



MINUTES OF THE
SANTA FE COUNTY
PLANNING COMMISSION

Santa Fe, New Mexico

July 21, 2022

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COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss
PLANNING COMMISSION MI
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1. A. This meeting of the Santa Fe County Planning Commission called to order by Chair Charlie Gonzales on the above-cited date at approximately 4:00 p.m.

The meeting was conducted as a hybrid, in person and on a virtual platform via Webex.

B. Roll call preceded the Pledge of Allegiance and indicated the presence of a quorum as follows:

Members Present:

Charlie Gonzales, Chair
Frank Katz, Vice Chair
J. J. Gonzales
Steve Krenz
Wendy Pierard
Rhea Serna

Member(s) Excused:

Leroy Lopez

Staff Present:

Vicki Lucero, Building & Development Services Manager
Roger Prucino, Assistant County Attorney [Webex]
Leandro Cordova, Deputy Manager
Gabriel Bustos, Case Manager
Jose Larrañaga, Case Manager
Penny Ellis-Green, Land Use Administrator

2. Approval of Agenda

There were no changes to the agenda and Member Katz moved to approve. Member Krenz seconded. The agenda was unanimously approved.

Deputy *D. Stuy* *R. Ramirez*
Witness My Hand And Seal Of Office
Katharine E. Clark
Santa Fe County Clerk, Santa Fe, NM

3. **Approval of Minutes: June 16, 2022**

Member Pierard moved to approve the minutes and Member Serna seconded. The motion passed by unanimous voice vote.

4. **Consent Agenda**

A. **Case # 22-3036 Hacienda Doña Andrea Site Development Max & Britt Contreras, Applicants, James W. Siebert & Associates, Agent, request approval of a Site Development Plan to allow an Event Use (weddings) within an existing Bed & Breakfast site. The use would allow Hacienda Doña Andrea to be utilized as a large event wedding venue, in addition to the existing Bed & Breakfast for the 2022, season running through November 2022, only. After the 2022 season the property will revert back to solely a Bed & Breakfast. The 63.78-acre site is zoned Agricultural/Ranching (A/R). The site is located at 78 Vista Del Oro, via Goldmine Road in Cerrillos, NM, within Section 13, Township 13 North, and Range 7 East (Commission District 3) DENIED 7-0 Gabriel Bustos, Case Manager**

Member Krenz moved to approve the Consent Agenda and Member Katz seconded. The motion passed by unanimous voice vote.

5. **New Business**

A. **Case # 21-5120 American Tower/AT&T Conditional Use Permit and Variance. American Tower/AT&T, Applicant, ~~Arvin Norouzi~~, Kim Allen, Agent, request approval of a Conditional Use Permit for a Substantial Modification as per Section 10.17.4.2.1 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) [Exhibits 1 and 2: FirstNet information]**

[Jose Larrañaga read the case caption as shown above.]

JOSE LARRAÑAGA (Case Manager): Thank you, Mr. Chair. 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.

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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.

Clarification of 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 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. The Applicant has addressed criteria and staff has responded to the Applicant's comments. The Applicant addressed and staff responded to the following applicable design standards: access and easements, fire protection, fences and walls, lighting, road design standards and utilities.

The Applicant addressed design standards set forth in Chapter 10, Section 10.17 of the SLDC and staff has responded to the Applicant's comments. The Applicant has addressed the variance as per SLDC requirements of Section 4.9.7.4 and staff has responded to the Applicant's comments. The Applicant has addressed the variance criteria as per SLDC Section 10.17.13 and staff has responded to the Applicant's comments.

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 number 21.5120 American Towner/AT&T conditional Use Permit and Variance was tabled until such time that the revised drawings and engineering analysis were submitted to staff.

For the reasons stated above, an additional public hearing before the SLDC Hearing Officer was held on June 9, 2022 hearing. 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 submitted additional documents after the June 9th hearing which included the following: drop and swap zoning drawings, design appurtenance loading drawings, and engineer's addendum letter.

Hearing Officer's recommendation: On April 20, 2022 and June 9, 2022 this request was presented to the Sustainable Land Development Hearing Officer. The Hearing Officer

memorialized findings of fact and conclusions of law in a written order on this request. The Hearing Officer, based on the evidence presented, recommended that the Variance to allow a setback less than a minimum of twice the tower height is not necessary. The Variance request to allow the proposed 150- foot monopole to fall outside of the boundaries of the property in the Application be denied and the request for approval of the CIP be approved subject to the conditions recommended by County staff.

Recommendation, staff has reviewed the revised drawings and the engineering analysis which was 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. The recommendation of the Hearing Officer and Staff's recommendation is for the 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 the 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 inclusion of the condition use criteria set forth in Chapter 4, Section 4.9.6.5.

The recommendation of the Hearing Officer and staff's recommendation is for approval of the Conditional Use Permit to construct a monopole 150 feet in height within the 1,144 square foot leased areas, located at 51 Boomer Road subject to the following conditions. Mr. Chair, may I enter these conditions into the record?

CHAIR GONZALES: Yes.

MR. LARRAÑAGA: Thank you. Mr. Chair, this report and the exhibits listed below are hereby submitted as part of the hearing record. And, Mr. Chair, I stand for any questions.

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.

CHAIR GONZALES: Thank you, Jose. I have a question. Was there any – do you know if there was any dialogue between that property owner on the west as far as discussion for some kind of fall easement? Did that ever happen or anything like that?

MR. LARRAÑAGA: Mr. Chair, that property is state owned property. I did mention to the agent who was representing this project if they had contacted them as far as an easement because that was one of our conditions is for them to get an easement from the State Land Office and he just mentioned that they had noticed them as far as the hearings and the

neighborhood meetings and everything else but he did not state that they had any discussions with the State Land Office on that.

[There were issues with the microphones and Mr. Larrañaga repeated his comments]

CHAIR GONZALES: Any other questions of staff from the Commission?

MEMBER KRENZ: Mr. Chair.

CHAIR GONZALES: Steve.

MEMBER KRENZ: Right along these lines, I noticed in the notes here that the Applicant said that because of this FirstNet system that needs to be in place by I think it was next April or March, something like that, they would not be able to gain the necessary easement before that time; am I correct in that? I thought I read that in one of the submittals by the Applicant?

MR. LARRAÑAGA: Mr. Chair, Commissioner, is that in the handout that I handed out to you? I know that they're on a timeline for FirstNet. But they've had ample time to try and contact the State Land Office for an easement.

MEMBER KRENZ: Can you point to a particular page in the handout. This timeline that you're talking about, where is that in the handout?

MR. LARRAÑAGA: That's the timeline presented by the Applicant. Mr. Chair, Commissioner, I believe the Applicant is ready to speak and they may have that timeline.

CHAIR GONZALES: Okay, Frank.

MEMBER KATZ: I'm puzzled that the recommendation is to deny the variance because it would fall further than the boundary line. How you we approve the use if we're denying the variance?

MR. LARRAÑAGA: Mr. Chair, Commissioner Katz, they could move the actual monopole 150 feet outside of the leased area but that will mean getting another leased area from the current property owner of that area. And that's why one of our conditions it to be an easement from the State Land Office so that if it does fall then they wouldn't be any further buildings in that fall zone.

MEMBER KATZ: Shouldn't we come back when that's done?

MR. LARRAÑAGA: I'm sorry?

MEMBER KATZ: Shouldn't we come back and reconsider this when that's done?

MEMBER PIERARD: Can I say something before you start? I thought the variance was denied because it wasn't applicable because it wasn't near residences.

MR. LARRAÑAGA: Mr. Chair, Commissioners, yes, the applicant had noticed and went forward to the Hearing Officer for two variances. Staff looked at the code and I thought they would have to go through the other variance of twice the tower height for the fall zone, but that's more in a residential area and seeing that there's not any residences for miles to this location, staff reanalyzed that criteria and the Hearing Officer agreed with us that that particular variance for that particular section did not apply to this tower. The variance that they're asking for is that the tower is 74 feet and the falling would be 76 feet into the state land property.

MEMBER KRENZ: Mr. Chairman. Basically, the question is, have they talked to the state? Is the state happy with this? That's really what the question is. I mean, if I were the state and I had the potential of having a radio tower however distantly remotely possible, fall

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on my property, I guess I would want to know about it. And has the state been in the conversation with them?

MR. LARRAÑAGA: Mr. Chair, Commissioners, I don't know if they've had a conversation with the state. I do know that they did notice them for the neighborhood meeting and we have that information here and they did notice them for the Hearing Officer meeting. I have not received any letters from the State Land Office supporting or not supporting this project. Again, the applicant will be on the line here and they will be able to answer that question is they have contacted the state at all.

CHAIR GONZALES: Okay, J.J.

MEMBER J.J. GONZALES: I think I have several questions on this matter. You know, they the tower company, has come up with different designs in order not to try and get an easement from the western boundary. They had a design where the pole would snap at a certain height and not fall onto the other property. They have done a lot of extra work in order to try and avoid getting permission from the adjoining property owner. The adjoining property is the State Land Office and usually what they do is they lease that land to some rancher or somebody for grazing. I don't know what the acreage is that the State Land Office has but they're in the business of leasing their land in order to generate money for the state for the education of children in the New Mexico. That's what they do, they lease land. And the thing is they have gone through a lot of extra work to avoid getting permission.

The State Land Office is very responsive to property owners and tower companies and all you have to do is ask them permission and the case I'm familiar with is the State Land Office asked a lessee a relinquishment of a certain portion where the tower is going to fall. And this case has been around since 2020, August 2020 when they first made an application for a tower. So this is almost two years. And I don't understand why they haven't been able to get permission from the State Land Office, if they have the land, or the lessee that leases the land from the State Land Office. I'm kind of inclined not to approve a project like this until they get their permission from the adjoining property. And I note that one of the conditions of staff is one of the conditions is that they have to get an easement from whoever owns that -- whoever has the lease on that property, State Land Office or a private individual. So I'm kind of concerned that they've been negotiating this for the last two years and then all of a sudden they come up with a deadline where they have to do something by 2025 or something, so I'm kind of concerned that they have delayed getting easements for this fall zone and they're also trying to do everything that they can to try and avoid -- the property/the tower falling on somebody saying that these towers don't fall. These towers haven't been around for long of time. I mean there's wind events in that area that I think could knock anything down.

I'm kind of concerned that they have delayed this project and I'd like to ask the applicant, if they're going to speak today, some of these questions. So those are my comments. Thank you.

CHAIR GONZALES: Thank you, J.J. Let's continue with the presentation from the applicant.

KIM ALLEN: Good afternoon. Can you hear me?

CHAIR GONZALES: Yes.

MS. ALLEN: Thank you very much. Good afternoon. My name is Kim Allen and I'm from the Wireless Policy Group in Issaquah, Washington. And thank you for hearing this matter today.

[Duly sworn, Kim Allen, testified as follows:]

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MS. ALLEN: My address is 12979 Walla Cove Lane, Olalla, Washington, 98359. Thank you.

I do have a power point that I have put together to kind of walk the Commission through the project and I have been taking note of the questions that you have been asking as well and I do want to be able to address those. I think the power point will address some of them and certainly at the end we can discuss that. I'm going to go through this fairly quickly, so thank you for your attention.

Next slide, next slide, please. These are just some visuals on what the site is today. That's the existing 35 foot tower. Next slide please. To be replaced with a tower at 150 feet which is the height needed for the AT&T deployment and the addition of FirstNet to the tower. Next slide. So AT&T and American Tower that owns the existing tower are requesting approval of this tower which will replace a 35 foot tower. This project is part of the FirstNet partnership that AT&T has with the federal government to provide preemption and priority in its network to first responders. And the State of New Mexico actually requested that this location be included in the FirstNet network as a condition of their opting in to the FirstNet network. And as a condition of the FirstNet contract this site does have to be on air no later than March 31 of 2023. Next slide, next slide, please.

Just to orient you with FirstNet, and we'll go through this quickly because I know that you've been given materials, this is a new federally mandated network. AT&T was selected to provide this service. It was a 25 year contract that was awarded to AT&T and the state of New Mexico was out to bid as well as other 50 states and five territories and DC. This particular site was identified as an opt-in site by the State of New Mexico. Not the State Land Office but the State of New Mexico and a different department. So nationwide we're looking for interoperable broadband network for public safety. This tower will host band 14 which provides priority and preemption for FirstNet users and then also priority will be provided on all of the commercial frequencies that AT&T will put on this tower for its regular customers as well. Next slide.

This is just some of the benefits of the FirstNet Network. It allows first responders to send and receive data, video which is important in medical emergencies as well as disasters, images and texts without any concern about network congestion. Next slide.

So I know that you heard the presentation by Mr. Larrañaga, the Hearing Officer and staff have requested a condition of approval that AT&T seek an easement from the owner of the property to the west which is the State of New Mexico Land Office to provide a fall zone for the height of the tower. AT&T because it entered into the FirstNet contract and has this deadline imposed has tried to work with the County to come up with a solution recognizing that working with the State Land Office is going to be a lengthy process to obtain an easement. I know that there were questions about the context that had been made to the State Land Office, I'm not sure – in fact, I don't believe that there has been outreach in terms of obtaining an easement yet. The condition of approval proposed by staff was actually a little bit of a surprise that the easement would be required. And then we went to the Hearing Officer and we did think that maybe the breakpoint engineering which would keep all of the tower on the subject property would be an acceptable substitute from going through the process of trying to obtain an easement from the State Land Office of New Mexico. This was a perception on the part of AT&T that this going to be a very lengthy process and there was insufficient time to do that. So we did design the tower in such a way that the top 22 foot 10 inch section will basically fold over on itself in the event of an extreme wind emergency. We have in this power point packet that has been provided to the Commission, there are letters from a New Mexico certified engineer who has worked on over

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20,000 towers in his career. He was the one who did the design for this. He has never seen a breakpoint engineered tower fail in all of the years that he has been working as an engineer. So we, AT&T, proposes as a replacement for the easement requirement and we do understand that the County has continuing concerns about safety in the event that that property would someday develop and so we are requesting that the condition be changed to require an easement for the tower length if and when the western parcel ever develops so the tower can be built now to meet the 8 March 2023 deadline. We do understand that we would be building at risk in the event we could not secure an easement but we do think that in the future once that land is subject to some development which would bring people to that particular location that we would be able to obtain an easement at that time and satisfy a condition of approval but it puts that requirement out in the future but allows us to construct the tower today. Next slide please.

So the diagram up in the left-hand corner is the tower itself and the adjacency to the western property line and then the diagram on the right side here is the site plan which shows that the property – or that tower itself is significantly distant from the road, over 700 feet from the road so there is no impact to the traveling public in the very highly unlikely event that the tower would fall. Next slide.

This is just a snapshot of the existing coverage that the lighter greens is the gap in coverage. Actually, that's some coverage provided by the existing tower and the darker blue is definitely coverage that is missing in terms of the traveling public on those roads. Next slide.

This site was selected because it provides good visibility to the north and to the south which is important for the line of sight tower to function properly. Next slide. This is the existing coverage in green from the existing site now at 30 feet and then next slide. You can see that the coverage is extended quite a bit. Certainly the traveling public on the roads to the west of the site are obtaining much more coverage here as well as along the road to the north and south of 285. Next slide.

Just to give you a flavor for the area itself. This is actually – these drone photos were taken from a location that is actually to the east of Highway 285 whereas the site is to the west. But that's where the drone photos were taken from just to give you a sense of that. Next slide. As you can see there's virtually no other structure for miles and miles as the eye can see here. Next slide. And this is the view looking northeast. Next slide. And this is looking east, directly east. Next slide. And this is looking southeast. And this is looking south, directly due south. Next slide. And then this is looking southwest you can see a 35-foot tower, it's barely visible, maybe 2/3s of the way in the center. It's the only structure in the vicinity for miles. Next slide. And here the 35-foot tower is visible at the very edge at the far left right on the border there. Again, you can see that there is really nothing here for miles. Next slide. And then this is looking northwest. Next slide please.

As for the engineering of the tower, we did hire a very experience New Mexico certified PE to do the tower design for us here to engineer it based on the wind conditions in this area and this is his attestation as to the strength of the tower and the way it is engineered. Next slide. This is a follow-up letter because the Hearing Officer had a question about the frequency to which these towers fail and this particular engineer has been involved and worked on more 20,000 telecommunication poles. He's had a 20-year career and he estimated that in his career he had seen less than 20 of these poles experience a collapse and usually it is a structural failure of some sort and that a tower engineer such as this with a breakpoint, he's never seen a failure in a tower like this.

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We have tried to do as much as we can to make sure the tower is engineered with a breakpoint that will keep the big larger portion of the tower on the subject property and then they hardened the rest of the length of the tower with additional steel to strengthen it so it continues to stand in the event of an emergency once the wind load has been relieved. Next slide. And this is just an illustration showing where the breakpoint or they call it point of yield buckle is on the tower from two elevations. You can see just below the antennae a way it's the next noted point there. Next slide.

So AT&T's position is that we have tried to address the County's concerns for safety in the event of high winds by the design of the tower itself. The outcome of this engineering is to keep any portion of the tower from falling outside of the subject property. But we do understand the County's concerns and AT&T is not against approaching the State of New Mexico Land Office to obtain an easement but because of the deadlines imposed by the FirstNet contract we are asking that the condition of approval be changed to allow, actually I'll read it:

That the Applicant shall obtain an easement agreement from the New Mexico State Land Office to allow a fall zone within the State property if and at such time as the parcel to the west of the tower is subject to development. The tower shall be engineered with breakpoint technology and designed to keep any portion of the tower from falling on the western property.

Because this area is so very remote and because it is unlikely to develop anytime soon, AT&T requests that the Planning Commission consider the requirement to actually obtain the easement some time into the future so that we can build the tower and obtain the easement – I noted from Commissioner J. J. Gonzales' remarks that in his experience it is easy to obtain property entitlement from the State Land Office and I hope that's the case. Certainly AT&T is willing to go forward and do that. They simply didn't anticipate that the condition of approval when all was said and done was going to be that we obtain an easement here. But there is no objection to doing that. And with that I am happy to stand for questions and thank you for your attention.

CHAIR GONZALES: Thank you. Does the Commission have any questions of the applicant? Frank.

MEMBER KATZ: How close is the boundary from the base of the tower?

MS. ALLEN: It's about 22, 23 feet, 22 feet 10 inches is the top portion of the tower. So it's 23 feet.

MEMBER KATZ: And what holds the tower up?

MS. ALLEN: The pole, the monopole, the base of it. The foundation and the monopole.

MEMBER KATZ: Are there any wires that anchor it on either side or several sides?

MS. ALLEN: No.

MEMBER KATZ: It's just a pole –

MS. ALLEN: No, they're not proposing – it is, with a substantial foundation. Very deep and very wide to hold that.

MEMBER KATZ: Okay, thank you.

CHAIR GONZALES: Any other questions? J.J.

MEMBER J.J. GONZALES: One of the conditions is that you have to get an easement from the western property owner. That's what staff recommends and you have all these designs, the pole snaps at a certain height so it doesn't fall on the western boundary or another

piece of property. Have you talked to the State Land Office or whoever owns the property there or has it leased?

MS. ALLEN: We have not. We have not had negotiations with the State Land Office because we were thinking – we were hoping that the condition could be altered so that the breakpoint technology could be substituted for the need to go get an easement given the amount of time it would take to negotiate that easement with the state.

MEMBER J.J. GONZALES: Well, it seems to me that you're required to get an easement from the western property owner or whoever leases that, the State Land Office or the lessee; so when are you going to start doing that? I kind of support this project but you need to get the easement so that we don't have any loose ends here. That's important.

MS. ALLEN: Commissioner Gonzales, what I'm suggesting and what we're requesting is that we will get the easement. We would like to be able to delay that until at such time that there's some development around that would be threatened – that would be threatened by a potential tower fall, as unlikely as that is. But if it is the will of the Commission for us to begin negotiations with the State Land Office right away we would just ask that we be allowed to begin construction of the tower now with the breakpoint technology knowing that it is undertaking the risk that we may not be granted the easement although I can't imagine why we wouldn't. It was just a matter of the time to be able to negotiate such an easement with the state versus the deadline that we were facing. It isn't any objection of getting an easement. It's that we had a timing issue.

MEMBER J.J. GONZALES: This project has been in the works since 2020. That's the date that I first saw on this application. So you've had two years before you came to this committee in order to get an approval; why haven't you been able to get an easement somehow from the western property owner?

MS. ALLEN: With all due respect, Commissioner Gonzales, we didn't know that we were going to be asked to get an easement until the staff report was published for the hearing just earlier this year that said that the staff was going to be requiring an easement as a condition of approval. We did not know that that was going to be a requirement under your code.

MEMBER J.J. GONZALES: Thank you very much.

CHAIR GONZALES: Okay, go ahead, Frank.

MEMBER KATZ: I guess it strikes me that you're in this business and you didn't know you needed an easement. You want to do it later, maybe if you get around to it. Why should we believe you? You have not convinced me that you're trustworthy.

MS. ALLEN: Well, I apologize for that, Commissioner. AT&T did not know that there was going to be a condition of approval for this project that they obtain an easement. Typically, in a drop and swap, which is what this is called, it's usually a very quick process with most jurisdictions where you go in and the application is approved quickly and you can move forward and it's typically the path of least resistance quite frankly because there's already a tower there. And so then the need for an easement, which is not typical across jurisdictions, this is not a requirement that we see very often that there be some sort of an easement across adjacent properties for the full height of the tower. So it was something that we did not anticipate until the conditions of approval came out with the staff report and since then, knowing how long it could take for negotiations with the State of New Mexico, we thought – we proposed a different solution which is the breakpoint engineering which would achieve the same results. And then understanding that staff wanted additional assurances and they thought that they still would require the easement, all we're asking is that we build the tower with the breakpoint technology

now and you, certainly if the Commission wants to do a condition of approval that allows us a certain period of time to obtain the easement and come back to the Commission or come back to staff within a year, we'd certainly be happy to do that. It just truly was not something that we foresaw earlier.

MEMBER KATZ: The breakpoint, what happens at the breakpoint?

MS. ALLEN: The breakpoint is engineered with a buckle on it. So in the event and only in the event of extreme wind and I think it's 110 or 120 mile an hour wind is what the engineer used as the statistic, then the top of the tower which is that big top hat, that's where all of the wind load is folds over on itself. The pole folds at that point and the tower top hat where all of the antennas are falls to the ground or in most cases just hangs there because the tower has folded. The remainder of the tower, the bottom 130 feet of tower, has been hardened with additional steel to withstand winds that are excessive as well – as well as foundation to keep that portion of the tower standing. And with the wind load relieved, then that portion of the tower would not fall. It would just be a pole with no end on the top – no load on the top.

MEMBER KATZ: Why wouldn't the antennas which I assume are what catches the wind, so of speak, if it is still attached why isn't that pulling the tower over?

MS. ALLEN: All I can say, Commissioner, is that we have not seen that happen. We have not seen it pull the tower over. We have not seen a tower designed like this fall its full length or even the length from the breakpoint down. I base that on someone with a degree that is far, far, far better than my mine in terms of engineering and a much broader base in experience.

MEMBER KATZ: I appreciate that.

MEMBER KRENZ: Mr. Chairman.

CHAIR GONZALES: Hold on. I think that staff wanted to say something.

Vicki?

MS. LUCERO: Thank you, Mr. Chair. I just wanted to point out that Ms. Allen made the statement that there's an existing tower out there but the proposed tower is actually four times the size, the height, of the existing tower. The applicants were made aware prior to the Hearing Officer's meeting that we were going to require them or impose a condition of approval that they would have to get an easement from the State Land Office so they've known about this for over three months now. And I just also wanted to mention that when they came forth, you know when they come forth to our Technical Advisory Committee meeting we always tell people that we usually do not support variance requests. So they were aware of the fact that we likely would not support this request.

CHAIR GONZALES: Thank you, Vicki. I think Rhea had a question.

MEMBER SERNA: Thank you, Mr. Chair. I have a question for the applicant. In looking through the materials submitted for the application there is an email exchange April 26, 2021 and a gentleman from the Darna Group talks about that the surrounding properties are corporations and LLCs. I'm just curious why the State Land Office – were they contacted, that's my first question to be part of this neighborhood advisory meeting required meeting? And then just my own personal dealings with the State Land Office, they're always very responsive and tend to be pro-development. I'm just curious what type of communications have gone on with the State Land Office since last year?

MS. ALLEN: Thank you for the question. I know that the State Land Office was provided notice of these meetings in terms of the community meetings as well as these hearings that we've had and the State Land Office didn't choose to intervene one way or the other either in favor or in opposition. And I previously – again, the only thing that I can say is that in the last

three months we've learned that we're going to be required to get an easement for the pole height of the tower. This was not something that we knew until the staff report came out for the hearing and what AT&T is asking is just for some additional time. We are very happy to go and obtain an easement. That's not an issue. We haven't made the contact yet because frankly we thought the breakpoint engineering would substitute for an easement. But staff has held firm in their resolve to have this and because it's not – because there's no immediate danger even if the tower were to fall to adjacent properties, we're just asking for some time to compromise so that we have time to obtain the easement that the County is requesting. Happy to do it and we'll open those negotiations right away. Certainly we need a reasonable amount of time to be able to undergo the negotiations. But we are very happy to obtain an easement. We just need to get the tower on air. And certainly if we were unable to obtain the easement then we would be at risk of having to take the tower down. That's the consequence that we're facing. But we are happy to proceed and obtain an easement from the State with great hope that the experience of the two commissioners who have spoken to it today about the responsiveness and development friendliness of the State Land Office will assist us in doing that very quickly.

MEMBER SERNA: Thank you.

CHAIR GONZALES: Thank you. Wendy.

MEMBER PIERARD: I'm just wondering on the easement. It seems like the purpose of the easement is to provide protection for future development; is that correct? So in case the State decides to lease the property or develop it that they should have an easement. Because I have dealt with several of these type of projects and I've never seen an easement requirement before.

CHAIR GONZALES: Basically, what I'm thinking is that if the tower was to fall over, once it fell over it would be encroaching to the next property so they need an easement for that encroachment.

MEMBER PIERARD: But what she is saying is that it is not going over the other property based on the engineering studies that they have. And if it did, say it did right now, what would happen? They would go on state land and take it out. There's no – projects that I have dealt with on these types of things have been, I don't want to see that and it's too close to my house. I don't want to see this tower. It's not, I'm worried about it falling over and especially in an area like this, with the engineering that she has, I just question that requirement.

CHAIR GONZALES: Okay. Thank you. Steve.

MEMBER KRENZ: I'd like to refer to a slide that you presented and in our handout, basically this is the two slides of coverage – 133DMB coverage. One was of the 30-foot tower, one is on the 50-foot tower. You presented that in your slides. I'd like to refer to that. In our handouts it is exhibit 3. And in this picture here, basically this is the coverage that is presently being provided, cell coverage I guess, it's being provided at the existing tower and cell coverage that is going to be provided in the 150 foot version. Okay, first of all I am trying to get oriented on here. One of these is titled Interstate 285, okay. What are these other lines, these are other roads, what roads are these off to the west?

MS. ALLEN: I believe they are state highways.

MEMBER KRENZ: Yeah, which ones?

MS. ALLEN: I'm not sure as I sit and look at the map today. And I would want to clarify too, that the previous map at 35 feet, which is the existing tower, the only carrier on the tower right now is Verizon. So the previous map is the coverage that AT&T would have 35 feet versus if it went on the existing tower versus the 150 feet.

MEMBER KRENZ: Right. Can anybody tell us what these roads are out here? I'm really interested in this because –

MR. LARRAÑAGA: Mr. Commissioner, the one to the left or to the west would be 41 and the one to the far west is Highway 14.

MEMBER KRENZ: Okay. So this is showing some coverage being provided between 41 and maybe up to Highway 14. What I'm getting at here is that even with the 150-foot tower there's no cell coverage out to I-40; is there, Ms. Allen?

MS. ALLEN: Not from this sight.

MEMBER KRENZ: Okay.

MS. ALLEN: It may be supplied by a different AT&T facility.

MEMBER KRENZ: But not by this tower. All right. I'm wondering, there's not a whole lot out there. I mean, there's not a lot of residential area, there's not a lot of towns, there's nothing like that. Why is AT&T going through the expense of building this 150-foot tower?

MS. ALLEN: When AT&T entered into the contract for FirstNet with the federal government and each state was given a chance to give a list of areas that they wanted to have covered by FirstNet and this was one of the areas identified by the State of New Mexico as one of their opt-in sites that they wanted FirstNet coverage in this vicinity. That is why AT&T is pursuing this site and has selected this site.

MEMBER KRENZ: But FirstNet doesn't really provide revenue to AT&T does it?

MS. ALLEN: Not directly. But I think the FirstNet contract does but I am not aware of the details of the contract in terms of revenue provided by the federal government for AT&T to provide this network. It's also part of the public service that they want to do as well, to operate this network. There is financial compensation. I am unaware of the details of it.

MEMBER KRENZ: Okay. Because when I look at this and FirstNet is a great thing. I'm all in favor of it. But it's not like it's revenue – I guess it's not a revenue producing entity and yet here we are putting up a cell tower kind of out in the middle of nowhere. You're saying we're doing this because we want to be able to provide FirstNet coverage which is a wonderful thing. But I'm asking this because, you know, I live out on Highway 14 out in the country, highly populated residential area, we can't get cell coverage for crap. AT&T is not knocking on our door saying, Hey, we want to put a tower up somewhere to give you coverage. And that would be for paying customers. Verizon isn't coming to us saying we want to put a cell tower to provide you guys, paying customers – we can't that to happen. We can't get anybody out there to put up cell towers. But yet here we are out in the middle of 285, there's no residences around there. It will provide some coverage up to and down 285 for people driving. Won't provide coverage for on I40 for people driving and AT&T is hot to get this done. That's confusing to me.

MS. ALLEN: Commissioner, it is part of AT&T's obligation under its contract to build this site in this location. By the extent that you would have other sites that you have identified that lack adequate coverage near your neighborhood, AT&T welcomes that feedback and I would certainly convey that to AT&T because a lot of the network build-out is driven by customer input.

MEMBER KRENZ: Thank you, Mr. Chair.

CHAIR GONZALES: Thank you, Steve. J.J.

MEMBER J.J. GONZALES: Ms. Allen, I just had one more question. You're going to remove the existing tower, the 35-foot tower, that's going to be gone; right?

MS. ALLEN: Yes.

MEMBER J.J. GONZALES: How difficult is it to move the new 150-foot monopole like 100 feet to the east that way you don't have to get an easement from the State Land Office. Have you figured that? To me that's a simple solution. The cables and stuff you could extend them to the existing building which you could leave on site. Explain to me why you can't move the tower like 100 feet or 75 feet in order to eliminate any kind of a variance or any easement from the State Land Office? Can you explain that to me?

MS. ALLEN: Yes, I can. AT&T when they were searching for locations wanted to, again we always try and take the path of least resistance, and so building a tower here on a property that is owned by American Tower Corporation – simply put their property is not large enough to move the tower that far. We'd have to enter into brand new negotiations with some other land owner and then also see if moving the tower that distance would have any impact on the RF propagation as well. Everything that AT&T needs to deploy is right here on the site. The site is not large enough for us to move it to accommodate the entire setback and that's why we have tried to get some creative solutions here in terms of the engineering and then also the opportune to obtain an easement from the State land Office, if that were to be a condition of approving the conditional use permit.

MEMBER J.J. GONZALES: Thank you.

CHAIR GONZALES: J.J., it probably would affect the visual impact as well. I don't know how much but because of that 150-foot height. Frank.

MEMBER KATZ: Maybe you can help clear something up for me. You have a contract with FirstNet and they do towers for first responders; is that what I am understanding?

MS. ALLEN: The U.S. Government, the Department of Commerce created an entity called FirstNet, FirstNet Authority. And their charge is to build out a network of towers that will accommodate new and dedicated spectrum called Band 14 which give first responders priority and preemption in the event of natural and manmade disasters and emergencies. The charge came from Congress after 9-11 and they want to make sure that the communications network is seamless and the first responders have the highest priority. So the FirstNet Authority opened it up to all of the carriers for bid and AT&T was the successful bidder and was awarded the sole contract to actually build out this network over the next 25 years as well as maintain it. And we were given a network of March 31, 2023 to build the sites that are opt-in sites. The ones that individual states said, we want you to build this site as a condition of us joining the FirstNet Authority.

So that's what this site is and that's why we're under the time pressure here is because the State of New Mexico asked for this particular site to be built and we're hoping that because the State Land Office owns the adjacent property that if this Commission were to require an easement that we would be able to obtain that. All we ask is that requirement to have the easement in hand be delayed and that we allowed to build the site in order to meet our deadline and commitment.

MEMBER KATZ: Did I understand you to say earlier that it's the state that wanted the antennae here for first responders? Was it a state chosen location?

MS. ALLEN: Yes. Yes. Not the State Land Office. I'm not sure which department or bureau of the state it was but the State of New Mexico made it a condition of them signing onto the FirstNet project.

MEMBER KATZ: It seems to me that if the state is asking for it, it wouldn't be such a leap to have gone to the state to get the easement. And it shouldn't be that hard.

MS. ALLEN: We are hoping that it isn't. We are hoping that it isn't that hard. As I say, it's a matter of timing – whether an easement would be required until relatively recently.

CHAIR GONZALES: Okay, I have a couple of questions myself. One of the questions that I have is that the tower is going to be so high how is that going to affect airplane traffic? I think I saw something about a strobe light that was going to be deleted or not used anymore.

MS. ALLEN: The tower has to be approved and certified by the FAA and if the FAA determines – they typically don't regulate towers until they're 200-feet tall. So they don't require lighting on towers that are less than 150 feet unless they are very proximate to an airport within the airport envelope. But this site has been submitted to the FAA and would be subject to any conditions that the FAA would impose as a condition of building it. The FAA would impose its own requirements.

CHAIR GONZALES: I think on the report to the Hearing Officer, there was mention that the strobe light was not going to be required; has that confirmed?

MS. ALLEN: I believe it has. I believe they confirmed it because the tower is less than 200-feet tall.

CHAIR GONZALES: Okay, another question I have is I have concerns about the depth of foundation. I think you have on your foundation here showing a 30 inch or 6 inches below frost line. I know the frost line down in southern New Mexico isn't that deep, so I am just curious about that. Do you have any information on that?

MS. ALLEN: Well, what I can tell you is that the foundation engineering meets all applicable building codes locally, that the foundation was designed by a local engineer, certified by the State of New Mexico and that it is our assumption based on the expertise that we have hired to design this foundation that it would meet all of the building codes. We also would have to be subject to obtaining building permits from the County and we're subject to the County's inspection of our designs as well as our build to be able to operate.

CHAIR GONZALES: I just want to say that in my opinion, I think 30 inches for 150-foot tower is under scale to me.

Okay, this is a public hearing. I'm going to start the public hearing. Is there anybody out there that wants to speak on behalf or against this project? [There was no response] I hereby close the public hearing. What the pleasure of the Commission? Discussion, motion?

MEMBER J.J. GONZALES: Mr. Chair.

CHAIR GONZALES: J.J.

MEMBER J.J. GONZALES: I had a question of staff. If we approve this permit today, will they be able to, without the easement from the State Land Office, will the County issue a permit to build this tower without an easement?

MR. LARRAÑAGA: Mr. Chair, Commissioner Gonzales, if the Commission would grant the variance for the fall zone to be outside of the property line and delete condition #3 as stated in the staff report; yes, we would proceed with the permit for the construction of the tower.

MEMBER J.J. GONZALES: Is that the easement from the State Land Office where they have to comply with condition 3?

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MR. LARRAÑAGA: Mr. Chair, Commissioner Gonzales, if this Commission would grant the variance – oh, I’m sorry, deny the variance –

If the Commission would deny the variance and approve it with condition #3 then we would have the easement for the fall zone. And the staff would not issue the permit for construction until they would have proof of easement from the State Land Office.

MEMBER J.J. GONZALES: I have to get an explanation; Mr. Katz, would you explain that to me?

MEMBER KATZ: From what I took from that is that if we do what I would like to do and I gather what you would like to do which is simply approve it with the conditions that the Hearing Officer said, they got to go get the easement from the Land Office and stop pretending that it’s too hard. And I would recommend that we do that.

CHAIR GONZALES: Is that a motion?

MEMBER KRENZ: To me the question is do these things have to happen simultaneously, the obtaining of the easement with the construction or do you have to get the easement before you begin construction?

MS. LUCERO: Mr. Chair, Commission member Krenz, we would recommend that the easement happen before we issue the permit to allow construction.

MEMBER KRENZ: Okay.

CHAIR GONZALES: What’s the pleasure of the Commission? Frank.

MEMBER KATZ: I’ll try – I’m not sure how to do this. I would move to follow the Hearing Officer’s recommendation which I believe means we deny the variance, we agree to the conditional use permit with the conditions that the Hearing Officer set forth, all four conditions. I don’t know whether that covers everything. I’m a little concerned but I think that’s where we want to go.

CHAIR GONZALES: I think so. Okay, is that a motion then Frank?

MEMBER KRENZ: Point of clarification. My understanding is that the applicant applied for a variance. Staff has come back and said, No, you don’t need to apply for a variance and their recommendation is that we disapprove a variance. And then – but they say if the variance is not necessary, they are recommending approval of the CUP with the four conditions. Is that correct, staff?

MR. LARRAÑAGA: Mr. Chair, Commissioners, no. Initially the applicant came in with and staff analyzed the project through maps that they provided showing the fall zone and where the exact tower is compared to the distance of the tower itself to the property line. So they came in for two variances. One variance would be 300 feet, the fall radius would be 300 feet twice the tower height. That one is explained in the first part of the staff report and wasn’t necessary for this type of development because it was more for a residential area where there were residences in close by where this 150-foot tower could fall on a residence. Since there wasn’t any residences, staff analyzed that and stated to the Hearing Officer that it wasn’t necessary. Hearing Officer agreed with staff that that particular variance was not necessary. The variance that they’re asking for, the second variance, to fall outside of the property line – the boundaries of the property line. Basically, they are falling outside of the distance from the existing tower to the property line of the state land is 76 feet. So it would be falling – if it would fall completely 150 feet – it would fall 74 feet into the state land. That’s the variance that they’re requesting.

MEMBER KATZ: That was the variance I was proposing we deny because we want the easement to provide that protection that the variance demands.

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MEMBER PIERARD: I guess, what are we protecting?

MEMBER KATZ: I am puzzled that you said the property line is 74 feet and then I heard it was 22 feet earlier, I am puzzled as to where the property line is.

MR. LARRAÑAGA: The property line is 74 or 76 feet, it would fall onto the state property the remainder 150 feet if the entire pole would fall 150 feet. With the breaking point at 25 feet it still would fall. If the design didn't work or maintenance as the applicant or engineer pointed out if it wasn't maintained and the design – if it wasn't built to design, then the breaking point would take 25 feet but then the rest of the pole would still fall 50 feet into the state land.

MEMBER KATZ: Absolutely.

MEMBER PIERARD: Fifty feet to the line, not 50 feet over the line.

MR. LARRAÑAGA: Fifty feet over the line.

MEMBER PIERARD: Over the line, okay. I guess my question is still why is the easement a requirement? I haven't seen this much discussion for a cell tower in the middle of a city where there is an impact. If they put it up next week and it fell over on the state line, what would be the harm be at that point. So it seems to me that you're making them jump through hoops for a perspective future development.

MEMBER KATZ: I guess my feeling to that is that they build it and it's there and there's no easement so there is nothing that prevents the state from putting something there or the state from leasing that portion of their land or a much larger portion to somebody who has no idea that there's this issue or this problem who puts a caravan out there to watch their sheep or whatever they might do. And to protect against the possibility of harm you just simply make clear that the state understands that they will not be to let anyone do anything there and does so with an easement. It's just straightforward. I reaction seeing this was gosh this is in the boonies and it makes absolutely no difference that they should be doing it. But it's sort of the combination that we're doing this for the first responders, the state wants it. We're not doing it for people who might live out there because no one lives out there. So why is this so hard to get it done in the right way to make sure that it is safe.

CHAIR GONZALES: I would also be concerned about if it did fall over, it would be an encroachment to another property and let's say something happened and there's a change of staff or something and it had to be cleaned up, the property owner would have to clean it up themselves. It could be a possibility.

MEMBER PIERARD: But again, the state was notified as an adjacent property owner, right, and they did not respond.

CHAIR GONZALES: Well, we don't know that. We don't have any letters that the state was notified; we don't know that.

MEMBER PIERARD: But don't they have to be notified as an adjacent property owner for a conditional use permit?

CHAIR GONZALES: The notice went out but as far as the applicant, they didn't have any dialogue with the state. Frank.

MEMBER KATZ: There is one aspect of the notification that I've seen throughout my time on the Commission which is it is pretty obvious who is most affected and we sort of require that an applicant will send them notice. We don't know whether the people read the notice or not and when there's a danger for somebody I would like to have the sense that you call them up and you ask them. It's not that hard if there's a specific person or entity that is involved. We had this case last time where there were neighbors all around and it's hard to know

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who – and I agree with you in that situation you send them notice and if they object then they do. But when it's a specific person or specific, a specific entity, a specific owner who is only that one person and it's going to fall on their land and no one else's land, call them up. Deal with it in a more proactive way.

MEMBER KRENZ: Mr. Chair.

CHAIR GONZALES: Steve.

MEMBER KRENZ: That's what bothers me in this is – I think that the engineering that is being presented makes a lot of sense. All of that is good. But what's missing from this application is any kind of input from the state. That's what is missing. I don't know if the state is in favor of this. I don't know if the state is against this. I would really like to see some sort of input from the state. Again, I don't know if the state would be willing to grant this easement. I don't know if the state would not be willing to grant this easement. I really think there needs to be some sort of information from the state.

And, question, Mr. Chairman, is there a motion on the floor?

CHAIR GONZALES: Yes, I believe there is.

MEMBER KRENZ: Was it seconded?

CHAIR GONZALES: I don't believe it was.

MEMBER J.J. GONZALES: I would second that motion.

MS. LUCERO: Mr. Chair.

MEMBER J.J. GONZALES: Frank's motion.

MS. LUCERO: Mr. Chair, if I could just interject. I just wanted to make two points before the motion is acted upon. The State Land Office did receive notice of the request but it wasn't specific to state that the tower could potentially fall on the State Land Office property. So they may not have realized that when they did get the notification. The other thing I wanted to mention is that the code does actually state that the tower would not be able to fall outside of the boundaries of the property. So that being said, even if the Commission wishes to impose the condition that an easement be required, I believe the variance would still be required as well because it will still be falling on the State Land Office property.

MEMBER KATZ: But with the easement, it would change the calculus for granting the variance, wouldn't it?

MS. LUCERO: Mr. Chair, Commission member Katz, I believe that that would justify a minimal easing of the variance request but it would still require a variance.

MEMBER KATZ: Yeah.

MEMBER PIERARD: So, Vicki, you said it would fall outside the property boundary.

MS. LUCERO: Mr. Chair, Commission member Pierard, this is correct.

CHAIR GONZALES: Okay, so as far as I know we still have a –

MS. ALLEN: Mr. Chair, point of order.

CHAIR GONZALES: I'm sorry, we're into discussion here with the Commission and I can't let you speak right now.

MS. ALLEN: I understand but it's point of order in terms of process. Because the staff has now made a significant change in their position here and we would ask for a continuance to be able to respond.

CHAIR GONZALES: So we're under discussion of a motion. What's the pleasure? We still have a motion floating right?

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MEMBER PIERARD: I have a question about the motion. Did it include – your motion is to deny the variance and it doesn't give them the opportunity to pursue the easement after the conditional use permit is approved?

MEMBER KATZ: That's correct. They can't start building, my understand is, that they can't start building until they have the easement. I guess what we're really doing is conditioning the granting of the variance because it still fall outside on the easement from the Land Office which seems to make sense.

MEMBER KRENZ: Point of information, Mr. Chairman. We have two things in front of us. One is the variance which staff is recommended not be denied and then we have the conditional use permit and that conditional use permit includes the four conditions that staff is recommending. So we have two motions here is that correct?

CHAIR GONZALES: That's correct.

MEMBER KRENZ: Which motion are we discussing and voting on now?

CHAIR GONZALES: I believe it was the first one, the variance. Is that correct, Frank?

MEMBER KATZ: I guess I'm confused too. What I thought was that the variance is necessary because the tower is too tall and it would fall on the adjacent property. And the recommendation from the Hearing Officer was to deny the variance because we have nothing from the adjacent property owner to say, okay, we understand this danger, we will solve the danger by giving you an easement over that area so we will not either – either we or any of our grantors/grantees or anyone else will not put anything there. So it would sort of justify granting the variance. I guess I don't fully understand the conditional use permit. I think it is just saying that you can build and I guess you need to have a conditional use permit to build a tower and we've made sure that the tower is now going to be safe because it's not going to fall on anyone. So we need to grant the conditional use permit too. So it's sort of like a combination of granting – I guess it would be granting the variance on the condition that there's an easement from the state. Is that a better way of expressing it? That's what we want to do.

MS. LUCERO: Mr. Chair, Commission members, I believe the intent of the Hearing Officer and this is what staff would recommend as well is that we could support the request for the variance with the condition that they obtain the easement from the State Land Office.

MEMBER KRENZ: That's what is confusing to me. Why would there even be a variance if the applicant obtains an easement?

MS. LUCERO: Mr. Chair, Commission members, the SLDC specifically states that the tower cannot fall outside the boundaries of the property.

MEMBER KRENZ: Even if there's an easement?

MS. LUCERO: It doesn't address the easement factor specifically in the SLDC but that would, as I mentioned, would constitute a minimal easing and mitigate the need for the requirement or for the variance request. So by granting the variance you would be allowing the tower to fall on the State Land Office property but if you impose the condition as stated for the conceptual plan, then they would be required to establish an easement around that fall zone. So it would still be falling on the State Land Office property which is why the variance is still necessary.

ROGER PRUCINO (Assistant County Attorney): Mr. Chair and Commissioners, this is Roger Prucino, can you hear me?

CHAIR GONZALES: We're still in discussion here.

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MS. LUCERO: Mr. Chair, that is the Assistant County Attorney on the line.

CHAIR GONZALES: Oh, I'm sorry. Please speak up.

MR. PRUCINO: I think the last statement made by Vicki states the situation very precisely. The granting of the easement simply suggests that State Land Office being the party granting the easement essentially is okay with the possibility that the tower may fall on its property. But the granting of the easement does not in any way alter the boundaries of the property so I think Vicki's analysis is correct that knowing that the easement is in place would make it a simpler matter for staff to support the variance rather than recommending against it. But I think that variance would still be necessary because in the property where the tower could potentially fall would still be State Land Office property, it would simply be, as Vicki said, an easier approach because the State Land Office would be agreeing to grant that easement. It would still be State Land Office property. The variance would probably still be necessary but my understanding from Vicki and Jose's statements the staff would be able to support the variance and recommend in favor of the variance if the easement were obtained. Thank you.

MEMBER KATZ: So do I understand you correctly, that if I made a motion to approve the conditional use permit with the conditions specified by the Hearing Officer and grant the variance on the condition that the easement is obtained from the State Land Office before construction begins; does that get us where I think – gets us legal?

MR. PRUCINO: I think that does get you to the point you want to be at. I think recommending or not granting the variance would be problematic so yes, Commissioner Krenz [sic] I do believe that the way you just phrased it would be appropriate and at that point your only further consideration if you choose to make any further consideration would be the timing of obtaining the easement.

MEMBER PIERARD: And does it – does the easement have to be that formal of an agreement with the state? Could the State Land Office send them a letter – like an interagency agreement but some sort of agreement rather than going through a formal easement process? It sounds like, I don't know if they contacted the state but having something less formal as an agreement that the state understands the situation.

MEMBER KATZ: That's what we want, is an agreement. It has to be written because you're talking about land and it's called an easement. It's not that hard.

CHAIR GONZALES: Anything else, sir?

MR. PRUCINO: Yes, I was simply going to clarify that something in writing from the state, if it is in writing, signed but isn't an actual easement agreement, that would still be binding on the state if it includes the right language. I'm assuming the question was asked to try to address the issue of urgency involved so it could certainly be a possible resolution to get written assurance from the state that it will grant an easement if in fact the actual process of getting that easement would be more time consuming than we realize.

MEMBER PIERARD: And am I understanding this right where an easement would be like a utility easement that this gives the company access to the state's property to do maintenance or access if it's an easement?

MEMBER KATZ: I assume that would be included so that if in fact it did fall on the state's land they could go there and fetch it.

MEMBER KRENZ: Mr. Chairman.

CHAIR GONZALES: Steve.

MEMBER KRENZ: So even if this property had obtained from the state an easement, even if that were the case, my understanding is that even with that easement it still

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would be a variance to allow this because as the SLDC is presently written you can't fall into an easement either.

MEMBER KATZ: But we would be approving the variance.

MEMBER KRENZ: Right, yes.

MEMBER KATZ: The reason for the rule is solved by the easement.

MEMBER KRENZ: It would be really nice to have this easement in hand.

MEMBER KATZ: Yes.

MEMBER KRENZ: So, the other option here would be table this request until we have an easement in hand.

MEMBER KATZ: We could do that but I am sensitive to the fact that, you'd never know it, but that they're in a rush and that they want to get it done and that this would get them the approval from us conditioned on their getting the easement from the State Land Office which is what we want. And I don't know that I need to hold up things until that's actually done. What we're saying is that we're holding up and granting of a construction permit as I understand what you're telling us. So they can't build it until they get that easement but then they would have to come back to us. That's my only desire to do it this way is that it might facilitate it actually occurring.

MEMBER KRENZ: So what would you imagine that we would be doing in the future? What would you imagine that we, this group, would be doing in the future?

MEMBER KATZ: I don't think that it would come back to us. I think that we would have approved the conditional use permit and granted the variance from the rule on the condition that an easement is granted by the State Land Office prior to any construction.

MEMBER J.J. GONZALES: Mr. Chair.

CHAIR GONZALES: J.J.

MEMBER J.J. GONZALES: I think before we consider any other motions I think we should vote on the motion on the floor.

CHAIR GONZALES: We could either vote on it unless you want to withdraw it.

MEMBER KATZ: I would like to withdraw it because I think it doesn't get us where we want to be. It simply denies the variance and drags them back in front of us again. And I don't see the point in doing that if we agree that it's worthy to go forward as long as the easement is in hand.

CHAIR GONZALES: Vicki.

MS. LUCERO: Mr. Chair, if I could just suggest that we have two separate motions. One on the variance and one on the conditional use permit just for clarification purposes. If the Planning Commission does want to require the easement, that could be a condition that is imposed on the variance as well.

MEMBER KATZ: You're suggesting I make a motion to grant the variance on the condition that the State Land Office grant an easement to the applicant before any construction begins.

MS. LUCERO: Mr. Chairman, Commissioner Katz, if that's what your wishes are and as far as the motion, I just think it would be clearer to start with the variance and we can impose the same condition on both if that's the pleasure of the Planning Commission.

MEMBER KATZ: I'm sorry I can't hear with the –

MS. LUCERO: If the Planning Commission wishes to impose the condition regarding the easement on both the variance and the conceptual plan –

MEMBER KATZ: Yes.

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MS. LUCERO: -- that can be done as well.

MEMBER KATZ: Yes, that was my intention. I'll make first the motion to grant the variance on the condition that the State Land Office grant the applicant an easement to cover the area on their property which the tower could fall on prior to any construction beginning.

MEMBER PIERARD: Would we word that differently not that we're not requiring the state to grant it, we're requiring the applicant to get the easement from the state; right?

MEMBER KATZ: Yes. We could say they must get the easement from the state but to get the easement from the state, the state has to grant it.

MEMBER PIERARD: Okay.

MEMBER KRENZ: Mr. Chairman.

CHAIR GONZALES: Steve.

MEMBER KRENZ: I think we're all in agreement with what we want to see happen here but the question is what is the best way to get there? To me it seems rather convoluted to have a conditional variance and the CUP. I personally would rather see this tabled until we have the easement and then vote on the variance and the CUP.

CHAIR GONZALES: That would mean they would have to come back before us, correct?

MEMBER KRENZ: Say that again.

CHAIR GONZALES: That would mean that they had to come back before this body.

MEMBER KRENZ: Right.

CHAIR GONZALES: That would postpone it a month or two. Okay, so let's work with one motion at a time.

MEMBER KATZ: I made a motion. It hasn't been seconded.

MEMBER PIERARD: I'll second yours.

CHAIR GONZALES: Can we have a roll call?

MEMBER KRENZ: And this is the vote on what?

MEMBER KATZ: This is a vote on granting the variance on the condition on that the State Land Office grant the applicant an easement for the area in which the antennae could fall and that this grant of easement is prior to any construction.

MEMBER KRENZ: And this is the variance?

MEMBER KATZ: Correct.

The motion passed by majority [5-1] roll call vote with Member Krenz voting against.

MEMBER KATZ: My second motion is to approve the conditional use permit subject to the four conditions stated by the Hearing Officer.

MEMBER J.J. GONZALES: I'll second that.

The motion passed by unanimous [6-0] roll call vote.

CHAIR GONZALES: Thank you all. Thank you all for the great discussion to everybody involved. Appreciate it.

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B. Recommendation on Ordinance No. 2022 - : An Ordinance Amending the Sustainable Land Development Code Ordinance No. 2016-9, to Add a New Section 3.6 to Establish the Extraterritorial Land Use Authority and a New Section 3.7 to Establish the Extraterritorial Land Use Commission

CHAIR GONZALES: Why establish rather than re-establish?

MS. ELLIS-GREEN: Because we thought it had gone. This is really a housekeeping ordinance that would create a new section 3.6 and 3.7 of the SLDC. Chapter 3 is where bodies are established including the Planning Commission. And state statute authorizes the creation of an ELUA and an ELUC and the ELUA is an extraterritorial land use authority and ELUC is an extraterritorial land use commission to exercise concurrent extraterritorial zoning district within two miles and platting districts within five miles. So the County used to have joint city-county boards that would hear zoning cases from the city limits two miles out and platting cases from the city limits five miles out. When the SLDC was approved those boards were not included in the SLDC for a couple of reasons. There was previous agreements through an annexation process and settlement agreement and a JPA with the City that said there are certain areas that the City is going to annex and during that they said, okay, if you're in the presumptive city limits which is in the area that we are going to annex but we haven't yet, all of the zoning and platting and land use issues go to the City. And if you're outside of that area, they will go to the County. By not including it in the SLDC the thing that we forgot about was annexation petitions. So those two bodies would still need to be around to hear any annexation petitions and there was one additional area off of West Alameda that is in the presumptive city limits due to be annexed or not annexed, depending upon negotiations now with the City and the County, that these two boards would need to be established to hear.

As a housekeeping matter, we do need to establish those. Again, they would only hear annexation hearings. The ordinance would establish membership and terms so the ELUA would be some County Commissioners, some City Councilors. All of the Commissioners and Councilors would be alternates for that. The ELUC would be five of the Planning Commission and five of the City Planning Commission with the other two members of the planning commissions being alternates. You would serve for two-year terms and again you would only be called upon if we had an annexation case to hear. And if we do have one we would be in contact with whoever had agreed to sit on our ELUC board and establish another one of these public hearings to specifically talk about the annexation petition that is in front. The Commissioners and the City Councilors would do exactly the same to take your recommendation and make a decision on that.

I would stand for questions. But to summarize this would be a joint City-County board to hear annexation issues. While we still have the settlement agreement and JPA that delegates all the other land use authorities to either the City or the County rather than this joint board. So this joint board at the moment would only do annexations. And I would stand for questions.

CHAIR GONZALES: Thanks, Penny. I think Frank and I are having flashbacks. I have one question, is the City onboard already; do we know?

MS. ELLIS-GREEN: Mr. Chair, Commissioners, yes, I believe that they are. They are going to have to establish and appoint ELUA and ELUC committee members as well. It sounds like from the County Attorney's Office that we would be taking the lead as far as on our side having the board, the BCC establish who is on the ELUA and appoint Planning Commissioners for the ELUC and the City Council would do the same on their end.

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CHAIR GONZALES: So we're ELUC and ELUA instead of EZC and EZA these days.

MS. ELLIS-GREEN: That is correct, yes.

CHAIR GONZALES: Okay, Frank.

MEMBER KATZ: Yeah, as you noticed my signature is on some of these documents here. I was City Attorney at that time and we were very happy to have worked out the agreement with the County and it stopped a whole bunch of lawsuits and we said, Okay, this is what the City is going to annex and we're not going to bother you, as I recollect, for 20 years. And you know, that's like five years from now. So I can understand that this does need to exist to deal with the current situation and annexations. Thank you.

CHAIR GONZALES: Other questions. Wendy.

MEMBER PIERARD: How many annexation issues do you have?

MS. ELLIS-GREEN: Mr. Chair, Planning Commission members, at the moment we've got one large area that is still to be questioned whether or not it is going to be annexed. And I think that is what the City and the County are having discussions on now. So I would hope that it would come in as one application of the area that will be annexed and the area that will stay in the County.

CHAIR GONZALES: Thank you.

MEMBER KATZ: One other comment. I would like to congratulate the County. I remember when we were doing this we were thinking the City is wonderful, we do a good job on land use planning and the County is just terrible – they don't do anything about it. And, boy, I don't know whether that was ever true really but it certainly isn't true now. And I've just been so impressed with the good job that the County does with its Sustainable Land Use Code and with its process. The big fear is gone.

MS. ELLIS-GREEN: Thank you.

CHAIR GONZALES: Steve.

MEMBER KRENZ: These commissions will only deal with annexation cases; is that correct?

MS. ELLIS-GREEN: That is correct at the moment while we've still got the JPA and the settlement agreement.

MEMBER KRENZ: What defines an annexation case?

MS. ELLIS-GREEN: It would be a case that states whether or not a piece of property that is currently not in the City would be annexed into the City.

MEMBER KRENZ: Thank you.

CHAIR GONZALES: Thank you, Steve. J.J.

MEMBER J.J. GONZALES: I think I was sitting on one of the committees at one time 14 years ago when they eliminated the two-mile extraterritorial and the five miles. And that's 14 years ago and what has happened that all of a sudden you bring these committees back? It seems like more bureaucracy and more work for County staff, more work for City staff and you have five Planning Commission members and five City Planning Commission members on one committee and then four Commissioners and three Councilmen. I mean it looks like this is creating a bigger bureaucracy and then the annexation work – I mean you haven't had any cases in 14 years. The City just incorporated everything, I-25, 599, Las Vegas Highway, everything so I just don't see that there's a need for this although there's a resolution or ordinance that says you have to create these committees. Is it really necessary with the workload that we've had over 14 years?

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MS. ELLIS-GREEN: Mr. Chair, Planning Commission members, yes, this is a required ordinance that we need to do. And if I can jump back, we used to have as Chair Gonzales said, the EZC and the EZA which was the commission and the authority within the two mile and five mile. So land divisions, rezonings, subdivisions, conditional use permits, special use permits would all come to those committees rather than the Planning Commission. So that is what stopped under the JPA and the settlement agreement because they looked at the areas that were to be annexed not that had already been annexed but were to be annexed and delegated that authority to the City because eventually it was thought that those properties were going to end up in the City and outside of that area delegated all of that authority to the Planning Commission. Which means that we don't have to bring every zoning case, land division case, subdivision to an EZC and an EZA. But as part of that and as part of the settlement agreement between the City and the County about which areas were going to be annexed we do need to have an ELUC and ELUA board because we've got one area that is still presumptive city limits and hasn't actually been annexed. So that area they need to make a decision on now and we need those two boards in place to be able to make that decision. So I don't believe it would be very many additional hearings. I would hope they could do it in one. Maybe it would be several meetings that they would have but who knows what will happen five years, ten years down the pike because the settlement agreement was for a 20-year period and that 20 years is coming up in about five or six years, I think.

MEMBER J.J. GONZALES: Well, I kind of like to think that there are boundaries. And within the City limits, you know, they have expanded the City limits a lot since 2008 when they settled all of these lawsuits that they had and the people that wanted to be in the City, they got themselves in the City. A lot of people that are in the City that were annexed in 2008, they kind of complain because being in the County they had a lower tax rate and they were on their own as far as utilities. They got annexed into the City and their services did not improve that much. I mean, they did not get sewer. They did not get water. There are certain services that they didn't qualify for because of terrain and stuff and yet they complain of being taxed at a higher rate. City taxes are higher than County taxes. And I like the fact that the City has its own boundaries and then the County has the rest. Santa Fe County is a very large county. And I like to be part of the County and not part of the City. If I was going to be annexed into the City, I would have a problem with that. I like my freedom in the County. But thank you.

CHAIR GONZALES: Thank you, J.J. And I would like to say that you and I have sat on these bodies together and I want to say that your questions and comments have gotten a lot better.

Okay, yes, Steve.

MEMBER KRENZ: What is the range of this? Did I hear five miles? Five miles from the City limits?

MS. ELLIS-GREEN: State statute allows for platting jurisdiction and extraterritorial boundary from five miles outside of the city limits. And it allows a two-mile boundary outside of the city limits for zoning. But, again, the City and the County have a settlement agreement and a JPA delegating the land use authority to either the City or the County so those two-mile and five-mile boundaries at this point are not an issue and are not up for discussion. But there is still an area that during the annexation settlement agreement an area was identified to be annexed into the City and has yet to be annexed into the City. But it is considered presumptive city limits so the land use zoning is with the City. But it has yet to be annexed and these boards are required so that area can either be decided to be annexed, and again

this is between the City Council and the Board of County Commissioners, is it going to be annexed or is it not going to be annexed? Or is there a different boundary that will be annexed. But without these boards they can't make that decision. So these boards only allow them to make that decision.

CHAIR GONZALES: To be blunt, it's a way to get the City and the County to work together.

MEMBER KRENZ: What would happen if this didn't pass?

MS. ELLIS-GREEN: I'm sorry, I didn't hear the question.

MEMBER KRENZ: What would happen if this didn't pass?

MS. ELLIS-GREEN: The Planning Commission and the BCC cannot make those decisions themselves as far as annexation and neither can the City Council. So we would take your recommendation for denial, if you recommended that, and we'd take it to the Board and we would let them know that they would need to approve it if they want to have any discussion on annexation.

CHAIR GONZALES: Frank.

MEMBER KATZ: After we entered into the Joint Powers Agreement and settled all of the disputes, there were annexations that occurred and we didn't have these boards anymore. So how did those annexation occur?

MS. ELLIS-GREEN: We actually did. We had a 2008 ordinance that established ELUC and ELUA and so we did have that. But when the SLDC came into effect we forgot to write them in. So we did use them for the previous rounds of annexations. We did have Planning Commission members actually on ELUC but we forgot to put it in the SLDC. So this is just pulling it into the SLDC.

CHAIR GONZALES: Okay, what the pleasure of the Commission?

MS. ELLIS-GREEN: Mr. Chair, I believe it is a public hearing.

CHAIR GONZALES: Oh, I'm sorry. Thank you for reminding me. This is a public hearing. Is there anyone out there that wants to speak for or against this?

MS. ELLIS-GREEN: Mr. Chair, we don't see anyone on Webex.

CHAIR GONZALES: Okay, in that case, I'm going to close the public hearing. Open it up for a motion.

MEMBER KATZ: Mr. Chairman, I would move that we recommend to the Board of County Commissioners that they approve this ordinance.

CHAIR GONZALES: Do I have a second?

MEMBER J.J. GONZALES: I didn't get the motion. Repeat it, Mr. Katz.

MEMBER KATZ: I move that we recommend to the Board of County Commissioners that they approve this ordinance.

MEMBER J.J. GONZALES: Is that a motion to approve the ordinance?

MEMBER KATZ: We can't approve the ordinance. We recommend the Commissioners approve the ordinance.

MEMBER J.J. GONZALES: Okay.

MEMBER KATZ: It was a motion to recommend that they approve.

MEMBER J.J. GONZALES: I'll second that.

The motion passed by unanimous [6-0] roll call vote.

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6. Petitions from the Floor

None were presented.

7. Communications from the Commission Members

Chair Gonzales requested additional information regarding the cell tower in Las Campanas that he noticed was being framed. He recalled the tower was approved as a bell-tower style. Mr. Larrañaga said the permit, displaying a bell tower, was issued. He offered to have staff follow-up on it.

8. Communications from the Attorney

None were presented.

9. Matters from Land Use Staff

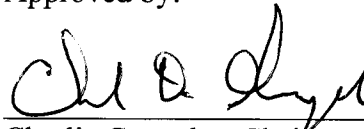
None were presented.

10. Next Planning Commission Meeting: August 18, 2022

10. Adjournment

Having completed the agenda and with no further business to come before the Commission, Member Krenz to adjourn and Member Katz seconded. Chair Gonzales declared this meeting adjourned at approximately 6:03 p.m.

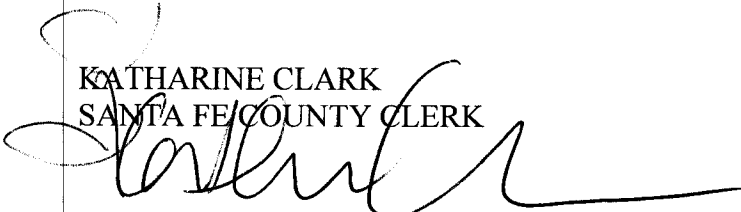
Approved by:




Charlie Gonzales, Chair
Planning Commission

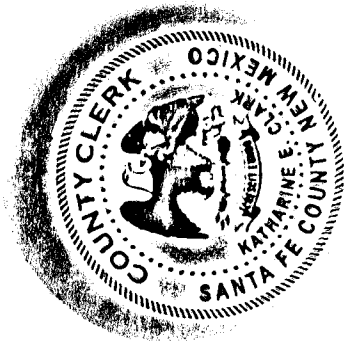
ATTEST TO:

KATHARINE CLARK
SANTA FE COUNTY CLERK

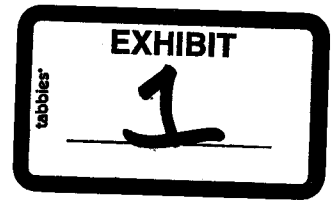


Respectfully submitted by:


Karen Farrell, Wordswork



SFC CLERK RECORDED 08/19/2022



First Responder Network Authority
12201 Sunrise Valley Drive, M/S 243 • Reston, VA 20192 • www.firstnet.gov

To Whom It May Concern,

On March 28, 2017, AT&T was awarded the federal government contract to deploy and operate the Nationwide Public Safety Broadband Network (NPSBN), following an open, transparent, and competitive procurement process—as well as consultation with state, local, tribal, and federal stakeholders—consistent with the First Responder Network Authority’s (FirstNet Authority) enabling statute. The NPSBN contract between the FirstNet Authority and AT&T has a period of performance of 25 years from the date awarded.

Per the terms and conditions of the NPSBN contract, and given that all U.S. states and territories and the District of Columbia (states) opted into the FirstNet Authority plan for network deployment, AT&T is responsible for providing a comprehensive network solution to each of the states. This comprehensive network solution includes: the deployment and provisioning of a nationwide Core Network and Radio Access Network equipment and services (e.g., cell sites, backhaul, aggregation, national transport networks and operation centers); a device ecosystem; deployable capabilities; operational and business support systems; an application ecosystem; network services; integration, maintenance, and operational services; and ongoing evolution of these systems required to function fully as an operational wireless 3rd Generation Partnership Project (3GPP) standards-based Long Term Evolution (LTE) NPSBN.

The FirstNet solution provided by AT&T brings Public Safety Entities across the country a dedicated interoperable broadband network with quality of service, priority usage, and preemption. In addition, the NPSBN is physically hardened, as needed, and is resilient, secure, and highly reliable. Furthermore, the NPSBN provides to public safety agencies local control over prioritization, preemption, provisioning, and reporting.

The NPSBN and associated devices are branded as FirstNet, consistent with applicable laws and regulations. AT&T is responsible for marketing; product management; sales; distribution; customer care; communications; strategic partnership; and network deployment, operation, maintenance, and evolution. However, in accordance with its statutory duties and responsibilities, the FirstNet Authority maintains rigorous oversight of the NPSBN and AT&T’s obligations under the contract.

If you have any questions with regard to this letter, please contact Kimberly Luke at Kimberly.Luke@firstnet.gov, 202-868-3683.

Sincerely,

Richard Reed

Chief Network Management and Operations Officer (CNMO)

First Responder Network Authority

SFC CLERK RECORDED 08/19/2022

FirstNet is the Nationwide Public Safety Broadband Network, required by statute. The First Responder Network Authority (FRNA) is the independent federal authority **established by Congress** to deliver FirstNet, and it is aligned under the Department of Commerce. The Authority reports and testifies to Congress annually on the progress and effectiveness of the FirstNet program.

In 2017, the federal government/FRNA, through a robust acquisition process under the Federal Acquisition Regulations, selected AT&T as its **private sector partner** to build, maintain, and upgrade FirstNet for 25 years **under the Authority's oversight**. This selection was based upon a best value award that met or exceeded the 16 objectives of the federal contracting solicitation.

Nationwide there are **currently over 18,500** federal, state, tribal, and local **agencies**, with more than **2.8 million connections** involving emergency medical services, fire services, law enforcement, and domestic emergency and disaster response organizations utilizing FirstNet.

For the 18,500+ agencies, **FirstNet provides:**

- (1) always on, 24x7 **priority and preemption** for First Responders across data and voice communications;
- (2) a **physically separate and highly secure network core** that is fully dedicated to FirstNet – utilizing end to end encryption and keeping public safety and emergency management traffic separate from commercial traffic; and
- (3) a dedicated fleet of over 100 portable network **deployable assets** to support connectivity for emergencies, in extremis, and other mission requirements - at no cost to FirstNet users.

Further, FirstNet:

- can be **connected to and complement an agency's closed land-mobile radio** (LMR) system to effectively extend LMR range, add operational capacity, and expand to provide video and data capability to LMR voice communications; and
- can provide **interoperability** across disparate agencies at federal, state, district, territory, and local levels.

As the private sector partner to build and implement FirstNet, AT&T and the FRNA **coordinated with the Governors and public safety officials** of the 56 states, territories, and DC to develop individual plans for each state/territory and to identify **specific new locations for FirstNet coverage** to address priority areas not previously supported. Supporting FirstNet, AT&T is pursuing the specified expanded coverage by March 2023 in each state/territory for those utilizing FirstNet, as well as ensuring **maximum coverage overall** for FirstNet.

More on the First Responder Network Authority and FirstNet is available at www.firstnet.gov