. Thus, the Board found that the Planning and Zoning Commission implicitly waived or

reduced the minimum separation distance through their approval of the conditional use and reversed the Commission's decision to deny GCI's application. The Board issued a new Planning and Zoning Commission resolution approving the conditional use and removing all references to the administrative waiver under AMC 21.45.265A.16.c.

### ARGUMENT

The Board of Adjustment committed substantial procedural error in determining that the Planning and Zoning Commission implicitly approved GCI's application for conditional use. The Commission made two separate decisions – one to approve the conditional use and one to deny the administrative waiver. The Commission acted under the assumption that approval of both decisions was required for overall approval of the conditional use permit.<sup>1</sup> Thus, denial of the administrative waiver meant denial of the overall application.

In the Planning Staff Analysis provided to the Commission for this case, the Planning Department erroneously advised the Commission that they should consider, as a separate vote, whether the minimum separation distance referenced in AMC 21.45.265A.16 should be reduced or eliminated. However, the Planning and Zoning Commission should have been instructed to approve or deny the conditional use application without making a separate determination of whether to grant an administrative waiver reducing or eliminating the minimum separation distance required. The Planning and Zoning Commission did not need to act as the “administrative official.”

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<sup>1</sup> Transcript Page 80 (“Chair Ferguson: I’d like to clarify something was just pointed out to me. And this is for everybody. Looking on pages 10 and 11 of your application, to go forward, will take two motions. It takes a motion first for approval of a conditional use, and then it takes a motion for approval or waiver for the separation. So it will take two motions to go forward, And I assume if it passes on one and fails on the other one, it fails on that.”)

Conditional use approval was required for this application because the tower did not meet the supplementary district regulations regarding height and distance from nearby protected land uses. AMC 21.40.045D.14; AMC 21.45.265A. However, an administrative official in the Planning Department could have waived one of these requirements (the minimum separation distance) prior to conditional use approval. AMC 21.45.265A.16.c. Through its Planning Staff Analysis, Planning attempted to streamline the process and combine the administrative waiver under AMC 21.45.265A.16.c with the conditional use approval process. Under Code, the actions should be separate. Processed that way, if the applicant can meet the supplementary district regulations, or have certain requirements like the minimum separation distance required under AMC 21.45.265A.16 waived, the application may no longer require conditional use approval. AMC 21.40.045D.14 (conditional use approval only required when application does not meet the supplementary district regulations).

Regardless of Planning's error, the Board completely misinterpreted the Commission's findings. In its Findings and Decisions, the Board stated, "[in] considering the factors under AMC 21.50.280C and approving the conditional use, the Planning and Zoning Commission waived or reduced the minimum separation distance by approving the proximity of the (antenna) tower to residential structures as allowed by AMC 21.50.280C."<sup>2</sup> That statement is incorrect. The Commission clearly understood that the minimum separation distance required a separate vote, and there is no evidence in the record that the Commission tacitly considered this factor by virtue of considering the

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<sup>2</sup> Board of Adjustment Findings and Decision, Finding #31, June 1, 2015.

other factors for conditional use approval under AMC 21.50.280C. Through a separate vote, the Commission considered the separation distance from the tower to nearby land uses and voted to deny the minimum separation distance waiver. If the Commission knew that their approval of the conditional use was supposed to include consideration of the minimum separation distance, it is very likely that they would have voted differently.

#### CONCLUSION

The Board of Adjustment erred by finding that the Commission impliedly approved GCI's conditional use permit. The Commission voted to deny GCI's conditional use permit when they voted against granting an administrative waiver of the minimum separation distance under AMC 21.45.265A.16. The Municipality of Anchorage respectfully requests reconsideration of the Board's decision. The Board should affirm the Planning and Zoning Commission's approval of the conditional use permit but remand the application to the Planning Department for a decision on the administrative waiver under AMC 21.45.265A.16.c.

Respectfully submitted this 17th day of June, 2015.

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