

**TRANSCRIPT OF THE
SANTA FE COUNTY
SLDC HEARING OFFICER MEETING**

Santa Fe, New Mexico

June 9, 2022

1. This meeting of the Santa Fe County Sustainable Land Development Code Hearing Officer meeting was called to order by Santa Fe County Hearing Officer Richard Virtue on the above-cited date at approximately 3:00 pm.

The meeting was held in a hybrid format incorporating both in-person and remote participation.

[For clarity purposes, repetitive identification and confirmations of those on the phone have been eliminated and/or condensed in this transcript.]

Staff Present:

Vicki Lucero, Building & Development Services Manager
Paul Kavanaugh, Building & Development Services Supervisor
Jose Larrañaga, Development Review Specialist
Roger Prucino, Assistant County Attorney

2. **Approval of Agenda**

HEARING OFFICER VIRTUE: Good afternoon. This is the monthly meeting of the Sustainable Land Development Code Hearing Officer. My name is Richard Virtue. I'm the Hearing Officer. We have one item of old business on the agenda today as published. Are there any changes to that?

VICKI LUCERO (Building & Development Services Manager) Hearing Officer Virtue, there are no changes.

HEARING OFFICER VIRTUE: Okay. If there are no changes we will go to the item as published which is a continuation of Case #21-5120.

3. **Old Business**

A. **Case # 21-5120 American Tower/AT&T Conditional Use Permit and Variance. American Tower/AT&T, Applicant, Arvin Norouzi, Agent,**

SFC CLERK RECORDED 07/05/2022

request approval of a Conditional Use Permit for a Substantial Modification to replace an existing cell tower (35' in height) and construct a new 150-foot tower and install new equipment within the leased area. The Applicant also requests a variance of Section 10.17.3.2.3 to allow the fall zone of the proposed 150-foot tower to be less than 300 feet. The site is within the Agricultural/ Ranching (A/R) Zoning District. Table 10-3 allows for a height of 150 feet within the A/R Zoning District. Appendix B, Use Matrix, illustrates that a Substantial Modification within the A/R Zoning District is a Conditional Use (CUP). The site takes access via US Highway 285, 16 miles North of Clines Corners and is located at 51 Boomer Road. SDA-3, within Section 32, Township 12 North, Range 11 East (Commission District 3)

[Hearing Officer Virtue read the case caption.]

JOSE LARRAÑAGA (Case Manager): Thank you, Hearing Officer Virtue. And just to clarify, Kim Allen is taking the lead on this project for American Tower.

On April 20, 2022, this request was presented to the Sustainable Land Development Hearing Officer. Staff provided a report and exhibits to the Hearing Officer outlining the Applicant's request. The Applicant testified on behalf of the application. The Applicant suggested that revised drawings and an engineering analysis demonstrating and discussing an intentionally designed breakpoint in the tower be submitted to the Hearing Officer to assist in assessing whether the application satisfies any of the criteria set forth in Section 10.17.3.13.

Case # 21-5120, American Tower/AT&T Conditional Use Permit and Variance was tabled until such time that the revised drawings and an engineering analysis were submitted to staff. These items are attached as Exhibits 10 & 11.

The Applicant is requesting approval of a Conditional Use Permit to replace an existing 35-foot pole with a new 150-foot pole, installation of the proposed AT&T tower equipment, additional ground equipment and a generator inside of the existing 1,144 square foot wireless telecommunication facility. The Applicant also requests a variance of Section 10.17.3.2.3 to allow the fall zone of the proposed 150-foot tower to be less than 300 feet and outside the boundaries of the property.

The 9,198-acre parcel is zoned Agricultural/Ranching. Appendix B of the Sustainable Land Development Code states that a modification of an existing wireless communication facility with substantial changes within the A/R Zoning District is a Conditional Use.

The Applicant states, "The proposal is to replace the existing 35-foot tower with a similar tower that is 150 feet. Due to the surrounding area, this is the most consistent tower design given the elevation needs of the carrier. Due to the number of antennas and need for elevation, the current design is the only design capable of meeting carrier's RF needs."

The Applicant requests a variance of Section 10.17.3.2.3, to allow the fall zone of the proposed 150-foot tower to be less than 300 feet and also to allow the fall zone outside of the boundaries of the property.

Staff recommendations on the variance: Building and Development Services staff has reviewed the request for a variance to allow the proposed 150-foot monopole to fall outside of the boundaries of the property and to allow a setback less than a minimum of twice the tower height. The existing 35-foot monopole is set back 74 feet from the adjoining property line. Staff finds the following facts in regards to the request: the purpose and intent of the SLDC Section 10.17.2, is to ensure that the County's health, safety, and public welfare, environmental features of the County, and the nature and character of the communities and neighborhoods are maintained.

Upon further review of this application and the SLDC criteria, staff has determined that a variance to allow a setback less than a minimum of twice the tower height in this instance is not applicable for the proposed development. Section 10.17.3.2.3 states: "supporting structures with a tower height of at least 20 feet sited adjacent to residential property shall be set back a minimum of 100 feet, or a distance equal to twice the tower height, whichever is greater, measured from the property line of a property on which a residence is located." Because there are no residences on the adjoining property, this portion of Section 10.17.3.2.3 does not apply to this application. The remaining provisions of Section 10.17.3.2, however, are applicable to this application.

Staff has reviewed the revised drawings and the engineering analysis which were submitted. Staff agrees that the proposed design may lessen the fall zone, but the fact that the proposed monopole will be 150 feet still allows for a possible fall zone of 150 feet, if the proposed design fails.

Staff recommends denial of the request to allow the proposed 150-foot monopole to fall outside of the boundaries of the property.

Conditional Use Permit: Building and Development Services staff has reviewed this project for compliance with pertinent SLDC requirements and has found that the facts presented support the request for a Conditional Use Permit to construct a monopole 150 feet in height. The facility meets the purpose and intent outlined in Section 10.17.2 of the SLDC with the exception of the fall zone being outside of the boundaries of the property; the use/structure will not impact adjacent land uses; and the application satisfies the submittal requirements set forth in the SLDC inclusive of the Conditional Use Criteria set forth in Chapter 4, Section 4.9.6.5.

Staff recommends approval of the Conditional Use Permit to construct a monopole 150 foot in height within the 1,144 square foot leased area, located at 51 Boomer Road subject to the following conditions. Hearing Officer Virtue, may I enter these conditions into the record?

HEARING OFFICER VIRTUE: Yes, you may.

Conditions:

1. The CUP showing the site layout and any other conditions that may be imposed through the approval process shall be recorded at the expense of the Applicant in the office of the County Clerk in accordance with Chapter 4, Section 4.9.6.8.
2. The maximum height of the wireless communication facility (monopole) shall not exceed 150 feet in height, inclusive of antenna array.

3. The applicant shall obtain an easement agreement from NMSLO to allow a fall zone within the State property.
4. A NMDOT access permit shall be submitted with the Development Permit application.

MR. LARRANAGA: Thank you. This report and the exhibits listed below are hereby submitted as part of the hearing record. Staff request the Hearing Officer memorialize findings of fact and conclusions of law in a written order. The Santa Fe County Planning Commission may be holding a public hearing on this matter on July 21, 2022.

Hearing Officer Virtue, I stand for any questions.

HEARING OFFICER VIRTUE: Thank you for that. I don't have any questions at this time. Let's turn to the Applicant and the Applicant's presentation. I would ask that anyone wishing to testify on behalf of the Applicant please identify yourself for the record by name and address and we'll have you sworn in.

KIMBERLY ALLEN: My name is Kimberly Allen. I am with Wireless Policy Group. I am here on behalf of the Applicant. My office is in Issaquah, Washington.

[Duly sworn, Kimberly Allen testified as follows:]

HEARING OFFICER VIRTUE: Please proceed, Ms. Allen.

MS. ALLEN: Thank you. As you know, Hearing Officer Virtue, we concluded our last hearing with an offer on behalf of the applicant to propose an alternative that achieves the same policy that the setback that is currently being applied would achieve. We see that staff has agreed that a 2 to 1 setback is not appropriate here so there is no need for a 300-foot setback because there are no residences on the adjacent properties, so staff is asking for 150-foot setback. As an alternative we submitted a letter from a certified engineer as well as revised engineering drawings demonstrating a design that is currently being used to address just these concerns nationwide. It's called breakpoint technology and as you can see in exhibit 10, the tower is engineered so that under extreme stress it would fold at approximately 22 feet from the top which is where the greater portion of the load is for this structure. It would fold over on itself and probably stay there, although, that top 22-foot section could drop to the ground. At that point, the wind load on the tower is relieved and the monopole itself will not fall. Additionally, the monopole itself, the remainder of the pole, is hardened and engineered with an extra 10 percent capacity to assist in achieving just that result.

I had a discussion with Mr. Larrañaga today and we talked a little bit about – I'm sorry it was yesterday – and I guess staff has some remaining concerns that the design, the actual construction of the tower may not match up with this design which has been certified by an engineer to create what should be a 22-foot fall zone rather than a 150-foot fall zone. And also bearing in mind that at present there is a 74-foot setback from the adjacent property line and where the tower will be. So, this is more than a 3 to 1 setback here that would accommodate easily that 22-foot top section where it to actually fall. So, we are requesting to address the concerns of staff, which we do understand, we are requesting a condition of approval that requests an easement on the adjacent property for the fall zone be revised to be stated in the alternative that, "an easement will be required or the Applicant will submit to the County documentation to the County's approval in the

form of a post-construction structural report that the actual tower was engineered, designed and built to the standards set forth in Exhibits 10 and 11. That way we can address the concerns of staff that sometimes there are miscommunications on what's exactly going to be built on that site. We can rely upon our engineer who has said that this only needs a 22-foot fall zone not a 150-foot fall zone and it achieves the policy of the County in this particular setback requirements because the top portion of this, which is the only portion that would fall, would be easily contained in the 74-foot setback that we have between the tower and the adjacent property.

And we also point out to the Hearing Officer that this particular area is undeveloped. The property to the west is state owned land. It is undeveloped. There are no plans to develop it and so I think that what we are proposing is a reasonable alternative way to achieve the policy goals of the County that are contained in the setback requirement.

We would ask for a variance of the setback to the 74 feet which is the distance we have between the tower and the adjacent property line as opposed to the 150-foot setback because through the engineering, careful design and construction we can achieve the same result. This will also allow AT&T to be on air by their March 2023 deadline for inclusion of this site in the FirstNet network which provides a dedicated network in the event of emergency for first responders and other emergency personnel. This site is a part of that which is why the extended negotiations that would be needed to acquire an easement from the state on this particular parcel we just couldn't be accommodated within the time needed to get this facility on air. And, so, we think that we get to same place with the same level of safety just through a different means and would ask that the Examiner recommend that the Planning Commission grant a variance on the setback requirements.

And with that, I am happy to answer any questions.

HEARING OFFICER VIRTUE: Okay, thank you. The Exhibit 10 which is the engineer's report related to the design, I guess we would call it, of the tower says, "the monopole has been designed to accommodate a theoretical fall radius," and then it goes on, "assuming the pole has been designed according to my design, and well maintained, in the event of failure." Basically, he says it would fold at 22 feet. How can we be assured that there won't be circumstances where the pole would fall completely onto the other property and exceed the 22-foot fall radius that you're effectively asking for? He says it's a theoretical fall radius and then he's saying his opinion is based on the assumption that it's properly designed and well maintained.

MS. ALLEN: Right and with respect to the second portion of that, the proper design and maintenance, I think that the post construction structural engineering report that it has been designed to those standards and has been examined and has been found to have been designed properly is one component of that. If the County were to require some periodic maintenance reports that the structure is being maintained, we can certainly talk about that as a way to get that level of confidence in the engineering. And I think with those two components we are at this point we've met the assumptions, the underlying assumptions of the engineer. You know, calculating wind load and structural capacities is always a theoretical exercise. I think, when the engineer discussed the underlying assumptions that he has in terms of the integrity of the design and the maintenance, he comes out with a fairly affirmative statement there that the fall zone

really is 22 feet and that would be the outcome here. So to the extent that anyone can, I think that those things would add the reassurance that you're requesting here.

HEARING OFFICER VIRTUE: Are you aware of any incidences or statistics that show that done of these poles have fallen under extreme weather. In other words, is there a track record of these poles identically designed to this one being installed in there being no problems with them falling over in extreme weather conditions?

MS. ALLEN: Well, I think if you go to the second from last paragraph in the engineer's report, the engineer says that, "a properly designed, constructed and maintained pole has never collapsed; monopoles are safe structure with a long history of reliable operation." That is consistent with my understanding anecdotally of the history of this type of design and in communities, both counties and cities across the United States, they include a setback variation in the event that breakpoint technology is engineered in here. So it is becoming – and I could provide a number of jurisdictions that allow that. And I can also look for statistics as well if that would be a supplement to the record that you think would be helpful.

HEARING OFFICER VIRTUE: I'm sorry. Would you restate what additional statistics you could provide?

MS. ALLEN: In the event – I could certainly go and do a canvass of this particular design and any known statistics on this and supplement the record with that information, if you think it would be helpful.

HEARING OFFICER VIRTUE: Okay, please do that. I'll give you three days from the date of the hearing to supplement the record with statistics as to how many of these types of poles have fallen in extreme weather conditions.

MS. ALLEN: Okay.

HEARING OFFICER VIRTUE: So we'll hold the record open for three days to allow you to submit those statistics, Ms. Allen. And with that, I don't have any further questions. Does staff have any questions of Ms. Allen at this point?

MS. LUCERO: Hearing Officer Virtue, just for clarification is that three working days from the date of this hearing?

HEARING OFFICER VIRTUE: I'm sorry, say it again.

MS. LUCERO: Is that three working days from the date of this hearing?

HEARING OFFICER VIRTUE: Let's make it three business days.

MS. LUCERO: Okay, thank you.

HEARING OFFICER VIRTUE: And that will be due by the close of business next Tuesday.

MS. ALLEN: Thank you.

HEARING OFFICER VIRTUE: Hearing nothing further from staff, are there any members of the public who have any questions of Ms. Allen at this point? Hearing none, Ms. Allen will be excused and I will ask if there are any other persons who wish to testify on behalf of the applicant at this point? Hearing none, we will turn to members of the public in opposition to application. Do we have member of the public who wish to testify in opposition, if so please identify yourself by name and address. Okay, I'll call one more time, any members of the public in opposition to the application who wish to testify? Hearing none, are there any members of the public present who just wish to make a statement with regard to this proposal, not necessarily for or against but

just a public comment? Again, are there any members of the public who wish to make a general public comment with respect to the application?

Okay, hearing none, does the staff desire to add anything at this point?

MS. LUCERO: Hearing Officer Virtue, if we could just ask the applicants for the record if they can submit the drawings that show the breaking point on the proposed antenna to staff for the record.

HEARING OFFICER VIRTUE: Okay. Ms. Allen, did you hear that? The staff is requesting plans that show the breaking point and I'm not recalling off the top of my head whether your drawings show that or not.

MS. ALLEN: I think that Exhibit 11 did but I'll double check that.

HEARING OFFICER VIRTUE: Yes, I would have thought it would have been in Exhibit 11 but actually I'm not recalling that I saw it now that it has been raised.

MS. ALLEN: We will definitely supply that.

HEARING OFFICER VIRTUE: Okay. We will allow you the same three days to submit a drawing showing the breaking point on the tower of the proposed design. So you'll have two submittals due in three working days and that would be by close of business Tuesday; okay?

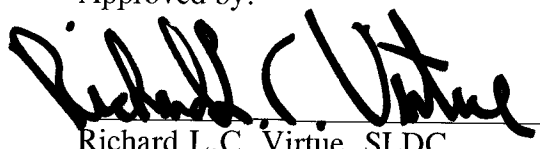
MS. ALLEN: Yes.

HEARING OFFICER VIRTUE: Is there anything further to come before the hearing? If not I will declare the hearing closed. We will await the additional submittals and then I will have a written recommendation filed within 15 business days of today's hearing. Thank you all very much.

4. Adjournment

Hearing Officer Virtue adjourned the hearing at approximately 3:30 p.m.

Approved by:



Richard L.C. Virtue, SLDC
Hearing Officer Santa Fe County

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

SLDC HEARING OFFICER M
PAGES: 7

I Hereby Certify That This Instrument Was Filed for
Record On The 5TH Day Of July, 2022 at 03:48:25 PM
And Was Duly Recorded as Instrument # 1992308
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office

Deputy Dorothy Romero Katharine E. Clark
County Clerk, Santa Fe, NM

