Staff Report

PLANNING DIVISION
DEPARTMENT of COMMUNITY and NEIGHBORHOODS

To: Salt Lake City Appeals Hearing Officer

From: Kelsey Lindquist, Senior Planner (385-226-7227 or kelsey.lindquist@slcgov.com)

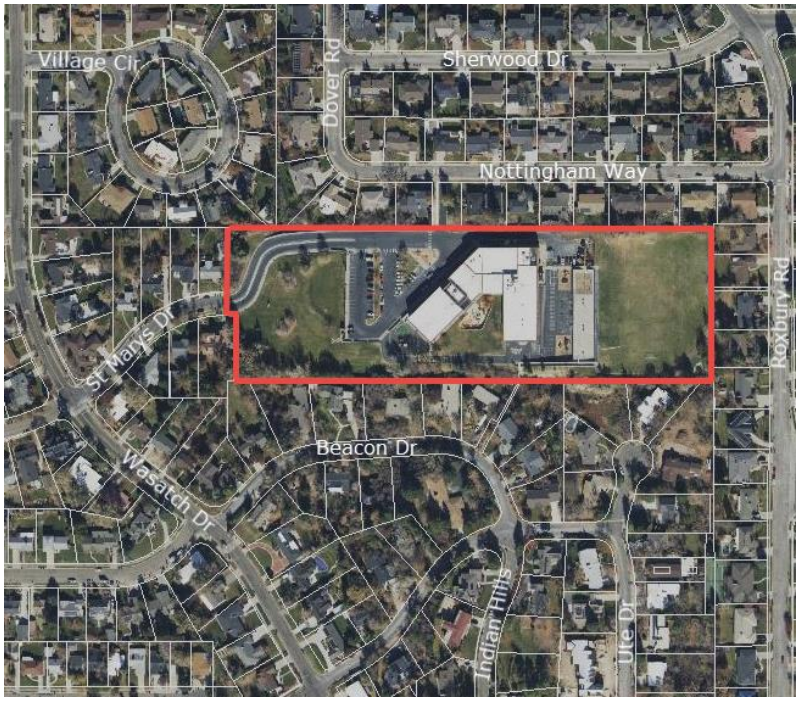
Date: April 8, 2021

Re: PLNAPP2020-00889

Appeal of Administrative Decision

PROPERTY ADDRESS: 2496 E. St Marys Drive
PARCEL ID: 16-15-226-001-0000
ZONING DISTRICT/ORDINANCE SECTION: Antenna Regulations 21A.40.090.E
APPELLANT: Brad Bush, Abutting Property Owner

ADMINISTRATIVE DECISION ISSUE: The issue of this appeal relates to the determination made by the Planning Director that the antenna expansion located on the roof of 2496 East St Marys Drive is a stealth antenna and a permitted use.



Vicinity Map

BACKGROUND: T-Mobile received conditional use approval in 2005 for a roof mounted antenna located on the roof of the subject property located at 2496 St Marys Drive. In 2020, T-Mobile replaced and expanded the roof mounted antenna without a building permit or a conditional use. T-Mobile was placed under enforcement in August 2020. Subsequently, building permit applications were submitted in September 2020 for a stealth antenna. Stealth antennas do not require a conditional use, so a building permit was issued to T-Mobile on October 30, 2020. The Salt Lake City Planning Director issued a memo (the Memo) that determined a wireless telecommunication facility on the roof of the subject property located at 2496 St Marys Drive is a stealth antenna and is allowed subject to meeting the provisions for stealth antennas listed in 21A.40.090.E2f.

APPEAL: The appellant provided a detailed appeal with the following summary, found on page 1 of the appeal:

> On October 29, 2020, the Salt Lake City Planning Division Director issued a memo (the "Memo") rendering several determinations approving T-Mobile's request to classify the antennas installed on the roof of Indian Hills Elementary as 'stealth' antennas, together with the determination that as 'stealth' type antennas, the installation qualified as a permitted use and was, by implication, exempt from conditional use permit requirements.
>
> The determinations made by the Planning Director were in error, and the reasoning asserted in the Planning Director's Memo was both foundationally and fundamentally flawed, and represent an alarming attempt by the Planning Director to pervert the ordinances of the city in support of a foreign commercial operator against the wishes of the residents of the community. This letter of appeal will demonstrate that the determinations are both illegal and unsupported by evidence, and ultimately motivated by bias against the residents of the community in question.
>
> It is recognized that, by state statute, the Appeals Hearings Officer must assume that the decision by the Planning Division is correct, and the appellant bears the burden of proving error. Embedded in this presumption of correctness bestowed by state statute is the presumption that the Planning Director acts impartially and dispassionately in the discharge of its responsibilities to administer its duties according to the ordinances adopted by the municipality. This letter of appeal will also demonstrate that the Planning Director has failed in this obligation and has in fact displayed rank bias against the residents of the municipality they serve and have abdicated impartiality to the benefit of the applicant, T-Mobile and its developer. This bias is clearly evident through the careful distortion of reality woven into the Memo and is so extreme that little if anything written can be taken as unbiased, object or at face value. The behavior of the Planning Director warrants rebuke, and presumption of correctness reassessed, given the circumstances.

Staff response to *Background and Context*, found on pages 2-28:

The full appeal is included as Attachment B. Planning Staff's response to the appeal claims are stated below. The full appeal includes a section titled *Background and Context*. This section is not applicable to the basis of the appeal, which is a determination on whether the subject antenna expansion is classified as a roof mounted or a stealth antenna installation and if stealth antennas are permitted in all zoning districts. This section also details T-Mobile's history of non-compliant behavior, which is also not applicable to this appeal. Salt Lake City Planning Division does not argue with the fact that T-Mobile failed to obtain the necessary permits for the antenna expansion. Civil Enforcement and Building Code Enforcement were notified, and T-Mobile went through the necessary process to obtain the applicable building permits.

Regarding the health and safety claims in the *Background and Context* section of the appeal, Salt Lake City cannot regulate the output of electromagnetic radiation from telecommunication towers and sites. The Federal Telecommunications Act of 1996 prohibits local jurisdictions from regulating telecommunication facilities "on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Federal Communications Commission's regulations concerning such emissions" 47 USC 332(c)(7)(B)(iv).

In summary, the discussions about T-Mobile's previous infractions, health and safety concerns, and the accusations against the Salt Lake City School Board, are not within the scope of the appeal of an administrative decision. The Salt Lake City Planning Director issued a decision solely on the antenna type; thus, staff will start the response of the appellant's claims on page 29 of the appeal submittal.

PLANNING DIVISION RESPONSE TO APPEAL CLAIMS:
The appellant provided two main claims, which he has labeled "Determinations". The three main "Determinations" are followed by sub-claims. Staff has addressed each main "Determination", and each subsequent claim.

Determination 1: Permit Required for the Antenna Array
The appellant states that the "Memo's purpose appears to be to establish that T-Mobile's proposed antenna installation would qualify as a stealth facility, it would qualify to receive a permit and would not be required to obtain a conditional use permit, as demanded by this Appeal and the residents of our community.(pg 29)" The appellant counters this decision by claiming that the subject antenna met the definition of ANTENNA, ROOF MOUNTED and; thus, would require conditional use approval.

Additionally, the appellant claims: "As the Memo indicates, the permit requirements by land use and type for wireless antennas is contained in the Table in 21A.40.090.E.1 (The "Wireless Antenna Permit Table" or "Table"). Roof Mounted Antennas on Public Land (PL), require a Conditional Use Permit, per the Wireless Antenna Permit Table. The Stealth Antenna type is not in the Wireless Antenna Permit Table. (pg 30)"

Staff Response:
Staff believes that the entire basis of Determination 1 is that the appellant believes that the subject antenna expansion is a roof mounted antenna and should require a conditional use approval for the installation. First, staff must acknowledge that there is an obvious conflict within the Salt Lake City Zoning Ordinance, pertaining to Wireless Telecommunication Facilities. The specific conflicting code sections include: the Land Use Table for Special Purpose Districts (21A.33.070), the wireless telecommunication table (21A.40.090.E) and the specific stealth antenna section (21A.40.090.E2f). The Land Use Table for Special Purpose Districts (21A.33.070) does not indicate that wireless communication facilities are permitted or conditional uses, but rather provides a code reference to the reader stating: (See section 21A.40.090E, Table 21A.40.090E of this title). Section 21A.40.090E, of the Antenna Regulation Chapter (21A.40.090), provides a list of wireless communication facility types and a conditional or permitted use indication per zoning district. Stealth antenna facility types were left off the table found in 21A.40.090E. While stealth antennas were left off of the table found in 21A.40.090E, they are specifically addressed as "allowed uses" in the following section 21A.40.090E2f, which is a subsection of the Wireless Facility Types (21A.40.090E). Per state code, an identified conflict within city regulation requires a decision in the favor of the applicant. Utah Code § 10-9a-306(2) (and see Patterson v. Utah County Bd. Adjustment, 892 p.2d 602 (Utah App. 1995) ("because zoning ordinances are in derogation of a property owner's common-law right to unrestricted use of his or her property, provisions therein restricting property uses should be strictly construed, and provisions permitting property uses should be liberally construed in factor of the property owner.")

In this specific situation, stealth antennas are omitted from the specific Wireless Telecommunication Facility table (21A.40.090E) but addressed further on in subsection 21A.40.090E2f which clearly indicates that they "shall be allowed in all zoning districts." Section 21A.40.090.E2f which was specifically addressed within the Memo, was the determining language to indicate that stealth antennas do not require conditional use approval. While it is not inaccurate to have determined that the antenna installation at the time of enforcement to be a roof mounted antenna, because of the lack of a stealth enclosure, a stealth enclosure can be constructed to conceal any type of antenna communication tower, including an antenna array mounted to a roof. Once a stealth enclosure is constructed and conceals the antenna array, regardless of the mount type, it is considered a stealth antenna.

Claim A: Undermine the Determinacy of the Wireless Antenna Permit Table
The appellant claims that "The first objective of the Memo appears to be to create the argument for an exemption for antennas meeting the Stealth Antenna type from the permit requirements in the Wireless Antenna Permit Table." (pg 30)

Staff Response: Typically, the land use tables found in Chapter 21A.33 of the Zoning Ordinance dictate the allowed land uses in a particular zoning district. However, in the case of "Wireless telecommunication facilities",

the land use tables do not explicitly label wireless telecommunications facilities as a permitted or conditional use, but rather refers to the antenna regulations found in Chapter 21A.40.090 of the Zoning Ordinance. Within the antenna ordinance, there is a table (21A.40.090.E) that lists wireless telecommunication facility types and where they are allowed as permitted or conditional uses. Then, Section 21A.40.090.E2f provides specific regulations related to stealth antenna facility types. Strictly referring to the table found in 21A.40.090E, stealth antennas are not a listed type of wireless telecommunications facility. However, subsection 21A.40.090E2f specifically addresses stealth antennas, and clearly states that stealth antennas *shall be allowed in all zoning districts*. (Emphasis added)

The omission of the stealth antenna type from the specific wireless communication facility table found in 21A.40.090E does create a conflict between 21A.40.090E and 21A.40.090E2f. Referring back to the Planning Director memo, the memo states:

> The reference in the land use tables also refers to Table 21A.40.090E. This table is titled "Wireless Telecommunication Facilities" and includes subsections that indicate that the table shows which types of wireless telecommunication facilities are either permitted or conditional in each zoning district. Stealth Antenna are not listed in the table. The same subsection that contains the table also states that "The uses specified in table 21A.40.090E of this section, indicate which facility types are allowed as either a permitted or conditional use within specific zoning district. Low power radio services facilities may be an accessory use, secondary use or principal use." This creates a conflict between Table 21A.40.090.E and 21A.40.090E.2.f. The table does not indicate that a stealth antenna is permitted or conditional, while subsection E.2.f says they are allowed in all zoning districts.

To provide guidance and a solution to the noted conflict, the memo includes information and language from Ordinance 55 of 2011, which was the adopted ordinance that amended the specific section of the code related to wireless antenna facilities. As established in the memo, the noted zoning amendment for wireless antenna facilities "added the stealth tower provisions to Title 21A" and was intended to "encourage less visible communication structures." Additionally, referring to the Planning Commission minutes from April 27, 2011, which was the public hearing for the amendments to Chapter 21A.40.090 Antennas. Page 4 of the Planning Commission minutes, found in Attachment D, provides the following statement from Staff:

> Ms. McConkie discussed the next *proposed change that would expand the definition of stealth antennas and would include stealth facilities as a permitted use*. The way the code was written stealth antennas were limited to flag poles or antennas that were completely enclosed within a structure with no exterior evidence whatsoever. The new expanded definition would include facilities completely disguised as another object or otherwise concealed from view. There was a stipulation that they would have to fit the size and shape of what they are being disguised as, and that they would have to be in concert with their surroundings. Ms. McConkie added that final determination of Stealth Facilities could be approved by the Planning Director. [Emphasis added]

While there is a noted conflict, it is staff's position that there is little confusion on whether stealth antennas are a permitted wireless communication facility in every zoning district, due to the provided evidence from Ordinance 55 of 2011, the April 27, 2011 minutes from the Planning Commission, and the specific language of 21A.40.090.E.2.f.

Claim B: The Meaning of a Comma

This claim refers to the Wireless telecommunication facilities row in 21A.33.070 of the Table of Permitted and Conditional Uses for Special Purpose Districts and, "notes that since no 'P' (indicating permitted) or 'C' (indicating Conditional) is present, that the reference: 'see Section 21A.40.090, Table 21A.40.090.E of this title' is determinate as to the category of permit required."(pg 30) The reference in the Wireless Telecommunications Facility land use table (21A.33.070), does not refer to both 21A.40.090 and 21A.40.090.E. For both tables to be considered, this section of 21A.33.070 should have included an AND, not a comma. The claim further suggests that the second code reference is only for baring and not implied for specific application.

Staff Response: The meaning of the specific comma utilized in between the two code references in section 21A.33.070 for Wireless Telecommunications Facility, which reads as (see section 21A.40.090, table 21A.40.090.E of this title), and is used to imply that both code references apply. The discussion of the intention

of the comma between these two references, does not impact the fact that Chapter 21A.40.090 includes subsection 21A.40.090.E.2.f, which refers to the allowance of stealth antennas in every zoning district without conditional use approval.

Claim C: Omission from Table = Not Allowed
The appellant claims that the structure of Salt Lake City's Zoning Ordinance relies on the land use tables to provide direction on which land uses require a conditional use approval by zoning district. The appellant provides the following statement, regarding Salt Lake City Zoning Ordinance section 21A.33.010.C, "Any use specifically listed without a "P" or "C" designated in the table of permitted and conditional uses for a district shall not be allowed in that zoning district" (pg 33) and claims this would indicate that stealth antennas are prohibited in the Public Lands zoning district.

Staff Response:
The General Provisions section, 21A.33.010.C includes the following language: Uses not specifically listed without a "P" or a "C" designated in the table of permitted and conditional uses for a district shall not be allowed in that zoning district. The Public Lands zone is a Special Purpose district and it is true that there is not a P or C listed after Wireless Telecommunication Facilities for any of the zoning districts in the Special Purpose District land use table. The reason for this is that there is a specific section in the Zoning Ordinance that provides location and design criteria for Wireless Telecommunication Facilities. As stated in this report and in the Memo, Section 21A.40.090.E2f(1) states that stealth antennas "shall be allowed in all zoning districts."

Claim D: The 'Common Use' Proof
The appellant claims that "beyond arguments about the grammatical meaning of a comma, the reality is that in everyday usage, the city staff commonly references the Wireless Antenna Permit Table (21A.40.090.E) on a stand-alone basis when determining the permit requirements of a given antenna type and land use."(pg 33) The appellant provides an email that suggests a conditional use application would be required for the subject antenna expansion.

Staff Response:
The appellant provided an email dated August 13, 2020 from a manager within Building Services. The email indicates that conditional use approval would be required for the antenna expansion on the roof of the subject property. The email refers to the specific table referenced in section 21A.40.090.E. The important distinction is that this email was sent two days after the enforcement case was initiated and approximately one month prior to building permit submittal to Salt Lake City. As noted above under Main Appeal 1, staff acknowledges that prior to receiving plans associated with the building permit application, the antenna expansion on the subject property appeared to be a roof mounted antenna. Thus, the manager within Building Services provided the accurate information based on the images associated with the enforcement case HAZ2020-03195. After building permit submission and the plan information provided by T-Mobile, the antenna expansion was no longer considered a roof mounted antenna but a stealth antenna. Thus, the table in 21A.40.090.E would no longer apply but the section 21A.40.090.E.2.f would apply.

Claim E: Stealth Antenna Subsection Silent on Permit Requirements
The appellant claims that the Salt Lake City Zoning Ordinance does not say that stealth antennas are permitted in all zoning district. He provides: "Finally, an implied but not clearly stated assertion of the Memo is that the Stealth Antenna subsection (21A.40.090.E.2.f) allows antennas of this type 'as permitted' in all zones. But this isn't what the ordinance says. In fact, the language in the ordinance is clear that 'Stealth Antenna', though a type is not determinate as to category of permit required and that only the types listed in the Table in 21A.40.090.E are determinate, as reinforced by 21A.12.050.B and the Table in 21A.33.070… The Zoning Ordinance states, [stealth antennas] … shall be allowed in all zoning district subject to meeting the provisions contained in section 21A.36.020, tables 21A.36.020B and 21A.36.020C of this title." (pg 34)

The appellant further suggests that the zoning ordinance is silent to the required permit associated with stealth antennas and is inconsistent with other sections and tables located within the zoning ordinance. Due to this silent stance, he suggests that 'stealth' would be the added features to an antenna to disguise or conceal the antenna but would not constitute a valid type allowable in all zones.

Staff Response: Per the following definition:

> ANTENNA, STEALTH: An antenna completely disguised as another object, or otherwise concealed from view, thereby concealing the intended use and appearance of the facility. Examples of stealth facilities include, but are not limited to, flagpoles, light pole standards or architectural elements such as dormers, steeples and chimneys.

A stealth antenna is considered a telecommunication facility disguised as another object and is listed as a facility type under 21A.40.090.E.2. As a wireless communication facility type, clearly identified in the noted section, there is no reasonable claim that stealth antenna is not a valid wireless communication facility type.

Claim F: The Manufactured Conflict
The appellant claims that the Memo manufactures a conflict within the zoning ordinance, specifically between section 21A.33.070 and 21A.40.090E.

Staff Response:
This claim is also addressed in Determination 1. The conflict discussion within the Planning Director's memo is not manufactured. The memo refers to a conflict between the table found in 21A.40.090.E and the subsection on stealth antennas found in 21A.40.090.E2f. The noted conflict discusses the omittance of stealth antennas from the specific wireless communication table. Due to the omittance of the stealth antenna type from table found in 21A.40.090.E, the memo utilizes the legislative history to establish the intent of the language and structure of chapter 21A.40.090. The provided legislative history indicates that the City Council in 2011, intended to permit stealth antennas in every zoning district, which is further discussed under Claim A, Determination 1. Utilizing the April 27, 2011 Planning Commission minutes, found in Attachment D, there are several statements on the record that address the changes to stealth antennas, specifically that they will be permitted in all zoning districts. Furthermore, Section 21A.40.090.E2f clearly states that stealth antennas shall be allowed in every zoning district. While the specific land use table fails to include the stealth antenna type, the subsection on stealth antennas (21A.40.090.E2f) addresses where stealth antennas are permitted uses.

Claim G: Legislative History Presented is Irrelevant
The appellant suggests that the provided legislative history is irrelevant because the conflict was manufactured within the Planning Director's Memo. Secondly, he claims that the provided legislative documents within the Memo do not conclude that there was no misunderstanding or missed intent within the language that was adopted in 2011.

Staff Response:
See Claim A under Determination 1, Claim F and Attachment D.

Claim H: The Wireless Antenna Permit Table is Determinate
The appellant claims that the Memo attempts to subvert the plain language of the interpretation of the zoning ordinances by "casting aside" (pg 37) the actual plain language of the Wireless Antenna Permit Table and based on this table, a Conditional Use Permit is required for the antenna expansion on the subject property.

Staff Response:
This claim is unsubstantiated based the actual plain language of section 21A.40.090.E2f, which permits stealth antennas in every zoning district. Staff acknowledges that the stealth antenna type was not included in table 21A.40.090.E. However; the specific code section on stealth antennas located in a subsection of 21A.40.090.E, clearly states: [stealth antennas] shall be allowed in all zoning districts subject to meeting the provisions contained in 21A.36.020, tables 21A.36.020.B and 21A.36.020.C of this title.

Determination 2: Compliance with Stealth Antenna Definition
The appellant claims, "The second determination was that the antenna meets the definition of a stealth antenna, and that it meets the definition of being 'completely disguised as another object or otherwise concealed from view thereby concealing the intended use and appearance of the facility.'"(pg 38)

Staff Response:
The definition for a stealth antenna, found in 21A.62.040, reads as:

> ANTENNA, STEALTH: An antenna completely disguised as another object, or otherwise concealed from view, thereby concealing the intended use and appearance of the facility. Examples of stealth facilities include, but are not limited to, flagpoles, light pole standards or architectural elements such as dormers, steeples and chimneys.

Per the provided definition, a stealth antenna can either be 'completely disguised as another object, or otherwise concealed from view, thereby concealing the intended use.' The stealth antenna is disguised as an elevator bulkhead, an allowed stealth antenna object, located on a flat roof. This stealth antenna on the subject property meets this definition, due to the appearance being both disguised as another object and the intended use is concealed from view.

Claim A: Installed Antenna Facility is Unambiguously Roof Mount
The appellant suggests that the antenna, at the time that the Memo was issued, did not meet the definition of a stealth antenna but did meet the definition of a roof mount antenna. Further, this claim suggests that the Planning Director attempted to evade the permit requirements for the work performed on the subject property and to evade a public hearing requested by the subject community. This section further eludes to a collaboration between the Planning Division employees and T-Mobile, to coach T-Mobile on a "new course to minimize requirements." (pg 39)

Staff Response: As discussed under Determination 1 and Claim D, the facility is not a roof mounted antenna. Prior to the building permit submittal and the completion of the construction, the antenna expansion did meet the definition of roof mounted antennas. However, T-Mobile submitted for a building permit and the review of the plans indicated that the proposal was to completely conceal the antenna and to disguise the use as an elevator bulkhead, which meets the definition of a stealth antenna.

Claim B: Does Not Meet Stealth Definition Standard
The appellant claims that the Memo, "In attempting to demonstrate the compliance of the proposal with the definition of a stealth antenna, the Memo sets the lowest bar possible, focusing only on the need for the antennas themselves to be concealed." (pg 39)

The appellant claims that the installed antenna does not meet the stealth antenna definition standard, due to the definition of ANTENNA, STEALTH, which reads as follows:

> ANTENNA, STEALTH: An antenna completely disguised as another object, or otherwise concealed from view, thereby concealing the intended use and appearance of the facility. Examples of stealth facilities include, but are not limited to, flagpoles, light pole standards or architectural elements such as dormers, steeples and chimneys."

The appellant provides the following context:

> "A material factor in the assessment of what is visible is the vantage point of the surrounding land. Much of the land surrounding the school property to the east, where the antenna facility is located, is at an elevation near or above the elevation of the school roof, affording full view of the roof from a wide range of angles, such that installations on the roof are fully visible, despite parapets, etc. The significant slope of the surrounding property is noted in the Memo. Given this fact, the location affords zero opportunity for any element of the facility housed on the roof outside the enclosure disguised as an elevator bulkhead to be considered 'concealed from view.'" (pg 40)

Additionally, the appellant indicates that all of the associated support structures, equipment and wiring must be disguised or concealed from view. The existing stealth antenna does not meet this definition, due to the visual cues that indicate the structure is in fact not an elevator bulkhead. Further stating:

> "The antenna facility entails many elements that are not housed in the enclosure. First, the plans call for a staircase to access the platform, that is both visible and cannot be considered an elevator bulkhead. Additionally, electrical equipment/wiring and associated HVAC structures are all visible on the roof, and have been through all iterations of the antenna, including the smaller facility that was on the roof in July 2020." (pg 40)

The appellant also suggests the transition between the masonry and the white material does not meet the definition of a stealth antennas, because it betrays the viewer and does not appear to be one single cohesive structure.

Staff Response:
Referring to the section 21A.40.090.E2f of the Antenna Regulation Chapter, stealth antennas are not required to contain one cohesive exterior material. The appellant's claim regarding the transition between the masonry and white material is not prohibited based on the language within the specific stealth antenna regulations found in section 21A.40.090.E2f.

The additional claim in this section, is regarding the visible electrical equipment associated with the stealth antenna. The stealth antenna ordinance, found in section 21A.40.090.E2f, lists specific regulations for electrical equipment associated with a stealth antenna. This section refers to subsection E3 of the Antenna Regulation Chapter (21A.40.090) for electrical equipment requirements and standards. This Section 21A.40.090.E3b states:

b. Electrical Equipment Located on Private Property: Electrical equipment shall be located in the rear yard, interior side yard, or within the buildable area on a given parcel. In the case of a parcel with an existing building, the electrical equipment shall not be located between the front and/or corner facades of the building and the street.

    Electrical equipment located in a residential zoning district, shall not exceed a width of four feet (4'), a depth of three feet (3'), or a height of four feet (4') to be considered a permitted use.

    Electrical equipment located in a CN, PL, PL-2, CB, I or OS Zoning District shall not exceed a width of six (6'), a depth of three (3'), or a height of six feet (6') to be considered a permitted use.

    Electrical equipment exceeding the dimensions listed above shall be reviewed administratively as a special exception.

    The electrical equipment shall be subject to the maximum lot coverage requirements in the underlying zoning district.

The specific electrical equipment associated with the stealth antenna located on the subject property complies with 21A.40.090.E3b because it is located in the buildable area and does not exceed the specified height limitations.

Regarding the noted HVAC units associated with the stealth antenna, HVAC units are permitted to be located on the roof of structures located within the PL (Public Lands) zoning district. The appellant provided zoomed in photos of the installation within the brief. The stealth antenna and equipment are not visible from the public way to the west, north and south. However, the entire rooftop is visible from the east which is due to the increased grade. The provided photo below was taken from the pedestrian path off Roxbury Road. There is no evidence of other visible equipment or support structures associated with the subject stealth antenna.


Village Cir
Dover Rd
Sherwood Dr
Nottingham Way
St Marys Dr
Wasatch Dr
Beacon Dr
Indian Hills
Ute Dr
Roxbury Rd

Determination 3: Compliance with Stealth Antenna Standards
The appellant claims, "The third determination in the Memo relates to the compliance of the proposed antenna facility with the additional provisions of 21A.40.090.E.2.f, being:

1. The antenna shall conform to the dimensions of the object it is being disguised as, and
2. The location of the stealth facility shall be in concert with its surrounding" (pg 45)

Staff Response:
The appellant's interpretation of the stealth antenna definition and associated standards is incorrect. The definition of stealth antenna, 21A.62.040, includes the follow language: completely disguised as another object, or otherwise concealed from view, thereby concealing the intended use and appearance of the facility.

The Memo addresses this point with the following statement:

> A stealth antenna is defined in 21A.62 as 'An antenna completely disguised as another object, or otherwise concealed from view, thereby concealing the intended use and appearance of the facility. Examples of stealth facilities include, but are not limited to, flagpoles, light pole standards or architectural elements such as dormers, steeples and chimneys.' This proposal disguises the antenna as an elevator bulkhead. Elevator bulkheads are not defined in city ordinance but are generally a portion of the building that extends from the roof and provides space for the elevator equipment and for the elevator car to reach the top floor of a building. According to the info provided by T-Mobile, the antennae will be entirely concealed within a screen. T-Mobile must demonstrate on their required plans that the antenna is entirely concealed within the elevator bulkhead.
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> The subject property and surrounding neighborhood have significant slope and elevation changes that may result in the antenna being visible from higher elevations. The ordinance states 'or otherwise concealed from view.' The use of the word 'or' means that there are two options, one being that it is completely disguised and the other being 'otherwise concealed from view, thereby concealing the intended use and appearance of the facility' the intent of this provision is to completely disguise it or if it cannot be completely disguised, to otherwise conceal it from view. In this instance, the surrounding screen intended to conceal the antenna shall be of enough height to limit the view of the antenna from higher elevations, particularly to the east where public access through a pedestrian path to the school is provided from Roxbury road.

Sub Appeal Claim 1: Dimensions of the Antenna Facility are Inappropriate
The appellant suggests that just because section 21A.36.020.C permits elevator bulkheads up to a height of 16' and due to this allowance, there is an assumption that an appropriate height for an elevator bulkhead is 16'. This claim continues to explain that the existing "stealth enclosure" is not in scale with the public-school facility because it reaches 16' in height. Information was gathered from a leading elevator company that typical bulkheads only reach 12'-13' in height. Thus, "the reality is that 16-foot elevator bulkheads only exist in the dreams of aspiring stealth cell tower developers and their conspiring colleagues in the zoning department." (pg 47)

Staff Response:
Table 21A.36.020.C: HEIGHT EXCEPTIONS, permits elevator bulkheads or stairway towers to extend 16' above the maximum building height allowed within the following zoning districts: all commercial, manufacturing, downtown, FB-UN2, RO, R-MU, RMF-45, RMF-75, RP, BP, I, UI, A, PL and PL-2. The subject property is located in the PL (Public Lands) zoning district, which permits a building height of 75' for local government facility uses and 35' feet for all other uses. Per the language in 21A.36.020C, an elevator bulkhead can extend 16' above the maximum building height in the PL zoning district. The subject stealth antenna meets this requirement and can be 16' in height.

Sub Appeal Claim 2: The Antenna Facility 'Sticks Out Like A Sore Thumb"
Regarding this final claim, the appellant describes that the Memo established differing standards from the zoning ordinance, per: "The Memo asserts its own definition of limiting criteria to evaluate compliance, though these criteria are not in the ordinance. The Memo's criteria are:

1. 'The likelihood that the building would have an elevator based on the number of levels and the intended building occupants; and
2. The location of the proposed stealth antennae facility and whether it is in a location where an elevator bulkhead could reasonably be located.' (pg 47-48)

This Appeal takes issue with these:

> 'criteria' as sufficient to fully evaluate the requirement that the antenna facility is "in concert with its surrounding. The criteria applied are incomplete as the clear intent of the provision is for the enclosure to be 'stealth', or not otherwise noticeable relative to its surroundings. A cell tower disguised as a pine tree, in an area of other pine trees, for example, would not be visibly obvious and could reasonably be considered 'in concert with its surrounding.' A steeple on a church, where a steeple is appropriate, could meet this definition. However a massive structure on an otherwise flat and non-descript roof, where no other schools have similar structures, and where that structure obscures views of the valley below, and is out of proportion, can hardly be described as 'stealth' or 'in concert with its surroundings'." (pg 48)

The appellant continues this point to include:

> "A constructive approach to evaluating if the proposal meets the criteria is to consider what the opposite of being 'in concert with its surrounding' would imply. Rationally, it would imply standing out, or not fitting in. Given that stealth antenna criteria are exclusively concerned with aesthetic and visual considerations, this implies that an installation that stands out or doesn't fit in visually would not meet these criteria. The likelihood of a school having an elevator in general, or that there could be an elevator in this particular location are criteria of minimal consequence, relative to questions such as: 1) the relative proportionality of the dimensions, 2) the landscape context of the installation and 2) comparable landscape contexts of other schools in evaluating whether the installation meets the criteria." (pg 48)

Staff Response:
Staff understands the concerns raised by the appellant; however, section 21A.40.090.E2f does not include standards associated his following points:

1. The relative proportionality of the dimensions;
2. The landscape context of the installation; and
3. Comparable landscape contexts of other schools in evaluating whether the installation meets the criteria.

The standards associated stealth antennas do not address the appellants "relative questions."(pg 48) The standards clearly permit a stealth antenna as an elevator bulkhead up to 16' above maximum building height without taking the "landscape context"(pg 48) or "comparable landscape contexts of other schools"(pg 48) into consideration. Additionally, the "relative proportionality of the dimensions"(pg 48) is subjective and irrelevant to the Planning Director's memo or the stealth antenna criteria and standards found in 21A.40.090.E2f.

***Planning Division Bias* Response, Page 51-77**
Staff Response: The Salt Lake City Planning Division is responsible with administering the zoning ordinance. Staff provides all applicants with possible options and solutions available under the zoning ordinance. The Salt Lake City Planning Division sees no bias applied to T-Mobile in this situation. Additionally, the language and countless assumptions made by the appellant have no bearing on this appeal.

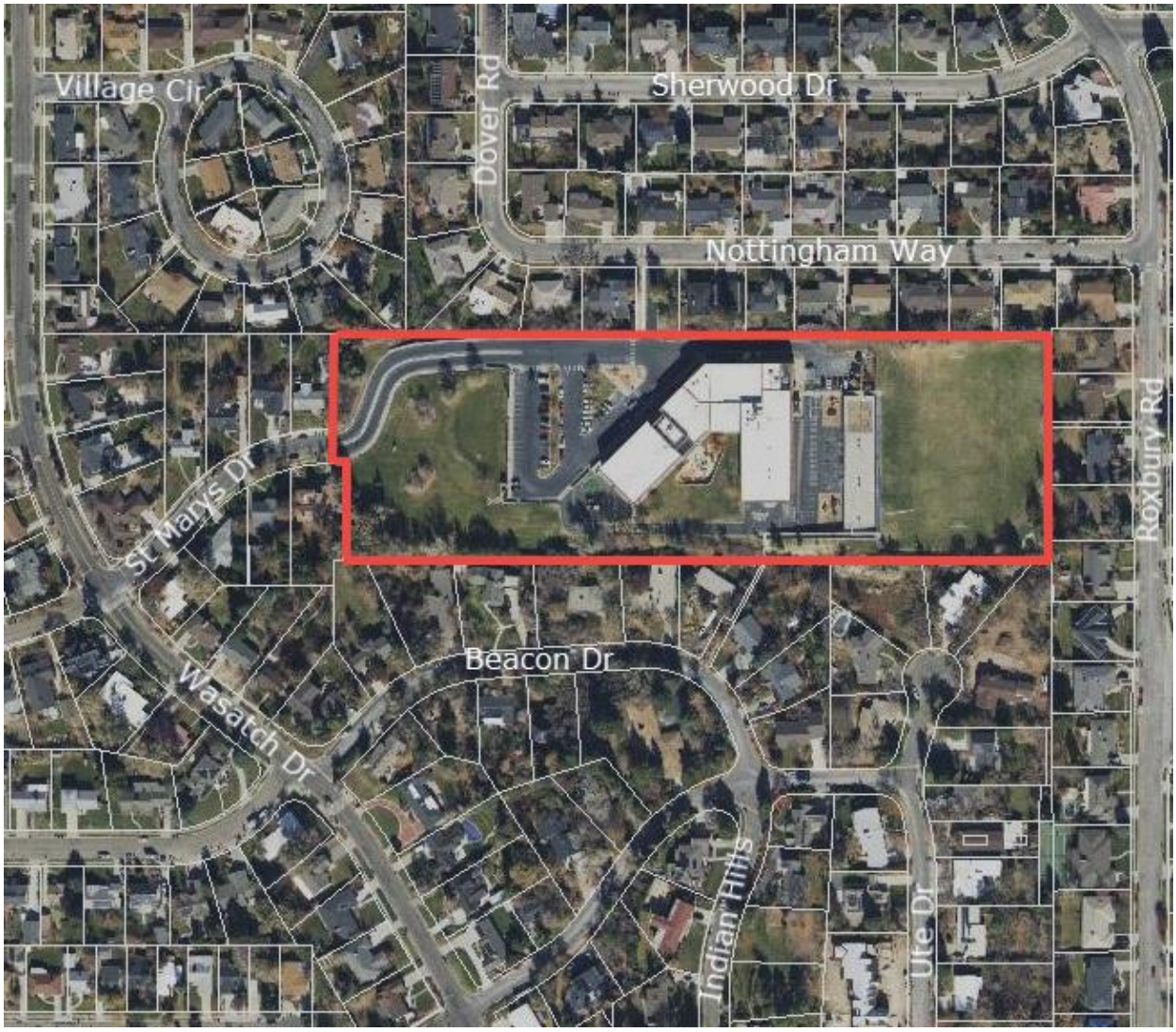
Next Steps:
If the Planning Director's Administrative Determination is upheld, the stealth antenna installation will remain as a permitted use on the subject property. If the decision is overturned, T-Mobile will need to seek a conditional use for a roof mounted antenna.

Any person adversely affected by the final decision made by the appeals hearing officer may file a petition for review of the decision with the district court within thirty (30) days after the decision is rendered.

ATTACHMENTS:

- **A.** Vicinity Map
- **B.** Appeal application and documentation of evidence
- **C.** Planning Director's Memo
- **D.** April 27, 2011 Planning Commission Minutes
- **E.** Public Input
- **F.** Photographs

ATTACHMENT A: Vicinity Map



ATTACHMENT B: Appeal Application and Documentation

To: Appeals Hearing Officer

From: Brad Bush, representing the property owners surrounding the school

Date: November 6, 2020, revised February 25, 2021

Re: **Appeal of Administrative Decision - Roof Mount Antenna on roof of Indian Hills Elementary, located at 2496 East St Marys Drive.**

On October 29, 2020, the Salt Lake City Planning Division Director issued a memo (the "Memo") rendering several determinations approving T-Mobile's request to classify the antennas installed on the roof of Indian Hills Elementary as 'stealth' antennas, together with the determination that as 'stealth' type antennas, the installation qualified as a permitted use and was, by implication, exempt from conditional use permit requirements.

The determinations made by the Planning Director were in error, and the reasoning asserted in the Planning Director's Memo was both foundationally and fundamentally flawed, and represent an alarming attempt by the Planning Director to pervert the ordinances of the city in support of a foreign commercial operator against the wishes of the residents of the community. This letter of appeal will demonstrate that the determinations are both illegal and unsupported by evidence, and ultimately motivated by bias against the residents of the community in question.

It is recognized that, by state statute, the Appeals Hearings Officer must assume that the decision by the Planning Division is correct, and the appellant bears the burden of proving error. Embedded in this presumption of correctness bestowed by state statute is the presumption that the Planning Director acts impartially and dispassionately in the discharge of its responsibilities to administer its duties according to the ordinances adopted by the municipality. This letter of appeal will also demonstrate that the Planning Director has failed in this obligation and has in fact displayed rank bias against the residents of the municipality they serve and have abdicated impartiality to the benefit of the applicant, T-Mobile and its developer. This bias is clearly evident through the careful distortion of reality woven into the Memo and is so extreme that little if anything written can be taken as unbiased, objective or at face value. The behavior of the Planning Director warrants rebuke, and the presumption of correctness reassessed, given the circumstances.

Background and Context

2005 Conditional Use Permit

In 2005, T-Mobile installed a 3 antenna array on the roof of Indian Hills Elementary despite community opposition at the time. The Staff Reports at the time unjustifiably downplayed the community opposition as there was meaningful written objection in the record. The Salt Lake City School District had only recently moved ahead with a plan that doubled the height of the new school without community input or consent, after originally obtaining community approval for a single story school. The height addition to the school destroyed views of many homes, and the school district's indifference enraged the community. The School District's foisting of a T-Mobile antenna on the new school in the immediate aftermath of the new school added insult to injury and escaped broader scrutiny due to the fatigue of the community over all issues related to the school district's brutalization of the neighborhood.

The School District entered a 30 year lease with T-Mobile without following procedures required by state code that required Board Approval (no Board approval was received) when entering long term contracts.

At the time T-Mobile was petitioning the city for a conditional use permit in 2005, residents were concerned about the height the tower would add to an already unexpectedly tall structure that had been built without community input. T-Mobile promised to community residents the height of the tower would never be extended during an Administrative Hearing held on the subject on April 14, 2005. Quoting from the Administrative Hearing transcript, T-Mobile representative "explained that the height of the proposed antenna structure may never be extended".

Mr. Gourley explained that the height of the proposed antenna structure may never be extended. Extensive studies for demand are made before any equipment is installed and

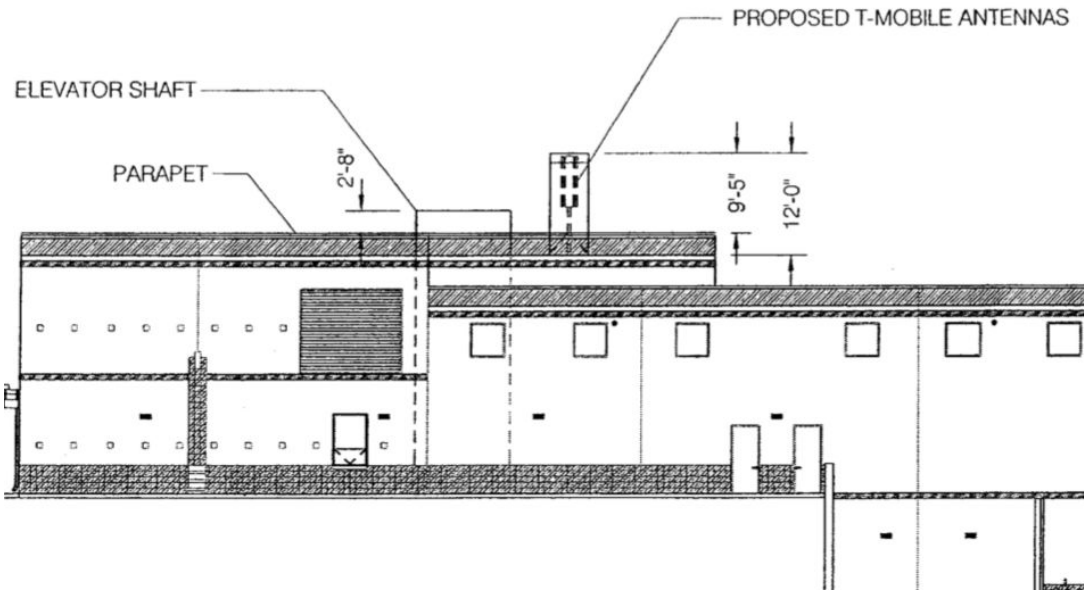
The 2005 CUP approval was for a 3 antenna facility in a stealth enclosure measuring 4'6" x 4'6" x 10', located on the flat surface of the roof, behind the elevator shaft, 60' from the edge of the roof on the east and 80' from the end of the roof on the north side, with no visible electrical equipment on the roof.

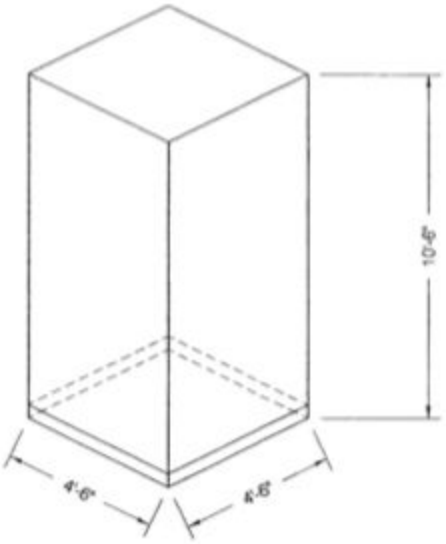
Motion for Petition 410-735

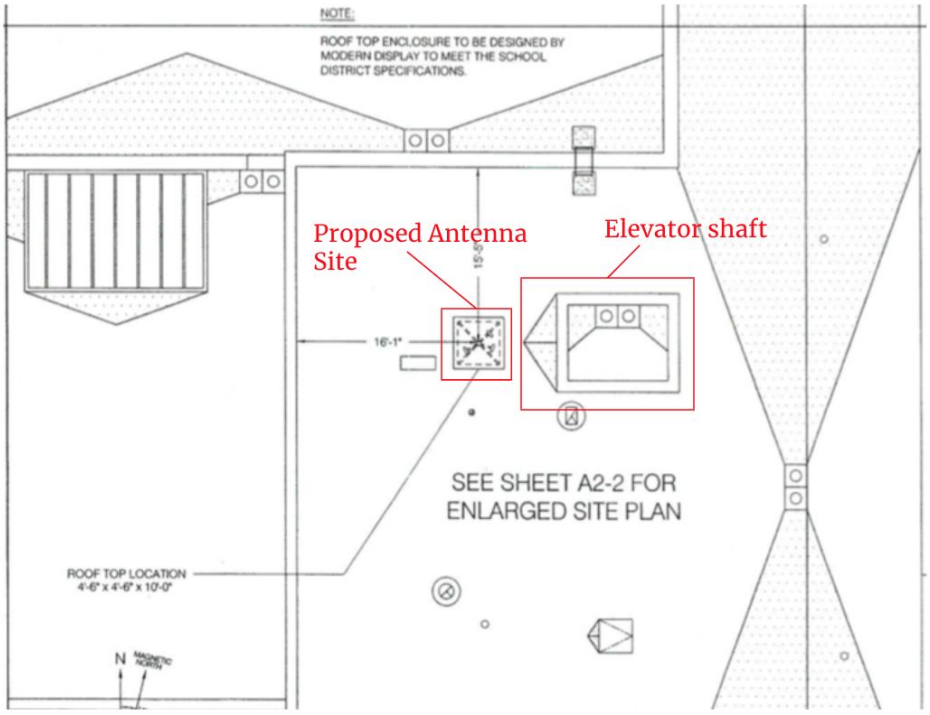
Based upon Staff analysis, findings and recommendations, Commissioner Scott moved for the Planning Commission to approve the conditional use to install a ten-foot high wireless telecommunications antenna structure on the roof of the Indian Hills Elementary School located at 2496 East St. Mary's Drive. The electrical equipment will be housed within the building and the proposed facility will be subject to Conditions 1 through 4 as listed on Page 9 in the Staff Report:

1. A professional engineer's stamp shall be provided on the construction drawings.
2. The design of the screening structure shall be compatible with the materials of the building.
3. The Petitioner shall meet all applicable City, County, State or Federal requirements.
4. The conditional use approval shall be valid for a one-year period unless a building permit is issued and construction is actually begun, or the use commenced within that period, or a longer time is requested and granted by the Administrative Hearing Officer.

Commissioner De Lay seconded the motion. Commissioners De Lay, Seelig, Muir and Scott voted *aye*, and Commissioners Diamond and McDonough voted *no*; the motion passed with a four-two vote.







2020/2021 Construction

In July and early August 2020, T-Mobile removed the original 3 antenna array and installed a new 6 antenna array. T-Mobile did not seek permits and the installation was in violation of city ordinances. The city was alerted to the zoning violation by residents of the community, who were now confronted with a massive antenna facility on the roof of the school that projected high levels of electromagnetic radiation

directly into the school field and the backyards and homes of young children. City officials confirmed to residents that T-Mobile required a CUP that had not been obtained, and was in violation of zoning ordinances.

Power density readings (the metric of electromagnetic radiation used in FCC limits) from homes of surrounding residents exceeded the range of the meters, and families were alarmed. Several large scale studies from institutions such as the US National Toxicology Program of the National Institutes of Health (NIH), under commission from the US Food and Drug Administration, have recently demonstrate biological harm and risk of cancer from prolonged exposure to high levels of electromagnetic radiation such as that emitted by cell towers.

Planning Division and Civil Enforcement staff at the city reached out to the school district to clarify what had occurred. The school district administrator responsible for cell tower contracts made false statements to city officials about the nature of work performed, claiming that no antennas had been installed.

From: Padilla, Antonio <Antonio.Padilla@slcgov.com>
Sent: Thursday, August 27, 2020 11:37 AM
To: Parks, Allison <Allison.Parks@slcgov.com>; Chytraus, Kimberly <Kimberly.Chytraus@slcgov.com>; Nielson, Paul <paul.nielson@slcgov.com>
Cc: Mikolash, Gregory <gregory.mikolash@slcgov.com>; Goff, Orion <Orion.Goff@slcgov.com>; Mills, Wayne <wayne.mills@slcgov.com>; Paterson, Joel <joel.paterson@slcgov.com>
Subject: FW: (EXTERNAL) Cell tower Conditional Use and permitting on Indian Hills Elementary

Good morning all,
Mr. Shulte has stated that no new work has been completed recently, as per a phone call I had with him this morning, as well as Joel's conversation with him yesterday. The claim was that only the stealth structure was removed. I've asked Mr. Shulte to send me photos of what the site looked like before the stealth was removed. I've attached those photos here. When comparing them to the pictures that Brad provided, it is evident that work has been completed.
I spoke to Britton from Rage Development, who handles construction and permitting for T-Mobile. He confirmed the recent work completed.
I believe a warning letter is still in order here. Please let me know if there are any concerns or suggestions before the letter goes out in the morning.
Thanks,

Antonio Padilla
Civil Enforcement Manager

Nonetheless, Planning Division staff informed T-Mobile and school district administrators that T-Mobile could circumvent the conditional use permit process (avoiding the public hearing under circumstances of community opposition) and

obtain a standard permit if the plans submitted met the standards of a stealth antenna.

On August 28, 2020, upon identifying that the property owner (school district) representative had falsely described the extent of work performed, the Civil Enforcement Division of the city sent a warning letter and asked T-Mobile to submit plans.

On September 11, 2020, following a lack of response by T-Mobile to previous communication, the city posted a Notice and Order on the door of the school for failure to apply for permits, demanding that plans be submitted.

Only following posting of the Notice and Order on September 11, 2020, and with full awareness of community opposition that would make obtaining a conditional use permit difficult, and after the Planning Division had indicated support for a 'stealth' antenna proposal, did T-Mobile submit plans for the antennas to contain a stealth enclosure with the intent that the installation be classified as a 'stealth' type antenna. T-Mobile then proposed that the 14' high, 11' wide by 8' deep 'stealth' enclosure be described as a chimney. To repeat: a massive structure with dimensions of 14' high, 11' wide and 8' deep on a school was earnestly proposed by T-Mobile as a chimney.

The screening material will match the exterior of the building and look like a brick chimney, in compliance with the stealth antenna requirements in 21A.40.090.E.2.f of the Salt Lake City Code.

On September 18, 2020, prompted by the Planning Director informing impacted residents of the rationale, contained in the Memo (but prior to its release), that the city viewed stealth antennas as exempt from conditional use permit requirements, and thus not subject to public/community scrutiny, I submitted a pro-forma appeal of that rationale and request for administration interpretation to the Planning Director See Appendix A.

On October 6, 2020, the Zoning Administrator reviewed T-Mobile's plans and suggested that the stealth enclosure be described as an elevator bulkhead rather than a chimney.

On October 26, 2020, Salt Lake City School District sent T-Mobile a Notice of Default regarding its lease agreement for continuing breach of contract stemming from its violation of zoning ordinances.

On October 28, 2020, the Zoning Administrator approved the designation of the plans submitted to meet the 'stealth' type categorization.

On October 29, 2020, the Memo was issued by the Planning Director.

Following issuance of the Memo, on October 29, 2020, I informed the Planning Director of the residents' appeal and asked that the city stay all action, including issuing a permit, as required under 21A.16.030. The Planning Director acknowledged the request and forwarded it to the Building Division.

On November 3, 2020, in violation of city ordinance 21A.16.030, and the understanding reached with residents, and without communicating its intent or rationale to residents, the city issued permits to T-Mobile.

On November 6, 2020, a followup draft to the original appeal submitted on September 18, 2020 submitted.

In mid January, 2020, T-Mobile installed the stealth enclosure despite this pending appeal.

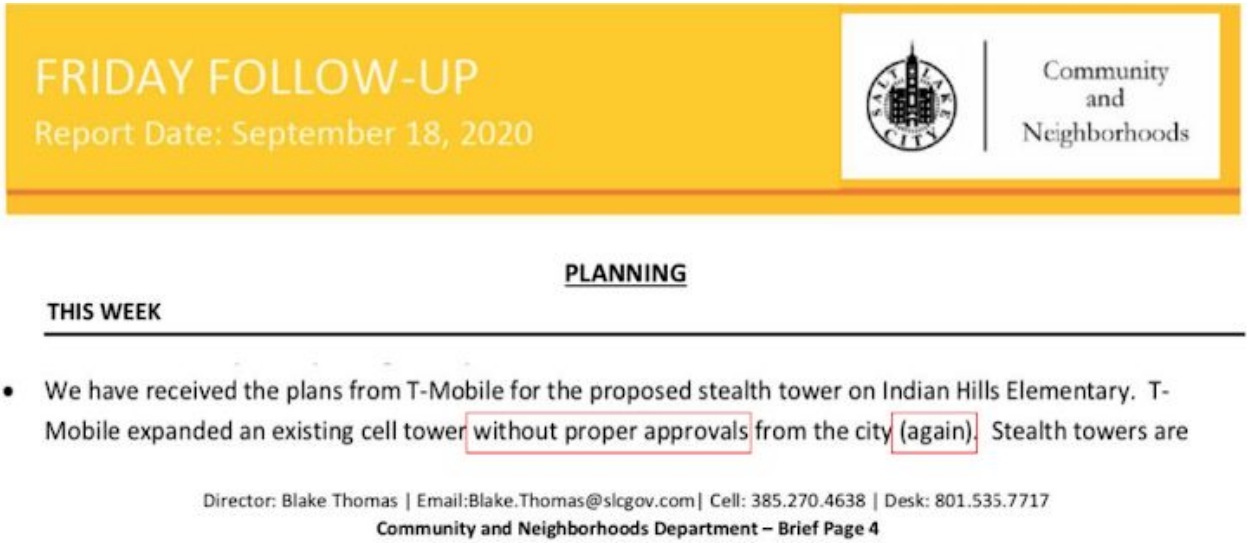
T-Mobile Background

In evaluating the Memo it is important to take into account the context of the subject installation applicant, T-Mobile.

Known Serial Violator of Zoning Ordinances

T-Mobile has an established track record as a serial violator of city zoning ordinances.

As can be seen from this portion of the Community and Neighborhood Mayor's briefing, T-Mobile's status as a serial violator is well known within the city government.



FRIDAY FOLLOW-UP

Report Date: September 18, 2020

Community and Neighborhoods

PLANNING

THIS WEEK

- We have received the plans from T-Mobile for the proposed stealth tower on Indian Hills Elementary. T-Mobile expanded an existing cell tower without proper approvals from the city (again). Stealth towers are

Director: Blake Thomas | Email:Blake.Thomas@slcgov.com| Cell: 385.270.4638 | Desk: 801.535.7717

Community and Neighborhoods Department – Brief Page 4

In 2018, T-Mobile was cited for an antenna installation on Emory Street that dramatically exceeded allowed parameters. This was one of the few instances where the surrounding community noticed the violation and had the resources to pursue city zoning officials to take action.

JACQUELINE M. BISKUPSKI
Mayor

DEPARTMENT *of* COMMUNITY *and* NEIGHBORHOODS
BUILDING SERVICES

June 8, 2018

T-Mobile/Terry Cox
121 West Election Road Suite 330
Draper, Utah 84020

Dear Property Owner:

Re: Property located at 922 South Emery Street, Salt Lake City, Utah

It has recently come to the attention of this office that the above referenced property is in violation of the Salt Lake City Code. The violation and code section(s) are as follows:

21A.40.090(G) Utility Pole Mounted Antenna: Antennas on utility poles and associated electrical equipment shall be allowed subject to the following standards:

(1) Antennas:

(A) The antennas shall be located either on an existing utility pole or on a replacement pole in the public right-of-way, or in a rear yard utility easement.

(B) On an existing pole, the antennas shall not extend more than ten feet (10') above the top of the pole.

(C) The antennas, including the mounting structure, shall not exceed thirty inches (30") in diameter to be considered a permitted use. Antennas with an outside diameter greater than thirty inches (30") shall be a conditional use.

(D) Antennas located in the public right-of-way shall be a permitted use and shall comply with the standards listed above.

(E) Conditional use approval is required for antennas located in a rear yard utility easement in all residential, CN Neighborhood Commercial, PL Public Lands, PL-2 Public Lands, CB Community Business, I Institutional, and OS Open Space Zoning Districts. Antennas located in a rear yard utility easement in all other zoning districts shall be a permitted use and shall comply with the standards listed above.

NOTE: Antenna size/diameter is not according to plan.

2019 T-Mobile Mea Culpa

Ultimately in the Emory Street case, community residents were able to overcome Planning Division staff complacency and have the violation addressed. (Originally (and repeatedly), Planning Division Staff claimed there was no violation, and were ultimately forced to concede error after residents in the community compiled incontrovertible evidence.)

In the aftermath of the violations eventually being recognized, T-Mobile Site Acquisition Consultant Kalab Cox wrote the below mea culpa, describing a "wild west mentality" at T-Mobile "where there was no regard for City regulations". T-Mobile claimed new processes that would eliminate these instances.

Written Briefing for T-MOBILE Franchise Agree

922 South Emery Ave, SLC -

The purpose of this written briefing is to provide some narrative in regard to what happened at the Cell Site located at 922 South Emery Ave, SLC. What caused to be built out of compliance, and what steps have been taken to avoid anything like this from happening again.

From what I am able to surmise, this site was built incorrectly due to lack of care and attention to detail from T-Mobile contractors. This was built at a time when speed, rather than care was the motivating factor in getting cell sites on-air. There was a race to get the new technologies on-air as quickly as possible, and mistakes were definitely made.

All Contractors and the T-Mobile manager that were involved with this build are no longer with the Company or doing any work for T-Mobile. Additionally, T-Mobile isn't using the same Engineering firm that created the CD's for this site. In my opinion, the parties involved were part of an old breed - kind of the "wild west" mentality where there was no regard for City regulations.

T-Mobile was not aware of this site being out of compliance until they received the Out of Compliance Notice in June 2018. Once the notice was received, immediate steps were taken to remedy this situation. We have been working tirelessly with the City since that time to come to a resolution.

T-Mobile has gone through significant quality control changes and has implemented strenuous new processes since this site was built. Measures are now in place to triple check all pertinent site docs prior to a site being built - and to also verify correctness after the site has been completed by physically inspecting the site as well as reviewing detailed photos. T-Mobile's improved process requires nine (9) sets of eyes that review every single site prior to T-Mobile issuing the approval to build. The site review team includes Project Managers, Certified Engineers, Field Technicians, Operations Management, and the General Contractor that is to build the site. I (and counterparts like me) personally put together and review these packages that include all pertinent site docs (Zoning and Building Permits, Leases, Drawings, Bill of Materials, Structural Calculations, Construction Standards... etc). These processes are in place for new site builds, as well as antenna modifications.

These processes are in place to illustrate T-Mobile's commitment to complying with Salt Lake City's Ordinances and Permit Requirements. Exact adherence to Ordnances, Permits, Leasing Terms, and Structural Calculation is far more important to T-Mobile than the speed at which we put sites up. These steps will definitely limit, if not eliminate, mistakes like this from happening in the future.

Sincerely,

Kalab Cox
Site Acquisition Consultant
T-Mobile
121 West Election Road, Suite 330
Draper, UT 84020

T-Mobile's 2020 Wild West

Yet in 2020, with the Indian Hills tower installation, nothing had changed. T-Mobile proceeded to violate city ordinances with reckless abandon.

Only after the city had posted a Notice and Order on the door of the school did T-Mobile respond, claiming they didn't believe they needed permits for the work done.

and maintenance. Accordingly, T-Mobile developed the design shown in the attached drawings. Based on the approval language in the CUP, T-Mobile believed that the new design was within the scope of the CUP.

Additionally, they blamed a screening material delay.

In order to complete the stealth modifications, the Antenna was temporary relocated on temporary skid mounts so a modified mounting structure could be installed. T-Mobile began implementing the relocation and upgrade on July 30, 2020, which included removing the screening for the Antenna. Unfortunately, delivery of the new screening material (which will look the same as the prior screening material) was delayed, and T-Mobile was unable to immediately screen the relocated and upgraded Antenna. Once any outstanding issues are resolved and the delayed materials arrive, T-Mobile will

In essence, T-Mobile, after being caught in violation, attempted to justify their actions claiming they had reason to believe the 2005 CUP approval of a 4' wide by 4' deep by 10' high enclosure as a chimney provided sufficient authorization to construct a 11' wide by 8' deep by 14' high enclosure, so long as they also called it a chimney.

The reality is, T-Mobile, it's developers and contractors are sophisticated parties with deep experience and expertise. They know exactly what they're doing. If they had in fact exercised diligence and read the 2005 CUP, they would not have concluded they were within the scope. If they were an organization that had any regard for city zoning ordinances, they would have confirmed their understanding before moving forward.

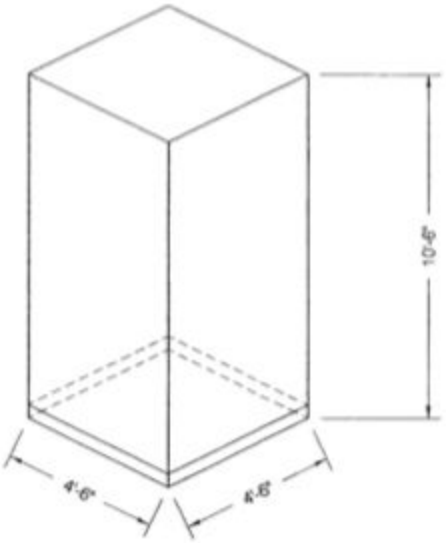
Recall that in 2005 during the CUP public hearings, that T-Mobile had promised residents they would never increase the height of the antenna facility beyond 10'. Plans submitted to the city in 2020 show a height of 14'.

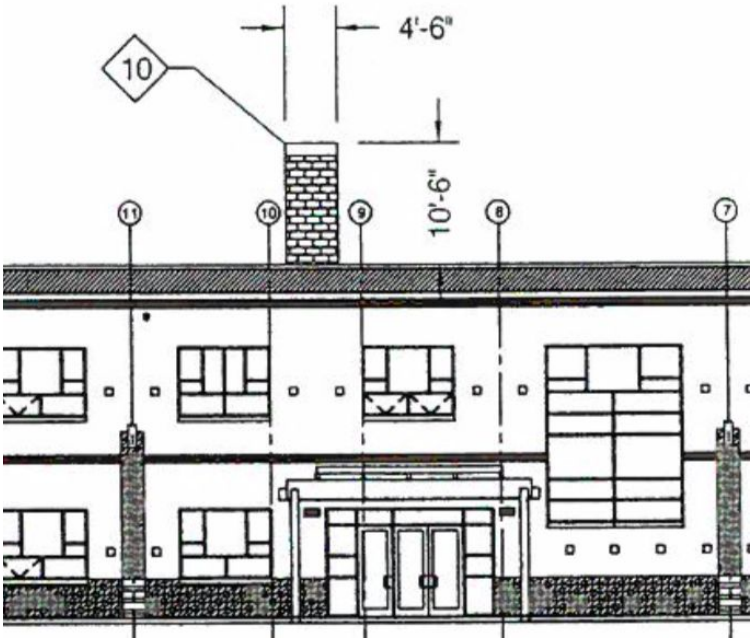
The reality is that any efforts at compliance T-Mobile has taken is simply due to the public outcry that has occurred and T-Mobile attempting damage control and to play along with the Planning Division to obtain a permit that will allow circumvention of public scrutiny.

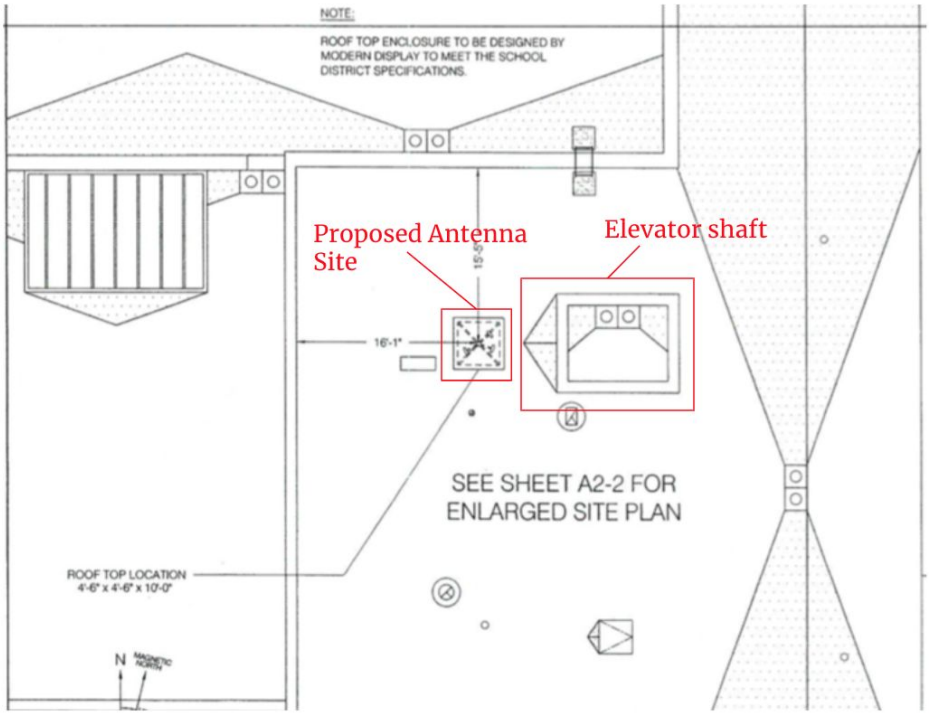
Prior Indian Hills Violations?

In fact, the plans submitted for the current proposal in 2020 show that what T-Mobile had on the roof prior to the 2020 zoning violation was in fact materially different from what had been approved in the original 2005 CUP, and was in fact in violation of the original CUP.

What was approved in the 2005 CUP was a structure 4'6"x 4'6" x 10'6" and installed directly on the roof such that what was visible was only 10'6" above the roof line. See below plans that were included in the 2005 CUP:

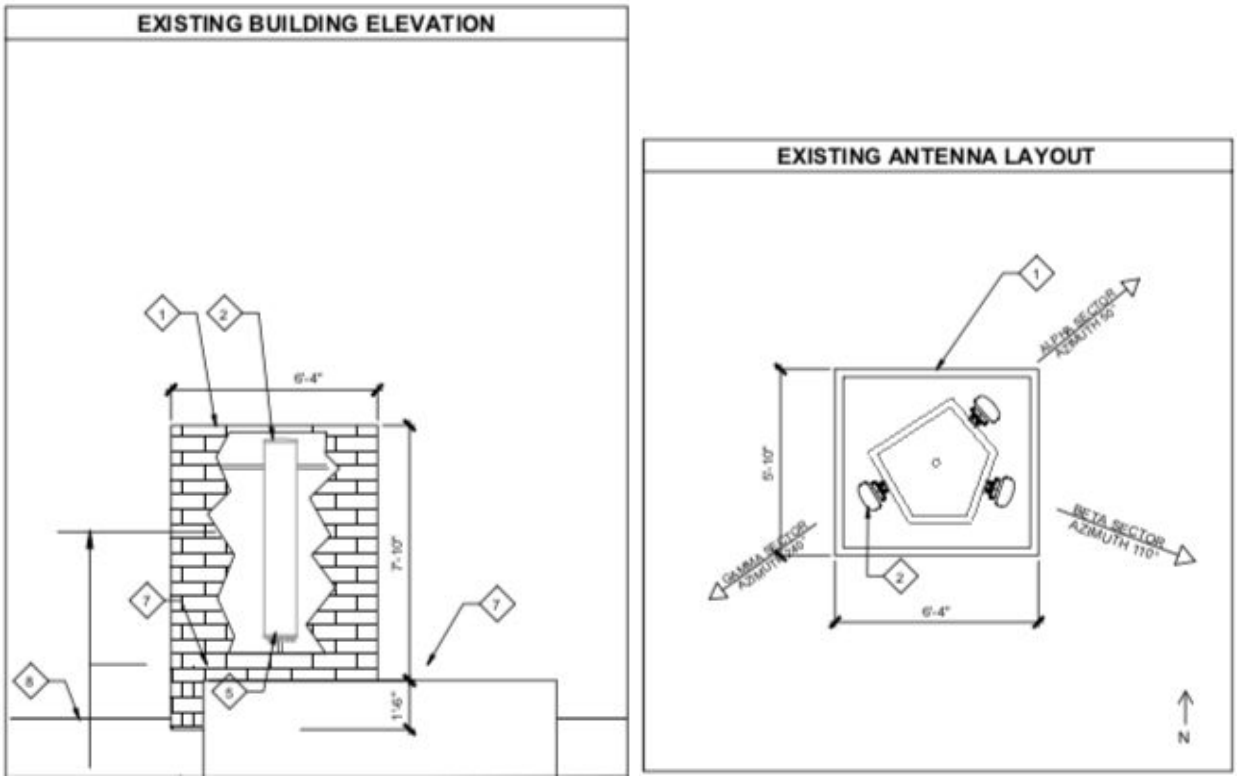




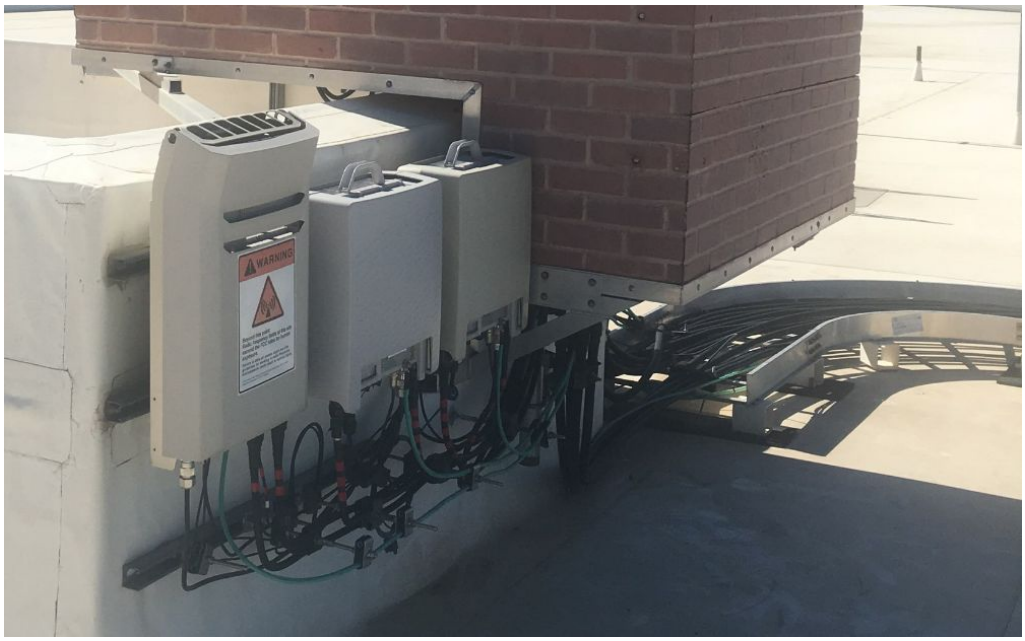


However what was mounted on the roof prior to July 2020 was 5'10" x 6'4" and rose 7'10" above the elevator shaft wall it was mounted on, which is 4'2". So height of the structure removed in 2020 was 12' above roofline, rather than the 10'6" approved.

See below "existing" drawings from the 2020 site plan.



Additionally, the 2005 CUP stated that there would be no electrical on the roof. Despite this, considerable electrical can be seen on the roof that was part of the prior installation.



There is no record that T-Mobile received any approvals from the city beyond the original 2005 CUP. This indicates that T-Mobile installed a different antenna facility (different dimensions, different location) than was approved.

It is reasonable to assume, given the evidence, that T-Mobile installed the 10'6"x 4'6"x 4'6" antenna enclosure in 2005 and subsequently installed the facility depicted in the drawings, on an unpermitted basis, in violation of zoning ordinance.

All of this is further evidence to the fact that T-Mobile is a serial violator of city zoning ordinance.

The reality is that T-Mobile, its developers and contractors are sophisticated parties with long experience. These permitting violations are not mistakes - they are part of a calculated strategy and pattern of operations. T-Mobile relies on the odds that most violations won't be called out. As such, they have chosen a strategy of developing cell tower sites with no regard to zoning ordinances, and then to rely on the inconsequential penalties (is $25/day a deterrent for a company like T-Mobile?) if caught and cozy relationships with city zoning officials to resolve the rare instances where violations are caught.

The zoning ordinances are there to protect the surrounding community and achieve balanced development. This pattern of operating represents a pattern of predatory behavior towards the communities of this city. These violations are violations of the rights to protection of the communities T-Mobile so regularly abuses, including the families in our community who oppose this cell tower on Indian Hills Elementary.

T-Mobile is an organization that cares about nothing unless they face consequences. They have run over the rights of the residents of this city, broken promises repeatedly. Enough is enough.

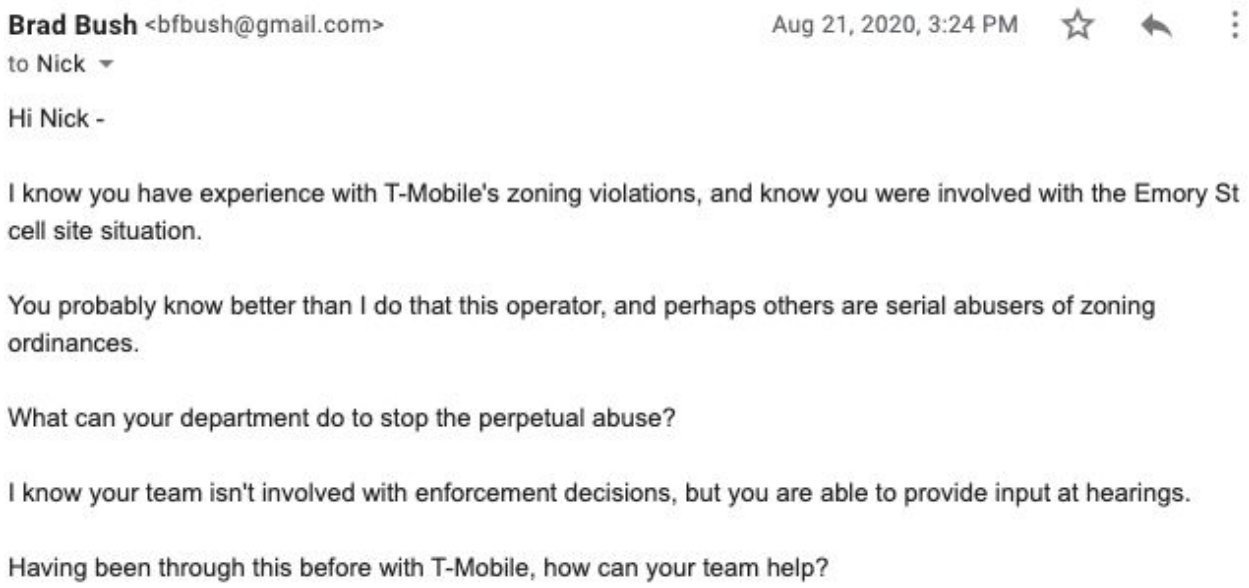
Planning Division Track record of Complacency

As noted above, when residents raised concerns about T-Mobile zoning violations at the Emory Street cell site in 2018, the Planning Division was dismissive, repeatedly denying violations identified by residents. The Planning Division was ultimately forced to acknowledge the violations due to persistent community action and incontrovertible evidence of violation produced by the local community.

See video at link below, where in 2019, the Planning Director, Nick Norris, concedes the Planning Division did not act appropriately in its handling of T-Mobile's violations at Emory Street:

https://www.youtube.com/watch?v=q3JcONPiEgQ

In August 2020, I reached out to Planning Division Director Nick Norris asking what could be done to stop T-Mobile's serial abuse.



Brad Bush <bfbush@gmail.com> Aug 21, 2020, 3:24 PM

to Nick

Hi Nick -

I know you have experience with T-Mobile's zoning violations, and know you were involved with the Emory St cell site situation.

You probably know better than I do that this operator, and perhaps others are serial abusers of zoning ordinances.

What can your department do to stop the perpetual abuse?

I know your team isn't involved with enforcement decisions, but you are able to provide input at hearings.

Having been through this before with T-Mobile, how can your team help?

Norris responded with apparent sympathy and a promise to look into the issue and get back to me with answers. Norris never responded.

Norris, Nick <Nick.Norris@slcgov.com> Aug 25, 2020, 10:36 AM

to me

Brad,

Thanks for your email. It is very frustrating when providers repeatedly violate our ordinances. I need to get caught up on this particularly issue, but it sounds like the cell tower was installed without first obtaining a conditional use. In terms of what the city can do to address perpetual abuse, the City enters into agreements/contracts with cell providers to operate in the city. Beyond the normal zoning violation process, I would need to check with the City Attorney's office on what we can do within the scope of those contracts. There is merit in addressing the penalties associated with a zoning violation and if the penalties are acting as a deterrent. Can I talk to the City Attorney's Office and get back to you with a more helpful answer regarding what else we can do?

NICK NORRIS
Planning Director

What is clear is that T-Mobile has operated recklessly for years and has flouted and violated city ordinances repeatedly, and the city has done nothing to stop them unless there is a public outcry. The unjustifiable and unexplainable bias of Planning Division staff in favor of T-Mobile only accentuates this problem.

The Memo is another attempt by Planning Division staff to paper over and normalize the predatory behavior of T-Mobile as they did with Emory Street in 2018.

Despite being repeatedly lied to by the property owner representative (Salt Lake City School District administrator), and with full awareness of T-Mobile as a repeat violator of zoning ordinances, and being in active violation at the time of the Memo, the Planning Director nonetheless rendered determinations unfounded by law or evidence in favor of T-Mobile, and then violated its own ordinances and the understanding reached with residents of the community in a rush to issue a permit to T-Mobile.

Salt Lake City School District

Cell Tower Contracts Background

The Salt Lake City School District (hereafter, the "district") is the subject property owner. The district has entered into many long term contracts with cell operators, particularly concentrated with T-Mobile, with cell towers on many schools around the city. As such, the district views T-Mobile as an important relationship and source of revenue.

Most if not all cell tower lease agreements the district has entered are long term leases, with terms of 25-30 years. The Indian Hills Elementary Lease, entered in 2005, has a total term of 30 years, meaning it will only expire in 2035, in 14 years time.

No Authority to Enter Cell Tower Leases

Prior to 2000, cell tower contracts were approved by the School Board in the Salt Lake City School District (hereafter, the "Board"), however after 2000, district administrators stopped bringing the contracts to the Board for approval and signed as Board representatives, but without obtaining approval or consent from, or sharing details of the lease agreements with the School Board prior to signing. As the School Board, or Board of Education of the Salt Lake City School District is the legal entity authorized to enter into lease agreements, as provided for under 53G-4-401 of Utah state code, lease agreements entered without Board approval were improper, and the actions of the administrators signing the agreements abused their positions and violated state code.

53G-4-401-4 reads: "A local school board may sue and be sued, and may take, hold, lease, sell, and convey real and personal property as the interests of the schools may require."

https://le.utah.gov/xcode/Title53G/Chapter4/53G-4-S401.html

In other words, the right to enter leases lies with the Board. Without Board approval for such actions, district administrators cannot in their own right to enter such agreements.

The malfeasance perpetrated by district administrators signing cell tower lease agreements without Board approval was discovered in 2015 and discussed at the Board. In order to ensure that the appropriate parties were properly notified and

approvals received before cell tower lease agreements were entered going forward, the Board updated its Shared Governance Guide ("SGG") to include new language specifically requiring School Community Councils ("SCC") to approve "any issues that involve long term contractual obligations for the school, such as the proposed installation of a cell phone tower" and to document approvals and send to the Board.

Below is the language in the SGG describing the responsibility of of the SCC to review any issues involving installation of cell towers:

> Review and discuss any issues that involve long term contractual obligations for the school, such as the proposed installation of a cell phone tower, new construction proposals, and potential lease opportunities with third parties, etc. Documentation of these discussions and the outcome of such discussions (e.g. consensus reached, results of vote, general feedback) must be kept for the purpose of informing the board of the SCC's position on these issues.

Cell Tower Lease Agreement Slush Fund

Proceeds received from cell tower lease agreements are largely siphoned off from the school where the cell tower is located into a vaguely defined "overall communications system for building administrators" fund, and only a small portion of the funds collected from the cell tower lease agreements are retained by the school itself.

> Responding to questions regarding allocations of funds, Mr. Tayler explained that the School District will receive about $12,000 a year and 20 percent or $2,500 will go back to the school. The School District decided to allocate antenna rental monies into an overall communications system for building administrators instead of one school generating and keeping all the money. It is intended to share the wealth with other areas that are not needed for cellular site coverage.

In other words, the bulk of the funds, across a large portfolio of cell tower contracts, go to a district slush fund with loose oversight. This may explain some of district administrator Paul Schulte's willingness to make false statements to the city when confronted about the zoning violation.

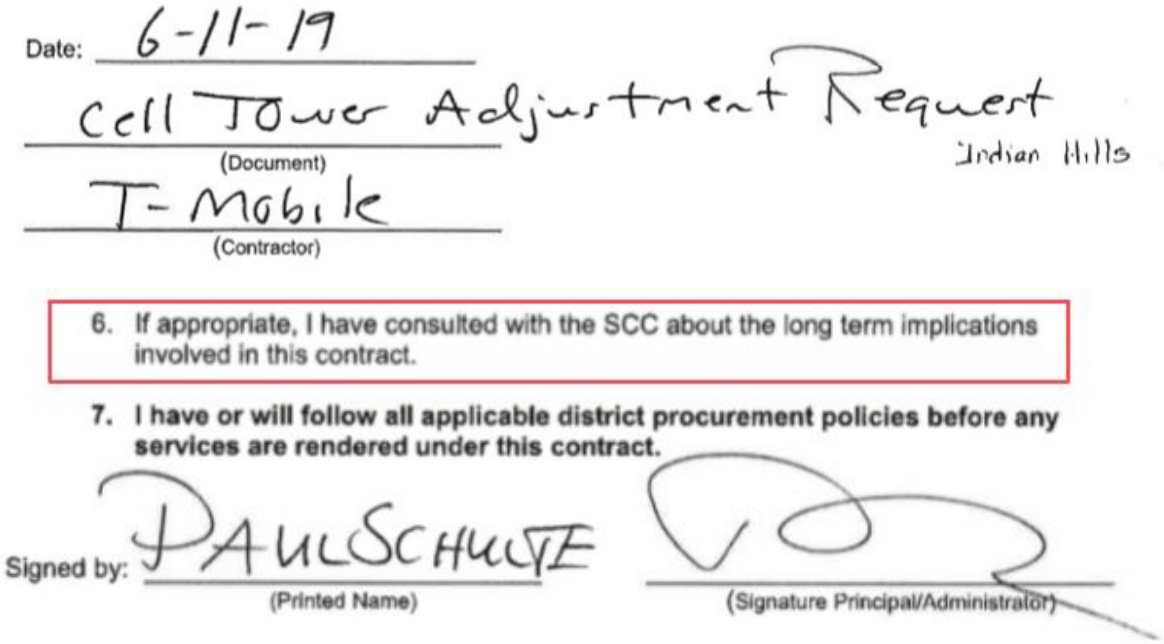
Indian Hills Cell Tower Approvals

The lease with T-Mobile for the cell tower at Indian Hills Elementary was signed on May 25, 2005. A review of Board meeting minutes from 2003-2005 shows that the lease agreement was not approved by the Board, nor was consent obtained or details of the lease discussed prior to the lease being signed. As such, the administrators

involved exceeded their authority in signing the lease and the lease was improperly entered.

Additionally, prior to the new tower being constructed in 2020, the district was required to present the proposed installation work to the Indian Hills School Community Council. Recapping the language in the SGG: the SCC has a responsibility to review and discuss any issues that involve the proposed installation of a cell phone tower.

In 2019, Director of Auxiliary Services Paul Schulte, signed an internal memo that he had consulted with the SCC about the new tower.



Date: 6-11-19

Cell Tower Adjustment Request Indian Hills

(Document)

T-Mobile

(Contractor)

6. If appropriate, I have consulted with the SCC about the long term implications involved in this contract.

7. **I have or will follow all applicable district procurement policies before any services are rendered under this contract.**

Signed by: PAUL SCHULTE

(Printed Name)

(Signature Principal/Administrator)

In 2020, after the installation, the Chair of the Indian Hills SCC confirmed that the district had not notified or obtained approval before the new tower was installed.

Katie Moore Aug 13, 2020, 3:23 PM

to me

hello brad,

no, the district did not notify or obtain approval from the indian hills SCC before the updates they performed at the school this summer 2020.

katie

Failed Governance Controls

In sum, none of the governance controls required by state code or Board policy were followed in the signing of the lease at Indian Hills Elementary. The issue was never raised in any of the forums where public scrutiny or community input would have occurred. Board and SCC meetings are open to the public, and the individuals that hold positions in these organizations are elected and bear accountability to their community. As a result of the short circuiting of state code and district policy, no one in a position of public accountability had ownership for the Indian Hills cell tower lease.

Public institutions operate on the basis of public accountability to the community that they serve. The fact that this lease involved no public accountability eliminates the legitimacy of the agreement. The public and our community can have no confidence that this agreement was entered in the best interests of our community, because it was never considered from that perspective. The zoning ordinances prescribed for public land, with more flexibility for the public institution responsible for the land, are built on the presumption of public accountability for the decisions made with the use of the land.

The breakdown of governance at the Salt Lake City School District relative to this lease agreement fundamentally undermines the legitimacy of the agreement and the zoning rights afforded to the land. These issues are even more concerning given that the proceeds from the lease agreement is part of a district wide slush fund that lacks transparency or accountability, creating real conflicts of interest.

Betrayal of Public Trust

Public land is entrusted to schools for one purpose: fulfilling an educational mission of our children. The district has a policy requiring facilities be used exclusively in fulfillment of its educational mission:

"All facilities should support the district's educational mission"

https://www.slcschools.org/board-of-education/policies/g-10/g-10-policy/english/

Notably, the renting out of school property for commercial purposes unrelated to the district's educational mission is a use outside the scope of the school's mandate for the use of its facilities.

As parents of school aged children living in the vicinity of a school, we have a reasonable presumption that the school and district will take all necessary precautions to keep our children safe and take no action that would put health and safety at risk.

Over the course of many years, several families in our community have asked that the cell tower on the roof of Indian Hills be removed on grounds that we are concerned about the health and safety of the cell tower in such close proximity to children. The unequivocal response in every instance has been to reject our concerns.

When we approached the district in 2020, we were direct in sharing the research and scientific literature that formed the basis for our concerns, and asked for the forum to discuss the risks posed to children. The reaction was stunning: We were stonewalled by district administrators at every possible turn. Despite espousing platitudes like "safety is our highest priority" district administrators showed zero interest in engaging in a dialogue about the risks the tower poses.

Over the course of our interaction with district administrators, they have:

- Yelled at concerned parents expressing their concerns at public meeting
- Engaged in a disinformation campaign, emailing parents links to T-Mobile and industry lobbying groups touting misleading information about safety risks, and attempting to label parents concerns as originating from Russian troll farms
- Refused an independent radiation reading and then emailed parents misleading radiation reading results and claims of "100% safe[ty]" and refused to share how they calculated the radiation readings in metrics required by the FCC
- Lied to, mislead and manipulated parents and council members in public forums, especially the School Community Council, pretending to not wanting to be in the contracts, but legally bound, and as well as providing misleading statements about T-Mobile's violations of zoning ordinances
- Promised meetings with the Superintendent to discuss health and safety concerns and then stopped responding when we attempt to schedule the meeting

Despite a policy requiring all facilities to support its educational mission, the Salt Lake City School District effectively operates a moonlighting business, renting out school facilities for commercial purposes unrelated to its educational mission, while diverting the proceeds to an opaque slush fund and stonewalling parents who come with health and safety concerns about the practice. Taken together, this constitutes a gross betrayal of the public's trust in this institution.

Salt Lake City School District has violated every norm of governance or public accountability with the Indian Hills cell tower contract, and has abrogated its responsibility to safeguard children in pursuit of commercial gain. The district's actions with respect to this lease agreement constitute a serious betrayal of public trust and a gross abuse of authority. Given these violations, including the lack of Board authorization to sign, the existence of a lease agreement cannot be taken at face value or viewed as a valid expression of the use as in the best interests of this public institution.

The Memo then must be read in the full context of these surrounding events and circumstances.

What's At Stake

A reasonable question is, what's at stake in this decision?

Not Telecom Access

T-Mobile and perhaps the Planning Division may argue that the rationale that justifies overlooking the opposition of the residents of the community is telecom access.

The reality is, however, that whether or not this cell site exists in this location will have no impact on telecom access in this area. This is a neighborhood where Google Fiber and XFinity broadband is at every door. Data access is ubiquitous. Every other cell provider covers the neighborhood without placing a cell tower on the roof of the school. And T-Mobile, as a 2nd tier network operator is not a leading provider in the area. In any event, alternative cell sites exist to cover the same terrain, though likely with different operating cost profiles

Put bluntly, this is not about telecom access. What's in question here are solely cell developer and corporate profits, a school district administrator slush funds, and the health and safety of children.

Health and Safety Concerns

Health and Safety concerns with cell towers have been a persistent theme. During the 2005 public hearings related to T-Mobile's installation at this location, Commissioner Diamond on the Planning Commission expressed his concerns.

T-Mobile was quick to downplay those concerns and the Commissioner found T-Mobile's response dismissive.

Addressing Commissioner Diamond's concern about health issues, Mr. Gourley explained that electromagnetic fields certainly exist any time there are radio frequency waves. Cellular telephones are actually radios and T-Mobile owns 1850 to 1965 megahertz. There is not enough power in these bands to cause problems with health and is far from causing any interference to other signals. Mr. Gourley added that health concerns relating to telecommunications are so minimal that the Telecommunications Act of 1996 precludes discussion of health issues at public hearings. Commissioner Diamond said that he believes there is too much focus on communication and not health, and he feels health issues are important enough to discuss.

Salt Lake City has regularly fielded calls from concerned residents. Greg Mikolash, a Supervisor in the Building Services Division told me in Nov 16, 2020 call that he has regularly fielded calls from concerned residents about cell towers over the course of his career.

The difference is that in 2021, science has come a long way in understanding the health impacts of electromagnetic radiation standards that were developed in the 1970s, in the era of black and white TVs, record players and AM/FM radio, that constitute the current safety standards required by the Federal Communications Commission (FCC). And the reality is that the standards in place have not kept pace with the science, and leading experts in the field globally are concerned that standards are too lax to protect the population, especially young children, pregnant mothers and the elderly.

In 2018, the largest study of its kind conducted by the US National Toxicology Program (NTP) at the request of the Food and Drug Administration (FDA), lasting 10 years and costing $30 million concluded that exposure to high levels of Radio Frequency Radiation (RFR), like that used in 2G and 3G cellphones, was associated with clear evidence of cancer in rats.

https://www.ncbi.nlm.nih.gov/pubmed/31633839

Numerous independent reviews of the data produced by this study further reinforced that RFR has a biological impact that was not previously contemplated when standards were set in the 1970s.

The Significance of Primary Tumors in the NTP Study of Chronic Rat Exposure to Cell Phone Radiation [Health Matters]. IEEE Microwave Magazine. 20(11):18-21. Nov 2019. https://ieeexplore.ieee.org/document/8866792

Evaluation of the genotoxicity (DNA damage) of cell phone radiofrequency radiation in male and female rats and mice following subchronic exposure. Environmental and Molecular Mutagenesis, Volume 61, Issue 2, Feb 2020.
https://onlinelibrary.wiley.com/doi/full/10.1002/em.22343

Ramazzini Institute (RI), one the European Union's preeminent toxicology labs subsequently confirmed the results of the NPT study in the largest long-term study ever performed in rats on the health effects of RFR.

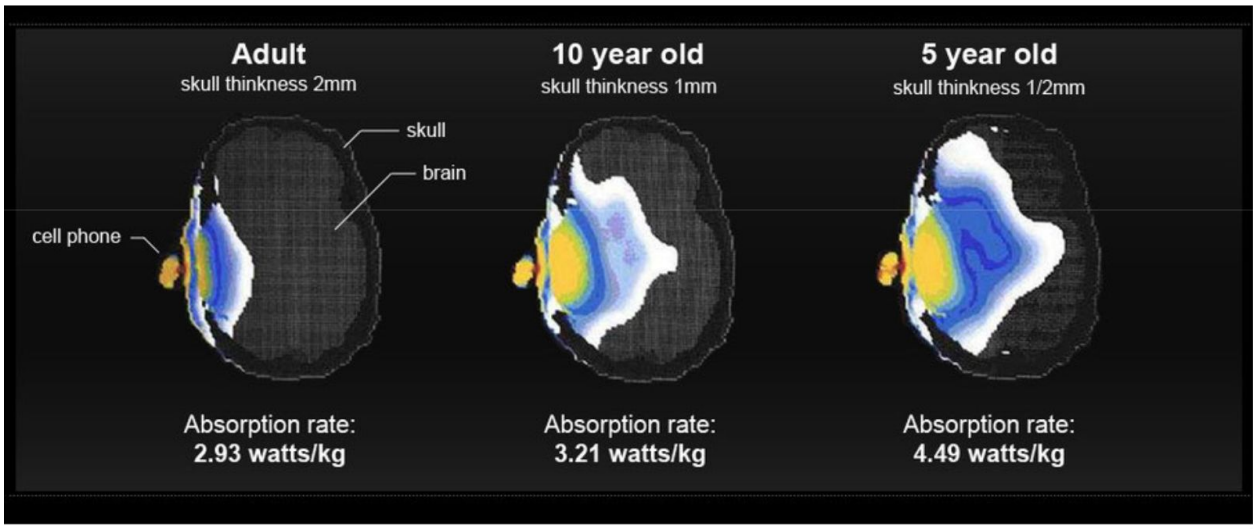
https://www.sciencedirect.com/science/article/abs/pii/S0013935118300367

The results of these studies have led many of the leading scientists and public health experts in the field to call for a re-evaluation of cell radiation standards.

Joel M. Moskowitz, Ph.D. Director of the Center for Family and Community Health School of Public Health at University of California, Berkeley concluded:

"In my opinion, the results of the NTP cell phone radiation studies in conjunction with the results of the recent Ramazzini Institute study provide conclusive evidence that long term exposure to cell phone radiation causes DNA damage and cancer."

The graphic below is from published research by Professor Om Gandhi of the University of Utah, and one of the world's leading scientists on Specific Absorption Rate, (how electromagnetic radiation is absorbed into tissue), and a member of the IEEE standards group in the 1970s that set the safety standards on which FCC standards are based.



Om Gandhi, University of Utah

Dr Gandhi concluded that children absorb electromagnetic radiation at a rate many times the rate of adults, and as a result has vocally called for a revision of safety standards, particularly to protect children.

The American Academy of Pediatrics, the leading professional society of Pediatricians in the US has called on the FCC to reassess safety standards to protect children.

American Academy of Pediatrics

DEDICATED TO THE HEALTH OF ALL CHILDREN™

As radiation standards are reassessed, the AAP urges the FCC to adopt radiation standards that:

- **Protect children's health and well-being**. Children are not little adults and are disproportionately impacted by all environmental exposures, including cell phone radiation. Current FCC standards do not account for the unique vulnerability and use patterns specific to pregnant women and children. It is essential that any new standard for cell phones or other wireless devices be based on

protecting the youngest and most vulnerable populations to ensure they are safeguarded throughout their lifetimes.

<u>So what's at stake in this decision? Our Children's Health and Safety</u>

Confirming the unfounded determinations in this Memo enables T-Mobile, a reckless cell operator, to massively expand its towers on a school, exposing the children at the school and those that live in the homes surrounding the school to extraordinarily high levels of electromagnetic radiation. And for children living in the surrounding homes, that exposure will be perpetual, 24 hours a day, 365 days a year for the duration of their childhoods, as long as they live at home. Surrounding the school in close proximity are many families with young children, including infants and pregnant mothers.

Confirming the determinations in this Memo condemns the children of our community to the health risks of high levels of exposure throughout their childhoods.

Frequently we hear the justification that the standards set by the FCC are safe. The evidence above proves that there is strong justification asserted by experts in the field that say this is not the case. Compliance with FCC standards does not equate to being safe when exposing children on a perpetual basis.

Additionally, we have already established that T-Mobile is reckless in its observance of zoning ordinances, and the Salt Lake City School District cannot be relied on to protect children. We have no reason to believe T-Mobile will not be equally reckless in ensuring safe radiation levels emitted from their towers. The reality is that, in practical terms, the safety of cell towers is unregulated. Utah (at the state level) and Salt Lake County do not have the relevant expertise to evaluate cell tower radiation (this has been confirmed in email and phone correspondence with the toxicology teams at both the State and County levels). And the FCC, with millions of cell sites to monitor, is unlikely to ever visit a cell site. And even if the FCC were to test the site, T-Mobile will likely be notified in advance, and signal strength can be reduced to avert non-compliance.

We, the residents of the community surrounding this cell antenna facility, have no protection or assurance or confidence that we are safe from this installation.

So what's at stake in the determinations made in the Memo is the health and safety of our children and families, and our own peace of mind living in our own homes.

Argumentation:

Determination 1: Permit Required for the Antenna Array

The Memo's purpose appears to be to establish that T-Mobile's proposed antenna installation would qualify as a stealth facility, and to establish that as a stealth facility, it would qualify to receive a permit and would not be required to obtain a conditional use permit, as demanded by this Appeal and the residents of our community.

The foundational flaw of the Memo's line of argumentation is that it entirely omits the requirements of 21A.40.090 for the installed facility as a Roof Mounted Antenna facility.

The Memo neglects to mention that, at the time the Memo was issued, the antennas in question had already been installed on on the roof, and that the installed antennas unambiguously and exclusively meet the definition of Roof Mounted Antennas, as defined in 21A.62.040 of the Zoning Ordinance:

"ANTENNA, ROOF MOUNTED: An antenna or series of individual antennas mounted on a flat roof, mechanical room or penthouse of a building."

See below a photo obtained from Salt Lake City School District under GRAMA request. The photograph below reflects the antennas at the time the Memo was issued.

Further, the addition of the stealth enclosure discussed in the Memo did not change the installation's conformity to the definition of a Roof Mounted Antenna: the antenna array remains mounted on the school's roof, consistent with the definition in 21A.62.040.

As the Memo indicates, the permit requirements by land use and type for wireless antennas is contained in the Table in 21A.40.090.E.1 (the "Wireless Antenna Permit Table" or "Table"). Roof Mounted Antennas on Public Land (PL), require a Conditional Use Permit, per the Wireless Antenna Permit Table. The Stealth Antenna type is not in the Wireless Antenna Permit Table.

The Memo asserts no argument against, or otherwise controverting the categorization of the installation as a Roof Mounted Antenna - it simply ignores this point (though this is the very point of contention that was raised in email correspondence with the Planning Director and in the September 18th pro-forma appeal that was sent to the Planning Commission - See Appendix A).

The City's Zoning Ordinance then is unambiguous that a Roof Mounted Antenna, such as the antenna array installed by T-Mobile, requires a Conditional Use Permit. This plain language understanding is clear to all.

The Memo however ignores this clear conclusion and chooses instead to embark on a perverse, tortured, and circuitous line of logic to support its objective of rationalizing issuance of a permit over the objections of the residents of the community, that is ultimately not supported by any language in the ordinance.

Memo Objective 1: Undermine the Determinacy of the Wireless Antenna Permit Table

The first objective of the Memo appears to be to create the argument for an exemption for antennas meeting the Stealth Antenna type from the permit requirements in the Wireless Antenna Permit Table.

The Meaning of a Comma

The Memo refers to the Wireless telecommunication facilities row in the Table of Permitted and Conditional Uses for Special Purpose Districts (21A.33.070), and notes that since no "P" (indicating permitted) or "C" (indicating Conditional) is present, that the reference: "see Section 21A.40.090, Table 21A.40.090.E of this title" is determinate as to the category of permit required.

Legend:	C =	Conditional	P =	Permitted

Use	Permitted And Conditional Uses By District																
	RP	BP	FP	AG	AG-2	AG-5	AG-20	OS	NOS	A	PL	PL-2	I	UI	MH	EI	MU
to retail and wholesale business (maximum 5,000 square foot floor plate)																	
Wholesale distribution		P								P							
Wireless telecommunications facility (see Section 21A.40.090, Table 21A.40.090.E of this title)																	

The reference in this table clearly refers to the Wireless Antenna Permit Table (21A.40.090.E) for further clarification on permit type required by type.

However, the Memo attempts to apply a grammatically false interpretation of the reference to imply that the reference to the Wireless Antenna Permit Table actually is meant to refer to two sections: the entire section 21A.40.090 (encompassing many antenna types, not just wireless antennas) being one, and the Wireless Antenna Permit Table being the other. The Memo states:

"The table refers to two sections of city code and reads "(see Section 21A.40.090, Table 21A.40.090.E of this title). The two sections are separated by a comma. A comma is used to separate items in a list. In this section, the comma indicates that both sections apply. These referenced sections determine if a proposed antenna is allowed in the zoning district."

This textual and grammatical analysis is simply not accurate and is not supported by the context of its use. First, the inclusion of the comma does not constitute a list (see *Garner's Modern American Usage*, which states: "the comma separates items in a list of more than two"). This is not a list as there are not more than two items. If this were intended as a list of two items, it would have so joined the two items with an "and" or "or" rather than a comma.

Rather, the comma used in the context of a parenthetical reference to separate the section source from the specific reference, such as, for instance: 1996 Telecommunications Act, 4.3.1., or Chapter 5, Verse 6.

Given the context of a table of permitted and conditional uses (which logically is going to reference another similarly structured table of permit categories by land use and

antenna type), the reference to this table clearly orients to the section where the table is located, rather than to the section broadly and on equal footing with the table.

Section 21A.40.090 covers a broad range of antennas, but for the subject installation, only the subsection 21A.40.090.E (Wireless Telecommunication Facilities; Low Power Radio Services Facilities) applies and corresponds to the "Wireless telecommunication facilities" row in 21A.33.070. Referring to the entirety of 21A.40.090 as a list item equivalent to the specific subtable of the subsection 21A.40.090.E is nonsensical. If the ordinance intended to refer more broadly to an appropriate section beyond the table itself, it would have been more specific as to the applicable subsection. The lack of specificity as to applicable subsection further reinforces, beyond the grammatically obvious, that the references to the 21A.40.090 broadly was merely for orientation purposes directing to the Table in 21A.40.090.E.

Additionally, given that the Table is a subsection of 21A.40.090.E, which is a subsection of 21A.40.090, if the intent was to refer to the section as a whole, with no specificity, as is implied in the Memo, there would be no need to include the specific reference to the 21A.40.090.E: this table is already apart of the section and the reference would be redundant.

Finally, reviewing other instances in the ordinance, it is clear that the convention used throughout when specifically referring to a table is to cite the section for orientation purposes, and then the specified table. For instance, in 21A.40.090.E.2.f.1, the ordinance contains the following language in referring to two tables: "...contained in section 21A.36.020, tables 21A.36.020B and 21A.36.020C of this title". It's clear from the context, and the content of 21A.36.020 that the reference is solely to the tables in 21A.36.020B and 21A.36.020C.

The Memo's assertion notwithstanding, the clear interpretation is that the reference in the table in 21A.33.070 refers specifically and logically to just one section: the Wireless Antenna Permit Table. The 'comma' only separates the section and table references for orientation purposes.

Omission from Table = Not Allowed

The fundamental structure of the city's Zoning Ordinances relies on use tables to define which uses require what category of permit by zoning district. This is a convention applied throughout the zoning ordinances.

Zoning Ordinance 21A.12.050.B (Chapter 21A.12: Administrative Interpretations) states: “Any use specifically listed without a "P" or "C" designated in the table of permitted and conditional uses for a district shall not be allowed in that zoning district”

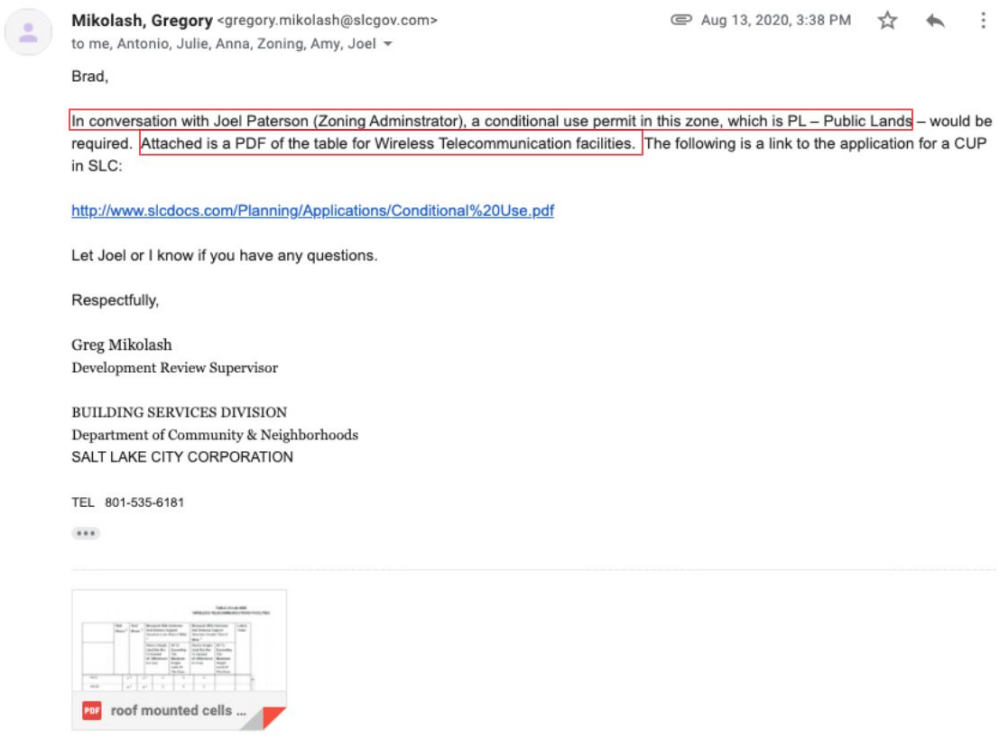
To define the permit requirements then, the convention is to refer to the table. 21A.12.050.B makes clear that a use that cannot demonstrate a “P” or “C” in the relevant table is not allowed.

The ‘Common Use’ Proof

Beyond arguments about the grammatical meaning of a comma, the reality is that in everyday usage, the city staff commonly references the Wireless Antenna Permit Table on a stand-alone basis when determining the permit requirements of a given antenna type and land use.

The email communication below highlights this common usage. When I asked what the permit requirements were for the antenna array installed on the school, I received the following reply. Note that the city supervisor, in consultation with the Zoning Administrator (who had been cc’d on the email chain all along), indicated that the antennas required a Conditional Use Permit, and sent me a copy of JUST the Wireless Antenna Permit Table. No reference was made to the rest of the section and the Table was presented as determinate as to permit category required by type and land use.

See below:



Mikolash, Gregory <gregory.mikolash@slcgov.com> Aug 13, 2020, 3:38 PM
to me, Antonio, Julie, Anna, Zoning, Amy, Joel

Brad,

In conversation with Joel Paterson (Zoning Adminstrator), a conditional use permit in this zone, which is PL – Public Lands – would be required. Attached is a PDF of the table for Wireless Telecommunication facilities. The following is a link to the application for a CUP in SLC:

http://www.slcdocs.com/Planning/Applications/Conditional%20Use.pdf

Let Joel or I know if you have any questions.

Respectfully,

Greg Mikolash
Development Review Supervisor

BUILDING SERVICES DIVISION
Department of Community & Neighborhoods
SALT LAKE CITY CORPORATION

TEL 801-535-6181

PDF roof mounted cells ...

Stealth Antenna Subsection Silent on Permit Requirements

Finally, an implied but not clearly stated assertion of the Memo is that the Stealth Antenna subsection (21A.40.090.E.2.f) allows antennas of this type 'as permitted' in all zones.

But this isn't what the ordinance says. In fact, the language in the ordinance is clear that "Stealth Antenna", though a type, is not determinate as to category of permit required and that only the types listed in the Table in 21A.40.090.E are determinate, as reinforced by 21A.12.050.B and the Table in 21A.33.070.

Further examination of the language of the "Stealth Antenna" type in 21A.40.090.E.2.f provides no reference to category of permit required:

The Zoning Ordinance states, [stealth antennas]...*shall be allowed in all zoning districts subject to meeting the provisions contained in section 21A.36.020, tables 21A.36.020B and 21A.36.020C of this title.*"

This language is noticeably silent as to category of permit required for this type, while the Table in 21A.33.070 and the further language in 21A.40.090.E.1 are definitive that

the Wireless Antenna Permit Table presents the complete designation of permit category by land use and type.

Further, in other sections of the Zoning Ordinances, when designating permit category, the ordinance specifically states "allowed as permitted". The absence of this specific language, combined with the other language referenced above, leave the Stealth Antenna type silent (an indeterminate) as to permit required.

But this is also logical: 'stealth' simply refers to adding features to an antenna installation to disguise or conceal the antenna, and every 'stealth' antenna also continues to meet the definition of the types specifically listed in the Wireless Antenna Permit Table. As such, a Stealth Antenna is both a valid type allowable in all zones, while being indeterminate as to permit category required, which is in fact determined by the antenna's underlying type defined in the Wireless Antenna Permit Table.

The Manufactured Conflict

The Memo further attempts to support its claim of an exemption of Stealth Antennas from the permit requirements in the Wireless Antenna Permit Table by manufacturing a non-existent 'conflict' to give rise to the need to resort to referencing legislative history to interpret the ordinances in favor of the Memo's determinations.

The Memo States :
"The reference in the land use tables [21A.33.070] also refers to Table 21A.40.090E [Wireless Antenna Permit Table]. This table is titled "Wireless Telecommunication Facilities" and includes subsections that indicate that the table shows which types of wireless telecommunication facilities are either permitted or conditional in each zoning district. Stealth Antennae are not listed in the table. The same subsection that contains the table also states that "The uses specified in table 21A.40.090E of this section, indicate which facility types are allowed as either a permitted or conditional use within specific zoning districts. Low power radio service facilities may be an accessory use, secondary use or principal use." This creates a conflict between Table 21A.40.090.E and 21A.40.090.E.2.f. The table does not indicate that a stealth antenna is permitted or conditional, while subsection E.2.f says they are allowed in all zoning districts.

For guidance on addressing this issue, I referred to the adopting ordinance and supporting documents created as part of Salt Lake City Ordinance 55 of 2011."

As noted above, the Table in 21A.33.070 does not refer to the Stealth Subsection ("21A.40.090.E.2.f") or the entire antenna section (21A.40.090), it only refers to the Wireless Antenna Permit Table. Further, as also noted above, nothing in the Stealth Subsection stipulates the category of permit associated with antennas associated with this type. As noted above, this is perfectly logical, given that every antenna with a stealth disguise is also an antenna meeting one of the types listed in the Wireless Antenna Permit Table.

In sum:

1. Rather than apply common grammatical usage of a comma, the Memo relies on unjustifiable grammatical interpretation of a comma in 21A.33.070
2. Rather than relying on the key reference of the Wireless Antenna Permit Table to determine permit category, and in conflict with 21A.12.050.B, the Memo assumes without explicit justification that omission of the Stealth Antenna type from the Wireless Antenna Permit Table means the Stealth Antenna type isn't subject to the Table.
3. Rather than accept the Tables in 21A.33.070 and 21.40.090.E as determinate as to permit category, insinuates that, no explicitly defined permit category requirements in the Stealth Subsection means that such antennas are permitted in all zones (i.e., that there are no limits on where a Stealth Antenna can be placed, regardless of land use type).

In sum, the Memo refuses to accept the ordinances as they are written, but has manufactured a conflict in an attempt to bring in a certain viewpoint from legislative history that is believed to provide justification for its otherwise unjustifiable interpretation. Put another way, the Memo is essentially asserting that the current ordinance was sloppily drafted and contains numerous omissions and errors that we believe were intended to be there to meet our definition, so we should look to memos from a decade ago from the petitioner proposing an amendment, to really understand what is going on rather than read the ordinances as they are actually drafted.

Legislative History Presented is Irrelevant

First, the legislative history is irrelevant because the manufactured conflict on the basis of which it has been introduced has been fully refuted.

Second, legislative history documents presented do not reflect, nor do they purport to reflect the intent of the City Council and its members in adopting the amendment in the form that it was adopted in 2011. In fact, materials presented reflect the position and objectives of the petitioner for the amendment (in this case the administration of Mayor Ralph Becker). The City Council is a body independent of the mayor's administration. Between the objectives of a petitioner proposing an amendment and the actual language adopted lies a large gulf of missing information about actual understanding and intent by the City Council. Notably, the language referenced in the petitioners materials hopes for stealth antennas to be 'allowed as permitted' - but what found its way into the adopted amendment did not include "as permitted'. The bottom line is that the City Council chose to omit the stealth as a type from the Wireless Antenna Permit Table, and to omit "allowed as permitted" when it could have done so if it so chose.

The Memo provides no proof or documentation of the understanding or intent of the City Council that would give rise to an interpretation of sufficient weight that would give rise to ignoring the plain language of what is in the ordinance.

Conclusion: The Wireless Antenna Permit Table Is Determinate

The Memo's argument for casting aside the plain language of the ordinance and the permit requirements in the Wireless Antenna Permit Table is fundamentally and thoroughly flawed and must be rejected.

State code is clear that: "A land use authority shall apply the plain language of land use regulations." (10-9a-306.1)

https://le.utah.gov/xcode/Title10/Chapter9A/10-9a-S306.html?v=C10-9a-S306_20170509 20170509

The Memo's line of argumentation is a clear attempt to subvert the plain language interpretation of the ordinances.

The fundamental question here is quite simple: what is the appropriate permit required for a wireless antenna built on school roof. Clearly, based on the Wireless Antenna Permit Table, a Conditional Use Permit is required. This is the definition of a plain language interpretation.

The Memo's failure to recognize the permit required in the Wireless Antenna Permit Table renders the determinations therein illegal, and the determination therefore in error.

Determination 2: Compliance with Stealth Antenna Definition

The second determination was that the antenna meets the definition of a stealth antenna, and that it meets the definition of being "completely disguised as another object or otherwise concealed from view thereby concealing the intended use and appearance of the facility" (21A.40.090.E.2.f.1 and 21A.62.040).

Installed Antenna Facility is Unambiguously Roof Mount

As noted above, the antennas in question had already been installed at the time the Memo was issued, and definitively did not meet the definition of a stealth antenna, but unambiguously did meet the definition of a roof mount antenna. The picture below shows the antenna installed in July/August 2020.

This installation of antennas in July/August 2020 was not permitted and should still require a permit before the Planning Commission question of further modifications.

This letter of appeal challenges the right of the applicant and the Planning Director's attempt to evade the permit requirements for the work performed in violation of ordinance, namely through proposing a modification to the unpermitted installation with the specific intention of evading the public forum discussion entailed with a

conditional use permit that is the right afforded under the ordinance to the residents of the community for the work that was performed.

If land developers, such as T-Mobile, are able to perform unpermitted work in violation of ordinance with no obligation to ever receive proper permitting for the work performed in violation, what is the incentive for such a developer to ever pursue permits as a first course? The logical strategy is to never pursue permits, and then, in the few instances where violations are called out, to call on their colleagues at the Planning Division to collaborate on a new course to minimize requirements.

In fact, given the established and well understood (within the Planning Division) pattern of T-Mobile as a serial violator of zoning ordinance, it can be reasonably surmised that this is exactly T-Mobile's strategy: don't worry about permits.

Thus, this Appeal asks that any determination on the proposed alterations to the existing towers be thrown out of consideration until such time as the applicant is able to demonstrate compliance for the work already performed.

Does Not Meet Stealth Definition Standard

Yet despite this Appeal's position that considering the question of whether the proposed antennas meet the definition of stealth antennas is inappropriate, this Appeal will nonetheless demonstrate that they do not meet the definition.

In attempting to demonstrate the compliance of the proposal with definition of a stealth antenna, the Memo sets the lowest bar possible, focusing only on the need for the antennas themselves to be concealed:

The Memo states:

> *"According to the info provided by T-Mobile, the antennae will be entirely concealed within a screen. T-Mobile must demonstrate on their required plans that the antennae is entirely concealed within the elevator bulkhead."*

Reading the definition of stealth antenna in 21A.62.030, it is clear that the requirement of concealment applies to the entire facility, and not just the antennas.

> *"ANTENNA, STEALTH: An antenna completely disguised as another object, or otherwise concealed from view, thereby concealing the intended use and appearance of the facility. Examples of stealth facilities include, but are not limited to, flagpoles,*

light pole standards or architectural elements such as dormers, steeples and chimneys."

The facility then would include all of the associated support structures, equipment and wiring, and must be completely disguised as the object - in this case as an elevator bulkhead - or otherwise concealed from view.

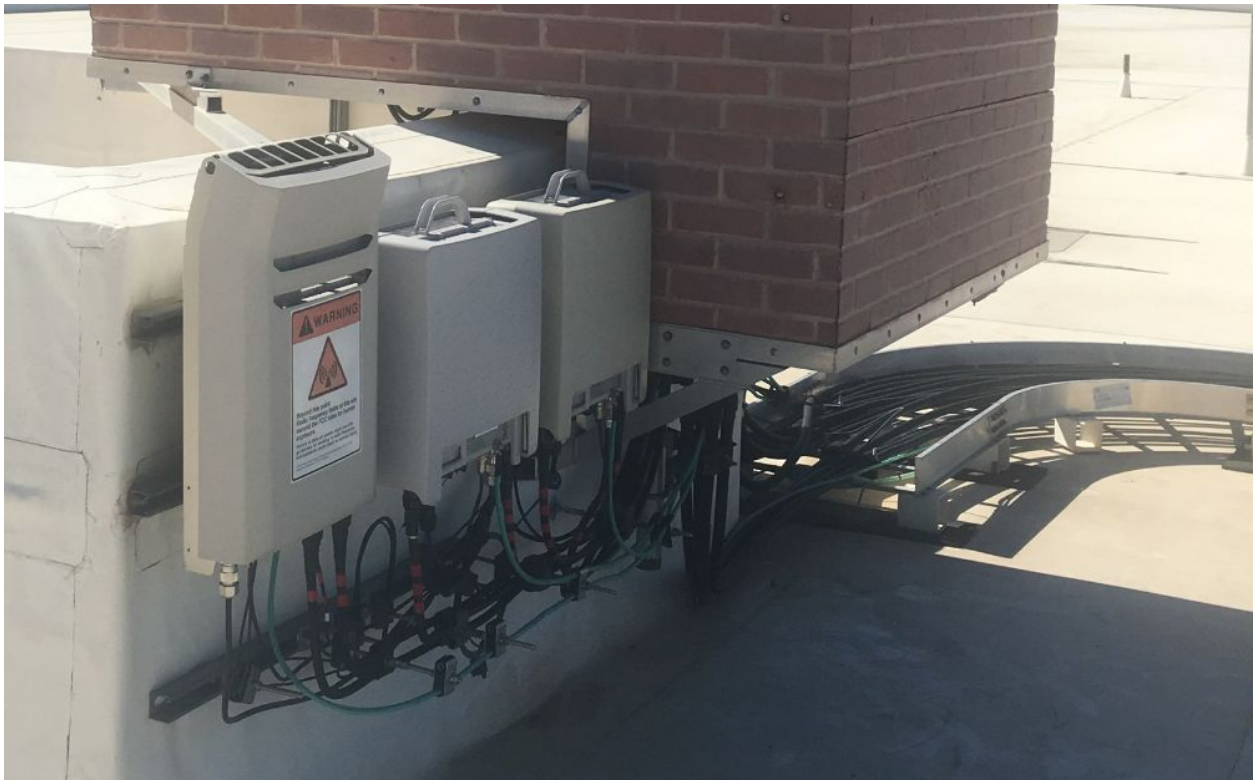
This establishes that in order to meet the definition, the entire antenna facility must be completely disguised as an elevator bulkhead, or not visible at all. To be completely disguised as an elevator bulkhead, the structure must appear just as an elevator bulkhead with no visual cues the betray that the facility is not actually an elevator bulkhead.

The applicant's plan fails to meet these criteria.

A material factor in the assessment of what is visible is the vantage point of the surrounding land. Much of the land surrounding the school property to the east, where the antenna facility is located, is at an elevation near or above the elevation of the school roof, affording full view of the roof from a wide range of angles, such that installations on the roof are fully visible, despite parapets, etc. The significant slope of the surrounding property is noted in the Memo. Given this fact, the location affords zero opportunity for any element of the facility housed on the roof outside the enclosure disguised as an elevator bulkhead to be considered "concealed from view".

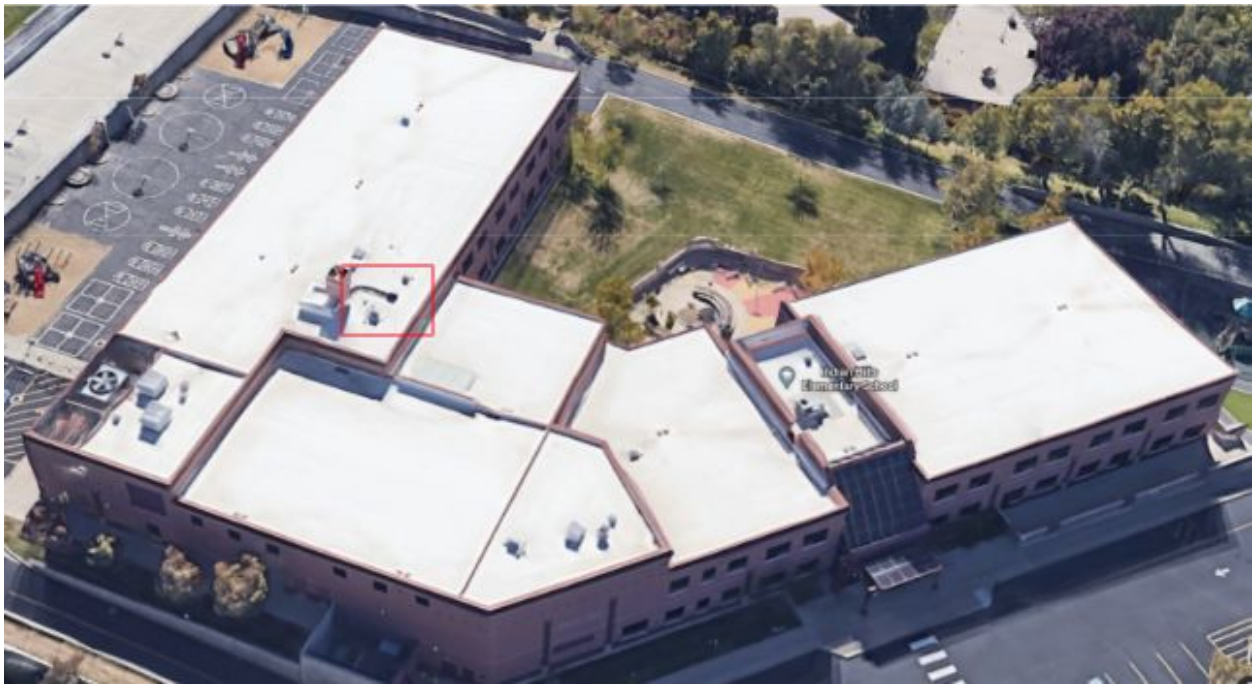
Despite this, the antenna facility entails many elements that are not housed in the enclosure. First, the plans call for a staircase to access the platform, that is both visible and cannot be considered an elevator bulkhead. Additionally, electrical equipment/wiring and associated HVAC structures are all visible on the roof, and have been through all iterations of the antenna, including the smaller facility that was on the roof until July 2020.

Below is a picture of the original enclosure, where considerable supporting elements of the facility can be seen outside the enclosure:

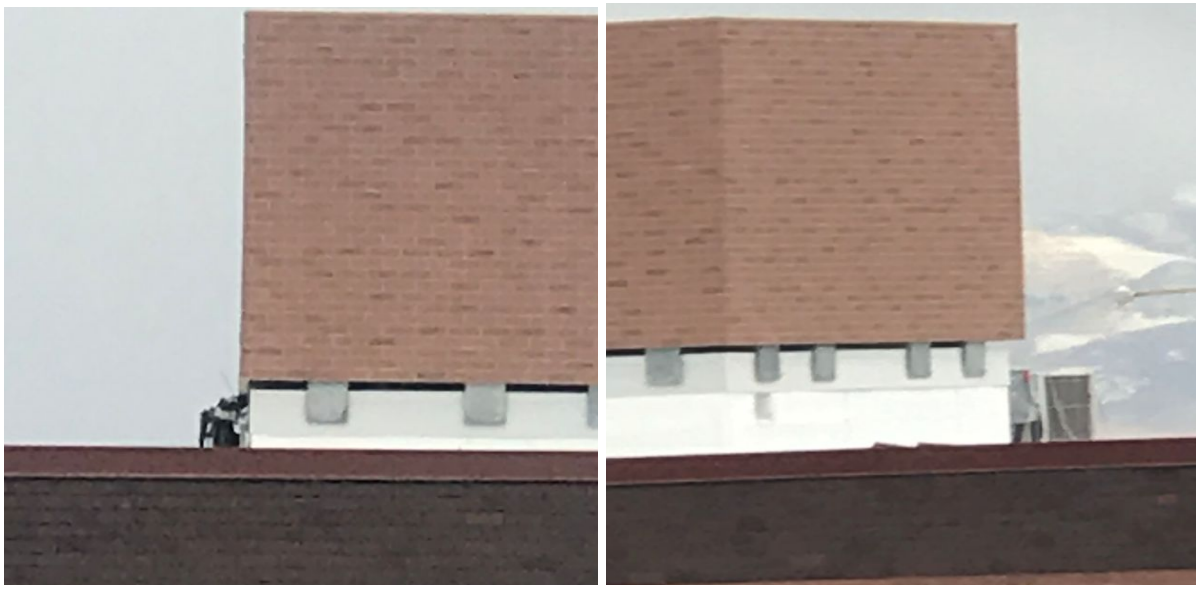


Below is a view of the supporting facility elements from a vantage point surrounding the school.

Below is a view from Google Earth (that was also referenced in Planning Division documents, clearly shows the cabling visible on the earlier ‘stealth’ antenna.



The new installation has even more facility elements outside the enclosure.



The wire cabling from the original installation can be seen to persist in the image below, leading to a large black box that is part of the facility and in full view.

Reasonable inspection of the prior facility by the Planning Division would have discovered the existence of significant unconcealed elements of the facility.

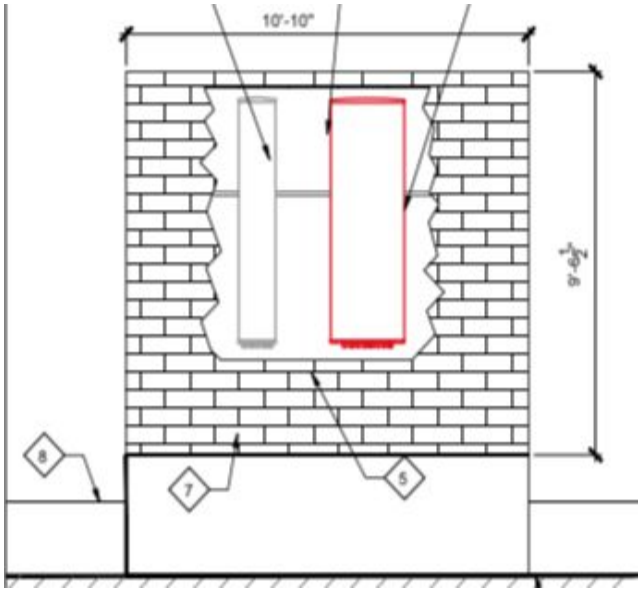
Further, the proposed plans submitted to the Planning Division, insofar as what I was able to receive under a GRAMA request, fail to address the supporting elements of the facility, focusing only on the structure of the stealth enclosure and the location of the antennas. The Memo's narrow focus on just the antennas themselves rather than the facility as a whole likely contributes to this disqualifying detail being omitted from plans. In any event the omission of such key elements from submitted plans constitutes grounds to overturn the determination, as made in error.

Nonetheless, failure to fully understand the complete facility elements on the part of the Planning Division staff involved, given what was reasonably known at the time, constitutes either willful ignorance and/or negligence.

Further, to be completely disguised as an elevator bulkhead and meet the ordinances definition of a stealth antenna, the structure must appear just as an elevator bulkhead with no visual cues the betray that the facility is not actually an elevator bulkhead. But the installation is not completely disguised as an elevator bulkhead.

The plans presented to the Planning Division clearly show that T-Mobile only intended to build a structure on top of the existing elevator shaft. The view then is of a white walled area extending 4'2" above the roofline with a brick structure built atop. Clearly, this is not a cohesive structure that effectively and completely disguises the structure as an elevator bulkhead. Rather the planned enclosure betrays the structure

as not being completely disguised as an elevator bulkhead. An elevator bulkhead would reasonably be expected to be built as a single cohesive structure without separate sections.



To apply a reasonable, common language evaluation, it is hard to imagine that the proposed structure could ever be considered to meet any definition of stealth.

Merriam Webster's Dictionary defines stealth as, "intended not to attract attention" or "cautious or unobtrusive".

A massive brick structure built on top of a white shaft, with wires and cables, stairs and HVAC units piped to it, amidst an otherwise flat and an unobtrusive white roof, plainly doesn't meet an common definition of stealth.

The reality is that no one is going to mistake this for the stated purpose of being an elevator bulkhead. T-Mobile proposed a 11' x 14' cube as a chimney, which was clearly absurd. The Zoning Administrator proposed to call it an Elevator Bulkhead, which, unfortunately, is equally absurd. There's nothing 'stealth' about this structure and it is inappropriate to apply the 'willful suspension of disbelief' standard that must be assumed for this to somehow be believed to be an elevator bulkhead.

We ask the Hearing Officer to reject the determination that the structure proposed by T-Mobile be considered a Stealth Antenna type, both on 1) the grounds that the antennas as installed on an unpermitted basis plainly did not meet the definition and their permitting status as installed must first be addressed, and 2) that the plans submitted did not present a facility completely disguised as an elevator bulkhead or otherwise concealed from view, as required.

Determination 3: Compliance with Stealth Antenna Standards

The third determination in the Memo relates to the compliance of the proposed antenna facility with the additional provisions of 21A.40.090.E.2.f, being:

1. The antenna shall conform to the dimensions of the object it is being disguised as, and
2. the location of the stealth facility shall be in concert with its surrounding

Dimensions of the Antenna Facility Are Inappropriate

The Memo asserts that because the maximum permissible height for an elevator bulkhead allowed under 21A.36.020.C is 16', and somehow then concludes that this defines 16' as an appropriate height to comply with the requirement of conforming to the dimensions of the object the antenna facility is being disguised as. In fact, the proposed height is wildly inappropriate.

First, recall that when T-Mobile first installed the antenna facility in 2005, it promised and undertook to the residents of the community that the antennas on the roof would never exceed the proposed height of 10' (Administrative Hearing Staff Report, April 14, 2005). Extending the height a further 4'-6' is a serious violation of this undertaking.

Second, the maximum permissible height allowed under the ordinance does not, in fact, constitute appropriate dimensions for an elevator bulkhead in the context of this location, as is required for it to continue to be considered "stealth". This can be proven from evidence in the record and from publicly available sources.

First, the Memo defines appropriate circumstances for an elevator bulkhead as supporting access to the top floor of the building. The Memo states:

"Elevator bulkheads are not defined in city ordinance but are generally a portion of the building that extends from the roof and provides space for the elevator equipment and for the elevator car to reach the top floor of a building."

However, the enclosure is built on the walls of the actual elevator shaft housing the elevator in the school, and the walls of the shaft only reach to ~4' above the roofline. Evidently, no more than this is necessary to support the actual elevator.

It is well known to all involved in construction projects, as would be the Planning Division staff involved in this evaluation, that elevator bulkheads only require 12'-13' from the top floor of the building. As such, most elevator bulkheads servicing the top floor of a building only minimally breach the roofline, if at all. The only instance where an elevator would extend anywhere near the maximum height of 14'-16' would be an instance where the elevator services the roof itself. The Memo grants explicitly that the appropriate expectation for an elevator would be to only reach the top floor of the school, implying a minimal rise above the roofline for the elevator bulkhead. The Memo makes no claim that it would be appropriate or 'in concert with its surrounding' to house an elevator servicing the roof.

In preparation for this Appeal, I called a leading elevator company and spoke with its technical manager, who has worked for several of the leading elevator companies over his career and is a reliable source of industry norms. He confirmed that 12'-13' from the top floor is an industry standard that does not vary by elevator manufacturer. A transcription of this information is available upon request.

Further, an examination of the rooftops of all public schools in the area, all constructed under the jurisdiction of the Planning Commission and well known to the staff involved, reveals that none of them have an elevator bulkhead that protrudes anywhere near the height granted in the Memo. Screenshots of the roofs of the public schools in the area showing rooftops devoid of protruding elevator bulkheads can be found in Appendix B.

It is visually obvious that the scale of the enclosure is massively out of proportion:

Note in the picture above the placement of the windows on the top floor and the dramatic rise of the enclosure above the roof line that is well above the windows. It is clear the dimensions of this enclosure are not consistent with a reasonable elevator bulkhead in this context.

The reality is that 16 foot elevator bulkheads only exist in the dreams of aspiring stealth cell tower developers and their conspiring colleagues in the zoning department.

The Antenna Facility 'Sticks Out Like A Sore Thumb"

Finally, the ordinance requires that the stealth antenna facility be "in concert with its surrounding."

The Memo asserts its own definition of limiting criteria to evaluate compliance, though these criteria are not in the ordinance. The Memo's criteria are:

1. *"The likelihood that the building would have an elevator based on the number of levels and the intended building occupants; and*
2. *The location of the proposed stealth antennae facility and whether it is in a location where an elevator bulkhead could reasonably be located."*

This Appeal takes issue with these criteria as sufficient to fully evaluate the requirement that the antenna facility is "in concert with its surrounding".

The criteria applied are incomplete as the clear intent of the provision is for the enclosure to be 'stealth', or not otherwise noticeable relative to its surroundings. A cell tower disguised as a pine tree, in an area of other pine trees, for example, would not be visually obvious and could reasonably be considered "in concert with its surrounding." A steeple on a church, where a steeple is appropriate, could meet this definition. However a massive structure on an otherwise flat and non-descript roof, where no other schools have similar structures, and where that structure obscures views of the valley below, and is out of proportion, can hardly be described as "stealth" or "in concert with its surroundings".

A constructive approach to evaluating if the proposal meets the criteria is to consider what the opposite of being "in concert with its surrounding" would imply. Rationally, it would imply standing out, or not fitting in. Given that stealth antenna criteria are exclusively concerned with aesthetic and visual considerations, this implies that an installation that stands out or doesn't fit in visually would not meet these criteria. The likelihood of a school having an elevator in general, or that there could be an elevator in this particular location are criteria of minimal consequence, relative to questions such as: 1) the relative proportionality of the dimensions, 2) the landscape context of the installation and 3) comparable landscape contexts of other schools in evaluating whether the installation meets the criteria.

Clearly the criteria conjured by the Memo are incomplete and inadequate for evaluating the compliance of the plan with the requirement of the ordinance.

The Memo's analysis, that somehow concludes that just because an elevator can be expected in a school, and that the maximum height allowed for an elevator bulkhead is 16', that somehow a 16' structure masquerading as an elevator bulkhead on an otherwise flat and nondescript roof can reasonably be considered "in concert with its surrounding" is non sequitur of stupendous proportions and is another instance of the tortured logic conceived in the Memo in the service of rendering a determination in favor of T-Mobile.

The reality is that this enclosure ‘sticks out like a sore thumb’. It is a massive structure on top of an otherwise flat, nondescript roofline that obscures the view of the mountain line and valley behind it, when viewed from the school field behind the school.

The fact that the structure is out of proportion has already been demonstrated above. The flat, nondescript nature of the roof line is evident from the Google Earth screenshots evaluated by the Zoning staff:

And a review of other school roofs in the area from Google Earth, that demonstrate that a structure of this sort sticks out and is not “in concert with its surround” is contained in Appendix B.

To add a 14’ high by 11’ wide by 8’ deep column, partially of brick, built on top of an elevator shaft, and to expect this to look “in concert with its surround” is wildly unrealistic by every criteria.

This Appeal seeks that the determination that the proposal meets the definition and criteria of a Stealth Antenna in 21A.40.090.E.2.f be overturned as a conclusion made in error.

Planning Division Bias

A fundamental concern that this Appeal raises is the extent of anti-resident bias manifested by the leadership of the Planning Division in the disposition of its duties in relation to the handling of this issue, which rose to a level that disqualifies the findings in the Memo as impartial.

Embedded in both the municipal ordinance, as well as the weight and presumption of correctness of Planning Division decisions, is the presumption that the Planning Division acted with impartiality in administering the ordinances of the city.

What is clear from the actions of the planning staff in this instance however, is that they have in fact acted with rank bias, and that bias pervades the logic asserted in the Memo.

We, as residents of the city, have a right to impartial administration of the ordinances, and Planning Division staff have an obligation of duty to faithfully uphold and administer the ordinances. When these city officials cease to act impartially, but become de facto agents of corporation and its developers (all not residents of this city) and their profit's interest, and when that profit's interest is not in alignment with the interests of the residents of the city, there is a fundamental rupture in the social contract that must be addressed.

The Memo represents a document designed with the specific intent of thwarting the residents of our community in expressing our position against the installation of the cell tower on the school, weaponizing the bureaucracy of municipal government against the residents they serve. This represents the height of perversion of the role of government and the subversion of democracy and rule of law to foreign corporate interests.

We, as residents of our community, have the right to reliance on the organs of government to vigorously pursue and support all protections available under law and ordinance. We, as residents of our community, have an obligation to our families to secure a safe environment for our children, and we should be able to look to the officials whose salaries we pay to support us in these efforts. Yet in this instance, these officials have failed in this duty, and in fact have demonstrated malice towards us in our efforts.

The evaluation of the permitting requirements pertinent to this installation arose because of the concerns of residents in the surrounding community who informed the

city of the new antenna facility that had been built, and inquired to better understand the zoning requirements that allowed this to happen without notification of surrounding property owners. Were it not for resident concern and notification to the city, this antenna array would have been built and forgotten without any zoning review.

Asymmetrical Responses

An appropriate framework for evaluating impartiality or bias is to examine the symmetry of responses to the two parties whose interests were at odds, T-Mobile and the residents of the community. Was the response of the Zoning Division to the residents of the community opposing the cell tower appear symmetrical and equivalently supportive in comparison to its response to T-Mobile and its developer?

The signs of anti-resident bias manifested obliquely at first, as we pursued answers to basic questions, lacking ourselves a basic knowledge of zoning ordinance. I reached out to the city to express our concern that the installation was made without resident input, and ask for assistance in understanding the ordinances and how to effectively oppose the installation.

From the earliest stages of correspondence, the Zoning Administrator, Joel Paterson was copied on emails from subordinantes and other departments. I, informing the group of city staff that I represented a community of opposed residents, repeatedly asked questions trying to understand the nature of the violations. Between Aug 7 and Aug 13, I sent 8 emails to a group of city staff, including Paterson, with the basic question: explain the nature of the violations and permits required that weren't received. Paterson did not respond to any of my emails, but as noted above, instead I only received a response via an email from Greg Mikolash from the Building Division who had called Paterson and sent an email stating that CUP was required per the Table. Confirming the basic details such as whether a violation had occurred or what permit should have been obtained, required arduous effort and I never received a direct reply from the Zoning Administrator, to whom the rest of the city officials look to to interpret the ordinances.

Only following 4 more emails with questions directly to the Zoning Administrator, did I receive a response from Joel Paterson, who simply cited notification requirements for CUPs, but did not address my primary question of what redress we as residents have for a cell tower installation not in compliance.

Paterson's response was designed to answer minimally a narrow question but not be helpful.

See the exchange below:

Brad Bush <bfbush@gmail.com> Aug 14, 2020, 9:38 AM
to Joel

Hi Joel - look forward to hearing back from you on this. To recap so you don't have to re-read the thread:

How do I ensure that I have notification of any public hearing. There is significant community frustration about this, and I am the liaison with residents in the area on the permitting process.

Additionally, given that the installation is not in zoning compliance, what action would we as residents need to take to force the installation to cease operations until such time as it is able to obtain a permit? Does that require a court, or can that request be filed directly with Civil Enforcement?

Thanks,

Paterson, Joel <joel.paterson@slcgov.com> Aug 14, 2020, 10:03 AM
to Gregory, me

Brad,

Salt Lake City notification requirements for public hearings can be found in City Code sections 21A.10.020 and 2.60. For a conditional use, 2.60 requires that an early notification be sent to recognized community organizations, such as community councils soon after the application is submitted. This notice is intended to make the public aware of a new application, what is being proposed and how to find more information. The mailing of this notice starts a 45 day period during which no public hearing or final decision can be made regarding the application. The Planning Division also mails the early notification to all property owners and tenant within 300 feet of the periphery of the property subject to the application.

When the application is ready for a Planning Commission public hearing, another notice will be mailed a minimum of 12 days in advance of the hearing.

If you own property or reside within 300 feet of the school site, you will receive notice of the proposed conditional use. If not, please send me your mailing address and request to be notified and I will forward the information to the planner that is assigned the application.

Thank you,

JOEL PATERSON, AICP

Additionally, after dozens of emails trying to confirm the options available to our community, and being at last given conformation that a CUP was required and the Table defined permit requirements, residents were blindsided in a meeting when we were then told by an attorney for the school district that the city had informed them that the cell tower could qualify as a stealth tower and no conditional use permit was required, with the implication that residents, despite the tower being built in violation of ordinance, and being told by the city a CUP was required, that in fact there were loopholes they hadn't mentioned and that we would be excluded from any discussion and the violation would be remediated by the city despite community opposition.

On Sept 3, I reached back out to the group of city staff I had been communicating with to clarify how we were receiving such mixed messages and to understand the stealth provision that was now being introduced. Nick Norris, the Planning Director, responded citing the language in the stealth subsection. Over the course of several emails, I asked Mr Norris to explain the rationale that supported his asserted interpretation that stealth antennas don't require a CUP and to respond to my clarifying questions seeking to understand. Mr Norris only responded to certain questions, and ignored others and at some point stopped responding, prompting me to file the pro-forma administrative interpretation appeal on September 18th, which has been noted previously (See Appendix A).

From: Brad Bush <bfbush@gmail.com>
Sent: Friday, September 18, 2020 1:04 PM
To: Norris, Nick <Nick.Norris@slcgov.com>
Cc: Dugan, Dan <Daniel.Dugan@slcgov.com>; Johnston, Andrew <Andrew.Johnston@slcgov.com>; City Council Liaisons <City.Council.Liaisons@slcgov.com>; Clark, Weston <Weston.Clark@slcgov.com>; Stokes, Jamie <Jamie.Stokes@slcgov.com>
Subject: (EXTERNAL) request for action: cell tower zoning administrative interpretation

Nick,

I'm following up on my email of Sept 9th to you, on which I am yet to receive a response.

Find attached a request for Administrative Interpretation relative to this application of the zoning ordinance. I'm new to this - please forward to the appropriate person for filing.

I am disappointed that you have not responded to my emails requesting clarification, and that I am forced to request an administrative interpretation to obtain clarification on where the City is at with the Conditional Use Permitting process with T-Mobile and the Salt Lake City School District.

As a resident, it is frustrating to try and navigate this process only to receive conflicting information from zoning (Padilla, Mikolash, Paterson), stating that there is a violation, then hear from the school district attorney (Kindl) that someone in SLC had told her that no CUP is needed, and then you to introduce stealth type as a way to avoid the requirement of a CUP for a roof mount. It's frustrating to try and obtain clarification and understand how this is justified in the code, only to be ignored and not responded to.

This is not the way residents of SLC should be treated.

Norris rejected my pro-forma appeal on the grounds that I did not have grounds to appeal because I was not the property owner for the installation in question. But the questions raised in the appeal went unanswered.

Norris, Nick <Nick.Norris@slcgov.com> Sep 18, 2020, 2:26 PM

to me, Dan, Andrew, City, Weston, Jamie

Brad,

You cannot submit an administrative interpretation for property that you do not own. You need the property owners consent.

The only question that appeared to be directed to me in the Sept. 9th email was about who from the city staff has discussed with the school district and the cell provider their options. I believe that Joel Paterson, the city zoning administrator, has provided them with the options provided in the ordinance. T-Mobile provided plans late last week and Joel is reviewing those plans to determine if the proposal qualifies as a stealth antennae or not. That determination will be made as part of the building permit review. We will let you know when that decision is made. That decision is considered an administrative decision that can be appealed and we are happy to provide information on appealing that decision if in fact the decision is made that it is a stealth antennae.

The other questions are best answered by Building Services and Civil Enforcement, who determine deadlines for submitting applications on enforcement issues and other parameters for bringing a violation into compliance.

NICK NORRIS
Planning Director

Norris mentioned in the email above that Paterson had provided options to T-Mobile. I emailed Paterson asking what options had been provided. It was becoming clear that Planning Division staff were available and providing responsive input to T-Mobile to provide a path to permit compliance while we, the residents of the community who had raised the concern and had asked for protection and to be part of the conversation, were being left out of the loop. Paterson did not respond.

As it became clear that Paterson was working with T-Mobile, I sent several additional emails to Paterson attempting to engage with him and assist the residents of the community who didn't want the cell tower. Paterson was unresponsive to all communication.

In sum, senior Planning Department staff were unresponsive, equivocal and as minimally helpful as possible as residents reached out for support in resisting the cell tower construction. I was left to send email after email, repeating the same questions without satisfactory answers. Senior Planning Division staff simply refused to engage in a constructive dialogue to support, with clear explanation of pertinent ordinances and understanding of process, our efforts to oppose the cell tower.

By contrast, the record shows that Senior Planning Division staff were regularly available and responsive to T-Mobile, its developer and the school district. Phone calls and emails were expeditiously returned with complete and clear answers. Questions and submissions were carefully considered. Planning staff offered helpful solutions to problems. In sum, Senior Planning Division staff actively engaged to support T-Mobile with clear explanation of pertinent ordinances and understanding of processes in their efforts to install the cell tower and avoid scrutiny and concerns raised by the community.

There was no symmetry in how the Planning Division staff handled two competing groups.

Planning Division Hoped "to Eliminate an Appeal"

WIth the Planning Division's issuance of the Memo came more overt signs that they were not just unhelpful towards the community residents but may have acted with malice towards the residents.

Norris issued the Memo on October 29th. Despite prior attempts to discuss the logic applied and establish the bounds of applicable ordinances, Norris gave residents no advanced warning that he planned to issue the Memo, and had shared none of the additional logic that was contained in the Memo prior to issuance.

As he prepared to issue the Memo, he congratulated himself that the Memo was so lengthy, and expressed that his purpose in issuing a lengthy determination was his hope to "eliminate an appeal".

From: Norris, Nick <Nick.Norris@slcgov.com>
Sent: Wednesday, October 28, 2020 4:36 PM
To: Paterson, Joel <joel.paterson@slcgov.com>
Subject: stealth antennae memo

Joel,

Will you review this to make sure it is accurate. It is pretty long but I hope to eliminate an appeal and make it very clear. I plan on attaching the documents referencing the adoption of the stealth tower provisions. I don't know who this

It's important to fully consider what the Planning Director implies with this statement. Residents had made clear their opposition to this cell tower, and the Planning Director had refused to engage earlier to fully explain the rationale. Even if the Planning Director had legitimately and impartially reached a conclusion adverse to the community that opposed the cell tower, the right to appeal is an important protection afforded in the ordinance. An impartial arbiter should welcome and encourage an appeal to allow full scrutiny and a 'second set of eye's' that would ensure that a determination was appropriate.

But there is an important distinction in this situation: the residents of the community have no advocate beyond themselves to effectively fight a determination, especially a lengthy and complexly argued determination, such as is found in the Memo. While

T-Mobile and its developer have extensive legal resources and deep pockets, the residents, to protect the wellbeing of their families, are required to mount a defense out of their own time and resources. The Planning Director, as a professional in the field, with long experience in zoning administration, and access to city attorneys and other colleagues with deep experience, is able to create barriers to effective appeal that are not based on the merits of an appeal but simply the asymmetrical access to information and experience.

The Planning Director sought to leverage this asymmetry of resources, to draft an extensive determination with the specific intent of thwarting the residents of this community in pursuing their valid and protected right to opposing the cell tower via the appeals process.

This the definition of perverse government - of a fundamental breakdown in the social contract. Where a municipal official weaponizes the resources at his disposal against the citizenry he was hired to serve and protect, in an effort to foist an unwanted cell tower on a community that doesn't want it.

Illegal, Rushed Issuance of Permits

The anti-resident bias of the Planning Director and Zoning Administrator became clear after the issuance of the Memo. In brief, I requested a stay of further city action, including staying issuance of permits, which the Planning Director acknowledged, and is my right under 21A.16.030. Rather than honoring the understanding that was reached and supporting the protections offered under city ordinance, the Planning Division senior staff proceeded to direct the Building Division to issue the permits anyway, in violation of the stay protections afforded to appellants in the ordinance.

A specific recounting of the pertinent facts related to this overt and malevolent act in violation of ordinance is below:

1. On Oct 29th, immediately after receiving the determination, I notified Planning Director Nick Norris that I would file an appeal but needed time to formulate a revision and to request additional documents under GRAMA, and SLC GRAMA response time have been slow, etc. He said I could file and then amend, but the 10 calendar day timeline needed to be observed.

From: Brad Bush <bfbush@gmail.com>
Sent: Thursday, October 29, 2020 4:18 PM
To: Norris, Nick <Nick.Norris@slcgov.com>
Cc: Clark, Weston <Weston.Clark@slcgov.com>
Subject: (EXTERNAL) Re: Indian Hills Cell Tower

Nick,

Thank you for sending this. We will appeal the decision.

One question of you: does the issuance of this memo imply that the permit is issued, or will it only be issued after the applicable appeals timelines have elapsed?

Norris, Nick <Nick.Norris@slcgov.com> Thu, Oct 29, 2020, 5:11 PM
to me, Weston

The memo authorizes the zoning review to be completed but does not issue the permit. The permit would be issued by Building Services as a building permit once all the reviews are done. It is possible that the permit could be issued before the end of the appeal period. If that happens, the applicant may proceed with any permitted work, but they do so at their own risk if the city's decisions end up being overturned. If an appeal is filed, the ordinance says that it stays any proceedings or further action by the city, which means that city cannot perform any decision making tasks, such as inspections, until the appeal is decided or unless the zoning administrator determines that it is in the best interest of the city to allow the city related functions to continue. Hopefully that makes sense, it's a long answer to a short question. Let me know if you have further questions.

NICK NORRIS

2. In the same exchange on October 29th, I asked that, under the circumstances where the determination logic was in dispute and an appeal was forthcoming, and where I needed time to draft the appeal, that it was inappropriate to issue a permit and asked that the permit issuance be stayed. At the time, I was not familiar with my rights in the appeals process and was reliant on Norris for direction. Norris stated he wasn't responsible for issuing permits, but would forward my request to the Building Division (Mikolash). His acknowledgement and no indication of concern with the request led me to believe we had reached an understanding, and that I didn't have urgency beyond the 10 calendar day timeline to file the appeal.

Brad Bush <bfbush@gmail.com> Oct 29, 2020, 5:15 PM
to Nick, Weston

Thanks Nick. That's helpful.

Under the circumstances where the decision is contested and an appeal is coming, I think it's important that a permit not be issued during the appeal window, and would request that you inform the Building department as such.

Norris, Nick <Nick.Norris@slcgov.com> Oct 29, 2020, 5:19 PM
to Gregory, me, Weston

I forwarded your request to Greg Mikolash (development review supervisor) and Kevin Hamilton (who is doing the zoning review) in Building Services.

3. It is important to note that since the appeal window is only 10 calendar days, the request to stay and to wait until I was able to formulate the appeal was not a huge ask of time, only a matter of days. If Norris had either (1) expressed any concern about honoring the understanding to issue permits, or (2) clearly explained that the only way a stay could be guaranteed would be for the appeal to be if the appeal were filed immediately, then I could have complied with the technicalities he was aware of. I was unaware of these technicalities, and again, was relying on his advice. Technically I had already filed an appeal on Sept 18th (See Appendix A), and if timing were an issue, or if there were particular technical issues that needed to be complied with and had been called out, I could easily have directed the Sept 18th appeal to meet those requirements. I did not take such action because I understood that Norris had acknowledged my request and was reliant on him to pass any objection along to me.

4. Unbenounced to me (I wasn't cc'd), Norris made no representations to the Building Division of the need to honor the request, and in fact seems to suggest not honoring the request in an example of a 'don't ask, don't tell' bureaucratic maneuver to avoid responsibility.

> See below. Not sure when this permit is expected to be issued or if we can honor this request, but I am letting you know.
>
> **NICK NORRIS**
> Director
> Planning Division

5. Apparently not picking up Norris' subtle messaging, Greg Mikolash, a Supervisor in the Building Services Division, initially acknowledged the request and instructed his staff to stay issuing permits on Oct 30th until the appeal was complete.

From: Hamilton, Kevin <Kevin.Hamilton@slcgov.com>
Sent: Friday, October 30, 2020 8:26 AM
To: Norris, Nick <Nick.Norris@slcgov.com>; Mikolash, Gregory <gregory.mikolash@slcgov.com>
Cc: Gilcrease, Heather <Heather.Gilcrease@slcgov.com>
Subject: RE: (EXTERNAL) Re: Indian Hills Cell Tower

Greg,

I passed this project for zoning yesterday. Do we need to put a stop on it?

Sincerely,

Kevin Hamilton
Development Review Planner

BUILDING SERVICES DIVISION

From:	Mikolash, Gregory
To:	Hamilton, Kevin; Norris, Nick
Cc:	Gilcrease, Heather
Subject:	RE: (EXTERNAL) Re: Indian Hills Cell Tower
Date:	Friday, October 30, 2020 8:53:34 AM

Yes. Until the appeal is over.

Thanks.

Greg Mikolash
Development Review Supervisor

On October 30th, T-Mobile was informed of the appeal and that the permit wouldn't be issued.

6. On Nov 2, Mikolash shifted course, after being clued in to the Planning Division's objectives in a discussion with Joel Paterson.

Mikolash described the conversation to me in a phone call in Nov 16 as follows:

"Trust me, I didn't work in a vacuum here. I dealt with Nick Norris, Joel Patterson and our attorney's office, and we were all under the conclusion that the permit can go out the door."

"We had discussions with our attorneys office and with Joel Patterson, the zoning administrator, and we determined that the permit needs to go out the door."

"I just do the building permits. I was told to go forward, and I did."

"My involvement in this was really, really minimal, and most of the conversations that I know that we've had have been with the Planning Division, not with Building Services."

"For a certain number of days, we did, I have emails that say, hold off on this permit. We did do that. And then the decision was made to issue the permit. I just called Joel Patterson an hour ago and I said, "am I incorrect in my interpretation of what you said about going forward with issuing this permit?" He agreed that it was ok to issue the permit because it had nothing to do with the appeal."

I then asked Greg directly: *"So Joel made the determination, Joel was the one that said, go ahead and issue the permit, despite the fact that this guy is saying, is asking you not to."*

Mikolash replied: *"Yes"*

Subsequently, in internal city correspondence relating to this discussion (Dec 2), after I had complained, Mikolash seems to attempt to cover the tracks of Paterson directing him to issue the permit:

I can be of assistance. Nick, I don't know why your name was mentioned in Item #8. I recall my conversations being with Joel and Paul. BTW: Joel didn't direct us to issue the permit. I simply recall a mutual agreement that the permit couldn't be held up on the assumption of an appeal being filed.

Let me know if I can answer any questions on the timelines and permitting.

Greg Mikolash
Development Review Supervisor

BUILDING SERVICES DIVISION

Obviously there are discrepancies amongst Mikolash's statements. At various times Mikolash has said that Nick Norris was involved or wasn't, and that a city attorney was involved, though Paul Nielson denies being involved. My Nov 16 call with Mikolash was a less filtered, more recent recollection before city staff were aware of my complaints, and is most likely correct in all material respects.

What is not disputed is that Mikolash originally had informed staff to tell T-Mobile that permit issuance was stayed until the appeal was over, but following a

conversation with Joel Patterson, he abruptly shifted course. He claims Joel didn't direct him, but it's clear from our phone call transcript this is exactly what happened.

7. On Nov 3, in language that is disrespectful to the rights of the residents of this city, Mikolash sent a message to T-Mobile's developer telling them that despite earlier saying they would not issue the permit because of an appeal, "It is our understanding that no appeal has been submitted to date and we now believe that it is not in anybody's interest to prognosticate that one will be filed"

From: Mikolash, Gregory
Sent: Tuesday, November 3, 2020 7:55 AM
To: rocky ragedevelopment.com; Hamilton, Kevin; Paterson, Joel
Cc: britton ragedevelopment.com
Subject: RE: (EXTERNAL) BLD2020-08988 - T-Mobile Permit Appeal

Britton, after discussing the matter with Joel yesterday, I think Kevin can sign-off on the zoning portion of the permit, where I believe that Joel has already signed-off for Planning. Please coordinate with Kevin for this sign-off.

It is our understanding that no appeal has been submitted to date and we now believe that it is not in anybody's interest to prognosticate that one will be filed.

I hope this information helps.

Thanks.

Greg Mikolash
Development Review Supervisor

BUILDING SERVICES DIVISION

The contempt towards residents is clear in the tone of Mikolash's response. The "not in anybody's interest" is in fact the interest of the residents of the community, whose interests Mikolash is employed to protect and support. This radical turn of position adverse to the residents of the community occurred only after conferring with Joel Paterson.

8. My appeal was filed 3 days later on Nov 6.

9. I received no communication from any city staff to let me know that they planned to renege on the understanding reached. I first was alerted to the issued permit on Nov 16th by a fellow resident who checked the permit portal, prompting my call with Mikolash.

10. In response to internal queries by the city attorney's office on Nov 18th and elsewhere, Nick Norris has been careful to say that he had no involvement with the issuance of the permit and it was entirely a decision by the Building Services Division:

6. The only thing I can provide about the request to not issue is the permit is what the code says and that I notified building services of the appeal at the time it was filed by forwarding the email from Mr. Bush.

NICK NORRIS
Director
Planning Division

In terms of the stay request and the issuing permits, I don't issue permits and I wasn't involved in the decision to issue permit.

Nick Norris

11. The position that Nick Norris, and by implication, the Planning Department, had no involvement in the decision to issue the permit is not supported by evidence, and is in fact misleading. He carefully omits that he acknowledged and forwarded my request to stay permit issuance to Building Services. Regardless of whether Nick Norris was involved in the decision to issue the permit (as Mikolash originally stated he was), Joel Patterson's involvement is confirmed and not disputed. Paterson both reports to Norris, and Norris is deferential and highly collaborative with Paterson. This represents an attempt amongst these individuals to pass off responsibility for the decision. In fact, the Planning division directed the rushed issuance of the permit against the understanding they had acknowledged, and in violation of protections provided under the ordinance, and now deny doing so.

12. 21A.16.030 provides protections to the appellant that stays all further city proceedings. The mechanics of what constitutes sufficient evidence of an appeal is not defined in the ordinance, but the filing of the Sept 18th appeal to Nick Norris together with my confirmation that I was preparing a document to appeal the Oct 29th determination, and the acknowledgement of my request to stay by Norris and Mikolash together all constitute ample basis for the city to have taken action to protect my right to stay provided under the ordinance.

The action taken by the Planning Division staff both violate 21A.16.030 and are yet another manifestation of the bias and contempt against the residents of the

community. The further attempts to cover up and deny involvement are evidence of their understanding that their actions were improper.

There was ample rationale to stay the issuance of permits, and this is a protection provided the residents of the city under the ordinance. If Planning Division staff had any interest in acting impartially and symmetrically towards all parties, their actions would have been markedly different, and would have preserved the valid right of stay.

Taken in aggregate, the actions of the Planning Division senior staff, particularly the Planning Director and Zoning Administrator reveal clear bias and contempt towards the residents of our community. In our attempts to protect our homes and families from the health and safety risks posed by this cell tower installation, these city officials have not only failed to act impartially but have taken active steps to thwart our efforts to protect ourselves.

As such the determinations in the Memo cannot be divorced from the context of malice, contempt and bias held by the authors of the Memo. Yet, the presumption of impartiality bestows weight under state code and municipal ordinance on the determinations of these Planning Division officials that is inappropriate when impartiality of this magnitude is manifest. As such, we urge the Hearings Officer to disqualify the Memo in whole in rejection of this otherwise unchecked behavior.

Conclusion

The Memo's objective of establishing that the antenna facility meets the criteria of a "stealth antenna" is irrelevant to the critical question of category of permit required for the installation. The antenna facility installed is subject to the requirements of roof mounted antennas and as such requires a conditional use permit. The Memo's assertion and approval of a permit circumventing the conditional use process is both in error and illegal and the permit issued must be revoked.

Further, this letter of appeal has established that the antenna facility does not meet the standards of a "stealth antenna", further reinforcing the required determination that the applicant must meet the permitting requirements of roof mounted antennas for the new installation.

This letter of appeal has refuted all determinations in the Memo. However if the Hearing Officer finds that any of the determinations in the Memo are in error or illegal, then the permit issued must be revoked.

Finally, this letter of appeal has attempted to make clear that the participants in the effort to install this tower have recklessly violated ordinances, statutes and policies to the detriment of the residents of our community. These wrongs must be rectified, and continuing to slap the applicant on the wrist with trivial fines and papering over violations is not in the best interests of the city. The city must stand up for the rights of its residents and require that violations be properly remedied before allowing the applicant to move forward with any installation.

As such, this appeal asks the Hearings Officer to take the following action:

1. Revoke the permits issued until such time as the applicant is able to demonstrate that the district has obtained all necessary approvals required under state statute and district policy to properly enter a lease agreement and approve the installation of a cell tower, including the explicit approval of the Board of Education of the Salt Lake City School District and the Indian Hills Elementary School Community Council.

2. Require that the illegal installation be removed from the roof of the school until such time as a conditional use permit has been obtained.

3. Require a waiting period, from the time of obtaining all necessary approvals until issuance of permits, equal to the time the applicant has been in violation of city ordinance, including the violations of the structure built prior to 2020.

4. Require that future applications be reviewed by different individuals who are established to be fully impartial and dedicated to upholding the city's ordinances for the benefit of the city's residents.

Appendix A: September 18, 2021 Pro-Forma Appeal

request for action: cell tower zoning administrative interpretation

Brad Bush <bfbush@gmail.com> Fri, Sep 18, 2020, 12:04 PM

to Nick, Dan, andrew.johnston, City.Council.Liaisons, Weston.Clark, Jamie.Stokes

Nick,

I'm following up on my email of Sept 9th to you, on which I am yet to receive a response.

Find attached a request for Administrative Interpretation relative to this application of the zoning ordinance. I'm new to this - please forward to the appropriate person for filing.

I am disappointed that you have not responded to my emails requesting clarification, and that I am forced to request an administrative interpretation to obtain clarification on where the City is at with the Conditional Use Permitting process with T-Mobile and the Salt Lake City School District.

As a resident, it is frustrating to try and navigate this process only to receive conflicting information from zoning (Padilla, Mikolash, Paterson), stating that there is a violation, then hear from the school district attorney (Kindl) that someone in SLC had told her that no CUP is needed, and then you to introduce stealth type as a way to avoid the requirement of a CUP for a roof mount. It's frustrating to try and obtain clarification and understand how this is justified in the code, only to be ignored and not responded to.

This is not the way residents of SLC should be treated.

Administrative Interpretation

SALT LAKE CITY

OFFICE USE ONLY			
Project #:	Received By:	Date Received:	Zoning:

Project Name:

PLEASE PROVIDE THE FOLLOWING INFORMATION

Address of Subject Property:
2496 E St Marys Drive Salt Lake City, UT 84108

Name of Applicant: Brad Bush — Phone: 917 582 0811

Address of Applicant:
2628 E Nottingham Way Salt Lake City, UT 84108

E-mail of Applicant: bfbush@gmail.com — Cell/Fax: 917 582 0811

Applicant's Interest in Subject Property:

☐ Owner ☐ Contractor ☐ Architect ☒ Other: Abutting property owner

Name of Property Owner (if different from applicant):
Board of Education, Salt Lake City School District

E-mail of Property Owner: paul.schulte@slcschools.org — Phone: 801.974.8367

Proposed Property Use:
Cell antenna site

SUBMITTAL REQUIREMENTS

Staff Review

Please provide the following information (attach additional sheet/s as necessary)

☐	✔	a. The provision(s) and section number(s) of the Zoning Ordinance for which an interpretation is sought.
☐	✔	b. The facts of the specific situation giving rise to the request for an interpretation.
☐	✔	c. The precise interpretation the applicant believes to be correct.
☐	✔	d. When a Use Interpretation is sought: • Please state what use classification you think is most similar to your proposed use. • Please provide a complete description of your proposed use and how you feel it will be compatible with the Zoning District. Include any documents or information that you feel would be helpful in making an interpretation.

Dear Zoning Administrator:

This is request for an administrative interpretation regarding whether roof top antennas on Indian Hills Elementary School, located at 2496 St. Marys Dr. Salt Lake City, Utah are exempt from the design standards and zoning restrictions as set forth in 21A.40.090E

On September 4, 2020, Planning Director Nick Norris stated the following in an email:

"The ordinance does not require a conditional use for a stealth antennae…is not subject to the standards of a roof antennae….Final determination regarding stealth poles shall be made by the Planning Director based on these standards."

I have reason to the believe that the Planning Director is in error for the following reasons:

1. Plain Language of the ordinance: Section 21A.40.090E.2.f of Salt Lake City's Zoning Ordinance permits stealth antennas in all zoning districts per the following standards: f. Stealth Antennas – (1) A telecommunication antenna completely disguised as another object or otherwise concealed from view thereby concealing the intended use and appearance of the facility, shall be allowed in all zoning districts subject to meeting the provisions contained in section 21A.36.020, tables 21A.36.020B and 21A.36.020C of this title.
2. The insertion of the notion that stealth covering then exempts a roof mounted antenna from the requirements of a roof mounted antenna is not in the ordinances and is not plain language.
3. 21A.40.090E.1 states: "The uses specified in table 21A.40.090E of this section, indicate which facility types are allowed as either a permitted or conditional use within specific zoning districts.
4. This provision clearly identifies the types in 21A.40.090E as definitive as to determining permitted or conditional use.
5. A roof mounted antenna, even if camouflaged, remains subject to the underlying zoning ordinances of the land type (PL), which according to the matrix table in 21.A.090E, a roof mount antenna requires a conditional use permit.
6. On August 19, 2020 – Antonio Padilla, Civil Enforcement Manager advised us via email: "We have opened an investigation on the matter (HAZ2020-03195). We are in communication with the contractor who installed the tower, and we have asked them to apply for a Conditional Use Permit through the Planning Division."
7. The unpermitted antenna array currently on the roof of the school is unambiguously a roof mounted antenna array built in violation of 21A.40.090E. Given the antenna array has been established as a roof mount type subject to ongoing civil enforcement action, the notion that a non-compliant operator is able to circumvent the requirements by choosing to classify itself as a new type, while it continues to meet the definition and criteria of roof mount, deprives the community validly relying on protections in 21A.40.090E of recourse.

Accordingly, I am requesting that the Zoning Administrator find that the Planning Director has exceed the reach of his authority and find that stealth antennas must conform to the specific

standards as outlined in 21A.40.090E. More specifically, stealth antennas that are roof top antennas on Public Lands, adjacent to Residential Zoning, are subject to the Conditional Use Permit process.

Appendix B: Google Earth Views of Nearby Schools


Beacon Heights
Elementary


Dilworth
Elementary School


Clayton Middle School


Tennis Courts at
Highland High School
Highland High School


Bonneville
Elementary School


Uintah Elementary
School


Emerson
Elementary School


East High School
2D

ATTACHMENT C: Planning Director's Memo

MEMORANDUM

PLANNING DIVISION
DEPARTMENT *of* COMMUNITY *and* NEIGHBORHOODS

To: Greg Mikolash, Building Services

Cc: Joel Paterson, Zoning Administrator; Kevin Hamilton, Building Services

From: Nick Norris, Planning Director

Date: October 29, 2020

Re: Request for Stealth Antennae to be placed on the roof of Indian Hills Elementary School located at approximately 2496 East St. Mary's Drive.

T-Mobile has submitted a request a determination on whether a proposed antennae to be placed on the roof of Indian Hills Elementary School qualifies as a stealth antennae and if so, are seeking approval of the stealth antennae as provided in Title 21A Zoning of the Salt Lake City Code. The proposed antennae will expand a previously approved antennae that is in approximately the same location.

In determining if an antenna is considered a stealth antenna, the first determination must be whether a stealth antenna is allowed in the zoning district where the proposed antennae will be located. The subject property is zoned PL Public Lands. Wireless telecommunication facilities are listed in the table of permitted and conditional uses for the PL zoning district (Zoning Ordinance section 21A.33.070). The table does not show a P (indicating permitted) or C (indicating Conditional) on the row for wireless telecommunication facilities. The table refers to two sections of city code and reads "(see Section 21A.40.090, Table 21A.40.090.E of this title). The two sections are separated by a comma. A comma is used to separate items in a list. In this section, the comma indicates that both sections apply. These referenced sections determine if a proposed antenna is allowed in the zoning district.

Section 21A.40.090 is titled "Antennae Regulations' and contains a number of sections that apply to different types of antennae that are regulated by the zoning ordinance. Included in this section is subsection E "Wireless Telecommunications Facilities; Low Power Radio Services Facilities". Referencing the entirety of 21A40.090 in the land use table indicates that all applicable regulations associated with wireless telecommunication facilities apply to the PL zoning district as indicated in this section. Included in this section is subsection 2, which lists the types of wireless facilities regulated by this section. There are 7 general types of facilities listed and each type includes standards. Stealth antennae are included in this list and the standards are found in paragraph f. Paragraph f reads as follows:

f. Stealth Antennas:

(1) A telecommunication antenna completely disguised as another object or otherwise concealed from view thereby concealing the intended use and appearance of the facility, shall be allowed in all zoning districts subject to meeting the provisions contained in section 21A.36.020, tables 21A.36.020B and 21A.36.020C of this title. The antenna shall conform to the dimensions of the object it is being disguised as and the location of the stealth facility shall be in concert with its surrounding. Examples of stealth facilities include, but are not limited to, flagpoles, light pole standards or architectural elements such as dormers, steeples and chimneys. Final determination regarding stealth poles shall be made by the Planning Director based on these standards. The electrical equipment shall be located in accordance with subsection E3 of this section.

(2) Antennas Located Within Existing Structures Where There Is No Exterior Evidence Of The Antennas: Antennas located within an existing structure constructed prior to the effective date hereof shall be a permitted use in all zoning districts provided that:

(A) There shall not be any exterior evidence of the antenna or support structure.

(B) The electrical equipment structure shall be located within the existing structure with no exterior evidence of existence, or in compliance with the location requirements as noted in subsection E3 of this section.

Subsection (1) above states that a telecommunication antenna shall be allowed in all districts subject to provisions listed. This indicates that stealth antennae are a defined type of wireless facility and are allowed in all zoning districts if certain provisions are complied with.

The reference in the land use tables also refers to Table 21A.40.090E. This table is titled "Wireless Telecommunication Facilities" and includes subsections that indicate that the table shows which types of wireless telecommunication facilities are either permitted or conditional in each zoning district. Stealth Antennae are not listed in the table. The same subsection that contains the table also states that "The uses specified in table 21A.40.090E of this section, indicate which facility types are allowed as either a permitted or conditional use within specific zoning districts. Low power radio service facilities may be an accessory use, secondary use or principal use." This creates a conflict between Table 21A.40.090. E and 21A.40.090 E.2.f. The table does not indicate that a stealth antenna is permitted or conditional, while subsection E.2.f says they are allowed in all zoning districts.

For guidance on addressing this issue, I referred to the adopting ordinance and supporting documents created as part of Salt Lake City Ordinance 55 of 2011. Ordinance 55 of 2011 is the ordinance that amended the zoning code related to wireless antennae facilities and added the stealth tower provisions to Title 21A. The adopting ordinance lists the purposes of the updated ordinance as follows:

- To update the ordinance for consistency with state and federal regulations,
- To encourage less visible communications structures,
- To streamline the review process for proposed structures and facilities meeting the purposes of this ordinance, and
- To clarify where wireless communications facilities may be located on a lot.

Encouraging less visible communication structures was part of the purpose of the update to the code. The posted agenda for the Planning Commission agenda from April 27, 2011 states (emphasis added):

> The purpose of the proposal is to bring the Ordinance up-to-date by encouraging the co-location of wireless facilities, clarifying screening requirements for roof mounted antennas, *allowing stealth antennas as a permitted use*, clarifying where electrical equipment shall be placed on a lot, refining area limitations for wall and roof mounted antennas, removing conditional use requirements for antennas located on non-complying buildings that exceed maximum height, and eliminating optional performance bond language for abandoned facilities.

The City Council agenda for the September 6, 2011 public hearing contains the following language (emphasis added):

C. PUBLIC HEARINGS:

1. Ordinance: Amending certain Sections of Title 21A, Salt Lake City Code, pertaining to wireless telecommunication antennas.

Accept public comment and consider adopting an ordinance amending the City's zoning regulations for wireless telecommunications antennas, facilities and equipment. Changes include - encourage co-location, clarify screening requirements, *include stealth antennas as permitted use* and provide a definition, clarify electrical equipment location, refine area limits for wall/roof mounted antennas, remove conditional use requirement for certain antennas, eliminate performance bond requirement for abandoned facilities and remove utility pole height restriction. Related provisions of Title 21A – Zoning may also be amended as part of this petition. (Petitioner - Mayor Ralph Becker, Petition PLNPCM2010-0045)

Based on the information above, the intent of the changes adopted by Ordinance 55 of 2011 was that stealth antennae be considered a permitted use. This is reflected in 21A.44.090.E.2.f that says stealth antennae shall be allowed in all zoning districts subject to complying with the applicable provisions cited. Therefore, a stealth antenna is allowed in the PL zone.

The second determination is whether the proposed antennae is a stealth antenna. A stealth antenna is defined in 21A.62 as "An antenna completely disguised as another object, or otherwise concealed from view, thereby concealing the intended use and appearance of the facility. Examples of stealth facilities include, but are not limited to, flagpoles, light pole standards or architectural elements such as dormers, steeples and chimneys." This proposal disguises the antennae as an elevator bulkhead. Elevator bulkheads are not defined in city ordinance but are generally a portion of the building that extends from the roof and provides space for the elevator equipment and for the elevator car to reach the top floor of a building. According to the info provided by T-Mobile, the antennae will be entirely concealed within a screen. T-Mobile must demonstrate on their required plans that the antennae is entirely concealed within the elevator bulkhead.

The subject property and surrounding neighborhood have significant slope and elevation changes that may result in the antennae being visible from higher elevations. The ordinance states "or otherwise concealed from view." The use of the word "or" means that there are two options, one being that it is completely disguised and the other being "otherwise concealed from view, thereby concealing the intended use and appearance of the facility." The intent of this provision is to completely disguise it or if it cannot be completely disguised, to otherwise conceal it from view. In this instance, the surrounding screen intended to conceal the antennae shall be of enough height to limit the view of the antennae from higher elevations, particularly to the east where public access through a pedestrian path to the school is provided from Roxbury Road.

The third determination is related to the provisions listed in 21A.40.090E.f.2. As provided on page 1, these provisions require that the antennae conform to the dimensions of the object the antennae are being disguised as and the location of the stealth facility must be in concert with its surroundings. Elevator bulkheads are regulated by table 21A.36.020.C. This is one of the sections cited in the stealth tower provisions that the disguised object must comply with. This table allows an elevator bulkhead to extend 16 feet above the maximum allowed height of the PL zoning district. The maximum allowed height in the PL zone is 35 feet. Therefore, an elevator bulkhead would be allowed up to 51 feet above the ground. The plans provided by the T-Mobile show that the elevator bulkhead will extend to a maximum height of 42 feet and 2.5 inches. This is within the allowed height exception for an elevator bulkhead. The proposed screen measures 10'10" by 7'10" and could conceivably be the dimensions of a single shaft elevator bulkhead.

The second part of these provisions is determining if the facility is in concert with its surroundings. The ordinance does not provide guidance on what being "in concert with its surroundings". In determining whether the stealth antennae are in concert, the following criteria were used:

- The likelihood that the building would have an elevator based on the number of levels and the intended building occupants; and

- The location of the proposed stealth antennae facility and whether it is in a location where an elevator bulkhead could reasonably be located.

Indian Hills Elementary has at least two levels and is a public school. It is possible that some students and their parents or caretakers and faculty may require elevators in order to navigate the two levels of the building. The school was constructed in the last decade and likely includes an elevator to comply with ADA requirements. It is reasonable to expect an elevator bulkhead to be located on this type of building with this type of occupancy.

The location of the proposed stealth antennae and the disguised bulkhead is located on the eastern portion of the building and is more towards the center of the building than the edge of the building. It is reasonable to expect an elevator bulkhead to be located towards the middle of a building's footprint.

Based on the information provided, I find that the proposal complies with the zoning requirements associated with a stealth antenna and is approved. All required permits shall be obtained, and all applicable construction

drawings must demonstrate consistency with the requirements for stealth antennae. A final inspection is required to demonstrate that the antennae are not visible and meet the requirements for a stealth antenna. The height of the surround should extend above the height of the antennae to effectively conceal the view from higher elevations to the east along Roxbury Road.

References Attached:

April 27, 2011 Planning Commission Agenda

September 6, 2011 City Council Agenda

September 20, 2011 City Council Agenda

April 27, 2011

Amended SALT LAKE CITY PLANNING COMMISSION MEETING AGENDA In Room 326 of the City & County Building at 451 South State Street
6:00 p.m. or immediately following the Work Session

Field Trip is cancelled.

Dinner will be served to the Planning Commissioners and Staff at 5:00 p.m. in Room 126.

Work Session: 5:30 in Room 326. The Planning Commission will hold a work session from approximately 5:30-6:00. During the Work Session the Planning Staff will brief the Planning Commission on pending projects, discuss project updates and minor administrative matters. This portion of the meeting is open to the public for observation.

Briefing

PLNPCM2010-00055; A request by Mayor Ralph Becker to amend sections of the Salt Lake City Zoning Ordinance as they relate to changes in grade and the definition of grade. The amendment will affect sections
21A.62.40 definitions of terms, 21A.36.020 obstructions in required yards and 21A.24.010 general provisions. Related provisions of Title 21A, the zoning ordinance may also be amended as part of this petition.(Staff Contact: Ray Milliner at
(801) 535-7645 or ray.milliner@slcgov.com)

- Approval of Minutes from March 9, and April 13
- Report of the Chair and Vice Chair
- Report of the Director

Public Hearing

Legislative Petitions

PLNPCM2010-00045, Telecommunications Ordinance Amendment – A petition to amend Zoning Ordinance Section 21A.40.090 – Antenna Regulations. The purpose of the proposal is to bring the Ordinance up-to-date by encouraging the co-location of wireless facilities, clarifying screening requirements for roof mounted antennas, allowing stealth antennas as a permitted use, clarifying where electrical equipment shall be placed on a lot, refining area limitations for wall and roof mounted antennas, removing conditional use requirements for antennas located on non-complying buildings that exceed maximum height, and eliminating optional performance bond language for abandoned facilities. Related provisions of Title 21A – Zoning may also be amended as part of this petition. The subject text amendments would apply citywide if adopted by the City Council (Staff contact: Lex Traughber at 801.535.6184 or lex.traughber@slcgov.com)

Potential Action Item: this item is not a public hearing; The Planning Commission will hold a discussion and may make a decision regarding this item.

Request for specific action by the Planning Commission to stay its decision of March 9, 2011 regarding conditional use PLNPCM2011-00037 Regional Athletic Complex Restoration Area - Jordan River Parkway. – Petition area includes 44 acres on the east and west banks of the Jordan River between Redwood Road and the Davis County line. Appeal application CED2011-00001 by Jeff Salt, Coordinator, Jordan River Restoration Network appeals Salt Lake City Planning Commission decision of Conditional Use PLNPCM2011-00037. The filing of an appeal shall not stay the decision of the planning commission pending the outcome of the appeal, unless the Planning Commission takes specific action to stay a decision. The appeal applicant requests the Planning Commission consider staying its decision for approval of Conditional Use PLNPCM2011-00037 during the appeal process. (Staff: Everett Joyce at 801-565-7930 or everett.joyce@slc.gov.com).

September 6, 2011

City & County Building
451 South State Street, Room 304
P.O. Box 145476
Salt Lake City, Utah 84114-5476
(801) 535-7600

Salt Lake City Council

CITY COUNCIL MEETING AGENDA

Tuesday, September 6, 2011

3:00 p.m. Work Session *(the public is invited to listen to the discussion)*

7:00 p.m. Formal Meeting *(public comment section is included)*

A. WORK SESSION: **Approximately 3:00 p.m. in Room 326, City & County Building, 451 South State St.**

(Agenda items scheduled during the Council's formal meeting may be discussed during the work session. Items from the following list that Council is unable to complete in the work session from approximately 3:00 p.m. – 6:30 p.m. may be addressed in a work session setting following the consent agenda.)

1. **(TENTATIVE)** The Council will consider a motion to enter into Closed Session, in keeping with Utah Code § 52-4-204, for any of the following purposes:

   a) A strategy session to discuss collective bargaining, pursuant to Utah Code § 52-4-205 (1)(b);

   b) A strategy session to discuss the purchase, exchange, or lease of real property (including any form of water right or water shares) when public discussion of the transaction would disclose the appraisal or estimated value of the property under consideration or prevent the City from completing the transaction on the best possible terms, pursuant to Utah Code § 52-4-205(1)(d);

   c) A strategy session to discuss pending or reasonably imminent litigation, pursuant to Utah Code § 52-4-205(1)(c);

   d) A strategy session to discuss the sale of real property (including any form of water right or water shares) if (1) public discussion of the transaction would disclose the appraisal or estimated value of the property under consideration or prevent the City from completing the transaction on the best possible terms, (2) the City previously gave notice that the property would be offered for sale, and (3) the terms of the sale are publicly disclosed before the City approves the sale;

   e) For attorney-client matters that are privileged, pursuant to Utah Code § 78B-1-137; and

   f) A strategy session to discuss deployment of security personnel, devices or systems pursuant to Utah Code Section 52-4-205(1)(f).

2. Report of the Executive Director, including a review of Council information items and announcements. ATTACHMENTS

3. The Council will receive a follow-up briefing regarding Budget Amendment No. 1 for Fiscal Year 2011 - 2012. Budget amendments happen several times each year to reflect adjustments to the City's budgets, including proposed project additions and modifications. (Item C2) ATTACHMENTS

4. The Council will receive a briefing regarding a resolution adopting the Restoration, Use and Management Plan for Wasatch Hollow Open Space. The goal of the plan is to protect native vegetation, water quality, and aquatic and terrestrial wildlife habitat of Emigration Creek while providing appropriate access and educational opportunities for the public. ATTACHMENTS

5. The Council will receive a follow-up briefing regarding a request to rezone property located at 2705 East Parleys Way from Community Business (CB) to Community Shopping (CS) and change the East Bench Community Master Plan Future Land Use Map to be consistent with the proposed rezoning. This action would facilitate demolition of the existing structure on the property (a former Kmart store) and construction of a new Walmart Supercenter. Petitioner - Ballard Spahr LLP representing Walmart Stores, Inc. (Petitions PLNPCM 2010-00556 & PLNPCM 2010-00557) (Item D2) ATTACHMENTS

6. The Council will receive a follow-up briefing regarding the budget relating to the Capital Improvement Program (CIP) for Fiscal Year 2011-2012. Capital improvements involve the construction, purchase or renovation of buildings, parks, streets or other physical structures. Generally, projects have a useful life of five or more years and cost $50,000 or more. (Item G1) ATTACHMENTS

7. The Council will receive a briefing regarding the City's 10 Year Capital Facilities Plan. ATTACHMENTS

8. The Council will receive a briefing regarding issuing Water & Sewer Revenue bonds to fund the construction of the Folsom Avenue Storm Drain. (The Department of Public Utilities is proposing to issue up to $10 million in Revenue Bonds to fund the Folsom Avenue Storm Drain construction. Folsom Avenue is approximately 50 South, and the storm drain corridor stretches from 700 West, just west of I-15, to the Jordan River.) (Item G2) ATTACHMENTS

9. The Council will receive a briefing regarding ordinances amending Section 12.96.020, *Salt Lake City Code*, extending the period after which unpaid parking citations may result in impoundment of a vehicle from 30 days to 40 days to be consistent with other provisions within the same Chapter and amending Section 12.56.570, *Salt Lake City Code*, clarifying and revising provisions governing the dismissal and reduction of parking citation fees. ATTACHMENTS

10. The Council will receive a briefing regarding an ordinance to change the City's zoning regulations to allow electric security fences in the Manufacturing M-1 and M-2 zones under certain conditions. (Title 21A Zoning, Chapters 21A.62.010 Definitions and 21A.40.120L Regulation of Fences, Walls and Hedges.) Related provisions of Title 21A – Zoning may also be amended as part of this petition. (Petitioner - Sentry Security Systems – PLNPCM2010-00300) (Item H1) ATTACHMENTS

11. **(TIME APPROXIMATE 6:10 P.M.)** The Council will interview Catherine Elizabeth Roberts prior to consideration of her appointment as a part-time Justice Court Judge for the Salt Lake City Justice Court. (Item G3) ATTACHMENTS

FORMAL MEETING

B. OPENING CEREMONY: **7:00 p.m. in Room 315, City & County Building, 451 South State St.**
Council Member Luke Garrott will conduct the Formal Council Meetings during the month of September.

1. Pledge of Allegiance.

2. The Council will approve the meeting minutes of August 23, 2011. ATTACHMENTS

C. PUBLIC HEARINGS:

1. Ordinance: Amending certain Sections of Title 21A, *Salt Lake City Code*, pertaining to wireless telecommunication antennas

Accept public comment and consider adopting an ordinance amending the City's zoning regulations for wireless telecommunications antennas, facilities and equipment. Changes include - encourage co-location, clarify screening requirements, include stealth antennas as permitted use and provide a definition, clarify electrical equipment location, refine area limits for wall/roof mounted antennas, remove conditional use requirement for certain antennas, eliminate performance bond requirement for abandoned facilities and remove utility pole height restriction. Related provisions of Title 21A – Zoning may also be amended as part of this petition. (Petitioner - Mayor Ralph Becker, Petition PLNPCM2010-0045) ATTACHMENTS

(O 11-18)

Staff Recommendation: Close and consider options.

2. Ordinance: Budget Amendment No. 1, Fiscal Year 2011-2012

Accept public comment and consider adopting an ordinance amending Salt Lake City Ordinance No. 50 of 2011 that adopted the final budget of Salt Lake City, Utah, for the Fiscal Year beginning July 1, 2011 and ending June 30, 2012. ATTACHMENTS

(B 11-7)

Staff Recommendation: Continue hearing to future meeting.

3. Resolution: Facility Revenue Bonds, Series 2011 (Cookietree, Inc. Project)

Accept public comment regarding the City's proposed issuance of its Facility Revenue Bonds, Series 2011 (Cookietree, Inc. Project) and the location and nature of the Project.

The City plans to lend the credit rating of the City to facilitate bonds for Cookietree, Inc. for the purpose of financing the costs of the acquisition, construction, improvement, equipping and furnishing of an approximately 95,000 square-foot manufacturing facility to be located at approximately 4010 West Advantage Circle, to be owned and used by the owner as a manufacturing facility for the production of baked goods. ATTACHMENTS

(Q 11-4)

Staff recommendation: Close.

D. POTENTIAL ACTION ITEMS:

1. Ordinance: Street Closure, Edmonds Place at approximately 346 to 362 North (640 West)

Consider adopting an ordinance closing a portion of Edmonds Place as a public street at approximately 346 to 362 North (640 West), pursuant to Petition No. PLNPCM2009-00591. The applicant's plan for the proposed street right-of-way is to use it as additional yard space that is currently being used as a drive approach for 362 Edmonds Place. ATTACHMENTS

(P 11-7)

Staff recommendation: Consider Options.

2. Ordinance: East Bench Community Master Plan Amendment and Zoning Map Amendment (Walmart).

Consider adopting an ordinance rezoning property located at 2705 East Parleys Way from Community Business (CB) to Community Shopping (CS) and change the East Bench Community Master Plan Future Land Use Map to be consistent with the proposed rezoning. This action would facilitate demolition of the existing structure on the property (a former Kmart store) and construction of a new Walmart Supercenter. Related provisions of Title 21A – Zoning may also be amended as part of this petition. Petitioner - Ballard Spahr LLP representing Walmart Stores, Inc. (Petitions PLNPCM 2010-00556 & PLNPCM 2010-00557) ATTACHMENTS

(P 11-8)

Staff recommendation: Consider options.

E. COMMENTS:

1. Questions to the Mayor from the City Council.

2. Comments to the City Council. (Comments are taken on any item not scheduled for a public hearing, as well as on any other City business. Comments are limited to two minutes.)

F. NEW BUSINESS:

1. Ordinance: Artwork on Building and Fences in Connection with the Olympic Winter Games of 2002
Consider adopting an ordinance repealing Chapter 4.3.54, *Salt Lake City Code*, relating to artwork on buildings and fences in connection with the Olympic Winter Games of 2002. ATTACHMENTS
(O 11-19)

Staff recommendation: Suspend the rules and adopt.

G. UNFINISHED BUSINESS:

1. Resolution: Allocation of Appropriations to Capital Improvements Program Projects (CIP)
Consider adopting a resolution relating to Capital Improvement Program allocations for Fiscal Year 2011 -2012. ATTACHMENTS
(R 11-11)

Staff Recommendation: Consider options.

2. Resolution: Public Utilities Bond, Series 2011, Resolution Authorizing a Public Hearing for the Purpose of Financing the Construction of Sewer Line Improvements
Consider adopting a resolution authorizing the issuance and sale of up to $10,000,000 aggregate principal amount of the City's water and sewer revenue bonds, in one or more series, to finance all or a portion of certain improvements, facilities and property that will be part of the City's water, sewer and stormwater system; providing for the holding of a public hearing and providing for related matters. ATTACHMENTS
(Q 11-5)

Staff Recommendation: Adopt the resolution and set the date of September 27, 2011 at 7:00 p.m. for a public hearing.

3. Resolution: Confirm the appointment of a Part-Time Justice Court Judge
Consider adopting a resolution appointing Catherine Elizabeth Roberts as a Part-Time Justice Court Judge for a six-year term as provided by law. ATTACHMENTS
(I 11-19)

Staff Recommendation: Adopt.

H. CONSENT:

1. Set Date: Ordinance: Amendments to the City's Zoning Regulations of Fences, Walls and Hedges, Petition PLNPCM2010-0300
Set the date of Tuesday, September 27, 2011 at 7:00 p.m. to accept public comment and consider adopting an ordinance to change the City's zoning regulations to allow electric security fences in the Manufacturing M-1 and M-2 zones under certain conditions. (Title 21A Zoning, Chapters 21 A.62.010 Definitions and 21A.40.120L Regulation of Fences, Walls and Hedges.) Related provisions of Title 21A – Zoning may also be amended as part of this petition. (Petitioner - Sentry Security Systems – PLNPCM2010-0300)
(P 11-10)

Staff Recommendation: Set the date.

2. Set Date: Ordinance: Enacting Chapter 12.58 Prohibiting Idling of Vehicles Within City Limits
Set the date of Tuesday, September 27, 2011 at 7:00 p.m. to accept public comment and consider adopting an ordinance enacting Chapter 12.58, *Salt Lake City Code*, prohibiting idling of vehicles within city limits.
(O 11-20)

Staff Recommendation: Set the date.

I. ADJOURNMENT:

September 20, 2011

City & County Building
451 South State Street, Room 304
P.O. Box 145476
Salt Lake City, Utah 84114-5476
(801) 535-7600

Salt Lake City Council

CITY COUNCIL MEETING AGENDA
REVISED
Tuesday, September 20, 2011

3:30 p.m. Work Session or immediately following the 2:00 p.m. Redevelopment Agency Meeting
(the public is invited to listen to the discussion)

PLEASE NOTE:
Limited Formal Session following 3:30 Work Session. A general public comment period will not be held this evening. This is the Council's monthly scheduled briefing night. However, housekeeping action items are included.

A. WORK SESSION: **Approximately 3:30 p.m. in Room 326, City & County Building, 451 South State St.**

(Agenda items scheduled during the Council's formal meeting may be discussed during the work session. Items from the following list that Council is unable to complete in the work session from approximately 3:30 p.m. – 6:30 p.m. may be addressed in a work session setting following the consent agenda.)

1. **(TENTATIVE)** The Council will consider a motion to enter into Closed Session, in keeping with Utah Code § 52-4-204, for any of the following purposes:

   a) A strategy session to discuss collective bargaining, pursuant to Utah Code § 52-4-205 (1)(b);

   b) A strategy session to discuss the purchase, exchange, or lease of real property (including any form of water right or water shares) when public discussion of the transaction would disclose the appraisal or estimated value of the property under consideration or prevent the City from completing the transaction on the best possible terms, pursuant to Utah Code § 52-4-205(1)(d);

   c) A strategy session to discuss pending or reasonably imminent litigation, pursuant to Utah Code § 52-4-205(1)(c);

   d) A strategy session to discuss the sale of real property (including any form of water right or water shares) if (1) public discussion of the transaction would disclose the appraisal or estimated value of the property under consideration or prevent the City from completing the transaction on the best possible terms, (2) the City previously

gave notice that the property would be offered for sale, and (3) the terms of the sale are publicly disclosed before the City approves the sale;

e) For attorney-client matters that are privileged, pursuant to Utah Code § 78B-1-137; and

f) A strategy session to discuss deployment of security personnel, devices or systems pursuant to Utah Code Section 52-4-205(1)(f).

2. Report of the Executive Director, including a review of Council information items and announcements. ATTACHMENTS

3. The Council will receive an update from David Hart, FAIA, Vice President/Regional Manager of MOCA Systems, regarding plans for the City's new Public Safety Facilities.

4. The Council will receive a follow-up briefing from the Administration regarding the City's Historic Preservation Program. The presentation will include information to establish a citywide Preservation Philosophy, improvement of the citywide Preservation Plan and preservation policy statements, and tools and projects to implement the City's preservation goals. ATTACHMENTS

FORMAL MEETING

B. OPENING CEREMONY: **7:00 p.m. in Room 315, City & County Building, 451 South State St.**
Council Member Luke Garrott will conduct the Formal Council Meetings during the month of September.

1. Pledge of Allegiance.

C. PUBLIC HEARINGS:

1. Redevelopment Agency Board Public Hearing: North Temple Urban Renewal Area (URA)
The Redevelopment Agency Board will accept public comment regarding the regarding the North Temple URA. (T 11-4)

Staff Recommendation:

a. The Council will consider a motion to recess as the City Council;

b. The Council will then consider a motion to convene as the Redevelopment Agency Board;

c. The Redevelopment Agency Board will accept public comment regarding the North Temple URA;

d. The Redevelopment Agency Board will consider a motion to adjourn as the Redevelopment Agency Board;

e. The Council will consider a motion to reconvene as the City Council.

D. POTENTIAL ACTION ITEMS:

1. Ordinance: Amending certain Sections of Title 21A, *Salt Lake City Code*, pertaining to wireless telecommunication antennas
~~Accept public comment and~~ Consider adopting an ordinance amending the City's zoning regulations for wireless telecommunications antennas, facilities and equipment. Changes include - encourage co-location, clarify screening requirements, include stealth antennas as permitted use and provide a definition, clarify electrical equipment location, refine area limits for wall/roof mounted antennas, remove conditional use requirement for certain antennas, eliminate performance bond requirement for abandoned facilities and remove utility pole height restriction. Related provisions of

Title 21A – Zoning may also be amended as part of this petition. (Petitioner - Mayor Ralph Becker, Petition PLNPCM2010-0045) ATTACHMENTS
(O 11-18)

Staff Recommendation: Consider options.

E. COMMENTS:
(None)

F. NEW BUSINESS:
(None)

G. UNFINISHED BUSINESS:

1. Resolution: Canvass of the Salt Lake City Primary Election

Consider accepting the official canvass of the September 13, 2011, Salt Lake City Primary Election. ATTACHMENTS
(U 11-1)

Staff Recommendation: a. Recess as City Council and convene with the Mayor as the Board of Canvassers;

b. Adopt resolution;

c. Adjourn as Board of Canvassers and reconvene as City Council.

H. CONSENT:

1. Confirm Date: Ordinance: Parking Ticket Ordinance Amendments

Confirm the date of Tuesday, September 27, 2011 at 7:00 p.m. to accept public comment and consider adopting an ordinance amending Section 12.96.020, Salt Lake City Code, extending the period after which unpaid parking citations may result in impoundment of a vehicle from 30 days to 40 days to be consistent with other provisions within the same Chapter and amending Section 12.56.570, Salt Lake City Code, clarifying and revising provisions governing the dismissal and reduction of parking citation fees.
(O 10-14)

Staff Recommendation: Confirm date.

2. Set Date: Resolution: Wasatch Hollow Open Space Management Plan

Set the date of Tuesday, October 4, 2011 at 7:00 p.m. to accept public comment and consider adopting a resolution regarding the Restoration, Use and Management Plan for Wasatch Hollow Open Space. The goal of the plan is to protect native vegetation, water quality, and aquatic and terrestrial wildlife habitat of Emigration Creek while providing appropriate access and educational opportunities for the public.
(T 11-3)

Staff Recommendation: Set the date.

I. ADJOURNMENT:

ATTACHMENT D: APRIL 27, 2011 PLANNING COMMISSION MINUTES

April 27, 2011

SALT LAKE CITY PLANNING COMMISSION MEETING In Room 326 of the City & County Building 451 South State Street, Salt Lake City, Utah

Present for the Planning Commission meeting were Chair Michael Fife, Vice Chair Angela Dean, Commissioners Emily Drown, Babs De Lay, Michael Gallegos, Charlie Luke, Matthew Wirthlin and Mary Woodhead. Commissioners Kathleen Hill and Susie McHugh were excused.

The scheduled field trip was cancelled.

A roll is being kept of all who attended the Planning Commission Meeting. The meeting was called to order at 5:45 p.m. Audio recordings of the Planning Commission meetings are retained in the Planning Office for an indefinite period of time. Planning staff members present at the meeting were: Wilf Sommerkorn, Planning Director; Joel Paterson, Planning Manager; Ray Milliner, Principal Planner; Lex Traughber, Senior Planner; Everett Joyce, Senior Planner; Breanne McConkie, Planning Intern; Paul Nielson, Land Use Attorney; and Angela Hasenberg, Senior Secretary.

Work Session
PLNPCM2010-00055; A request by Mayor Ralph Becker to amend sections of the Salt Lake City Zoning Ordinance as they relate to changes in grade and the definition of grade. The amendment will affect sections 21A.62.40 definitions of terms, 21A.36.020 obstructions in required yards and 21A.24.010 general provisions. Related provisions of Title 21A, the zoning ordinance may also be amended as part of this petition.(Staff Contact: Ray Milliner at (801) 535-7645 or ray.milliner@slcgov.com)

Chairperson Fife recognized Ray Milliner as staff representative.

Mr. Milliner stated that this work session items were proposed changes to the Zoning Ordinance as it related to grade changes.
The items to be changed were:

- o New definitions: established grade, natural grade, dormer and exterior wall height.
- o Clarification of definitions related to: natural grade, established grade and finished grade.
- o Modifications of obstructions in required yards related to: changes in grade for commercial and residential structures.
- o Clarification language related to: the Foothill regulations and in various places in the code that have been issues in the past, i.e. Yalecrest Overlay District, lot and bulk control fences, walls and hedges.

Mr. Milliner stated that there were no changes proposed in the actual height that would be required in the zones for flat or pitched roofs. With the proposed changes to definitions overall height of the building would be measured from established grade, and wall height would be measured from finished grade. The rational was making sure that continuity was maintained along the street faces with the height of the buildings. Mr. Milliner added that responses from several architects had been positive. The architects were pleased with the change of the definition of "established grade" because it had been nebulous. The current definition established grade as the grade "at time when the subdivision was created." So many subdivisions were created more than 50 years ago, it became difficult to determine established grade under that definition. Under the proposed definition established grade would be "the grade in existence prior to issuance of the building permit."

Commissioner Gallegos asked if it meant "undisturbed grade".

Mr. Milliner responded that yes, it would be without enhancement. It would be where the grass was planted.

Commissioner Dean clarified that what Mr. Milliner was saying was that the current term was what was once referred to as natural grade, but that term would no longer be used.

Mr. Milliner agreed. Mr. Milliner continued saying that the definition for "wall height," would be "up to the wall plate." He stated that it would eliminate the probability of variables and standardizes the

definition. Mr. Milliner stated that in regard to "obstructions within required yards," the current definition stated that if there was a grade change of more than two feet, it required a "routine and uncontested application" The proposed change to the definition would now be a grade change of more than four feet.

Commissioner Dean wondered about people artificially raising their grade.

Mr. Milliner responded that the grade would have to be measured prior to the most recent proposed development or construction activity.

Discussion between Commissioners involved maintaining the two feet requirement instead of the four foot allowance for permitted grade change.

Mr. Milliner stated that he did not feel that the wall height would be an issue due to the current 28 foot maximum building height limit.

Planning Manager Paterson added that wall height regulations within residential zones, was that it would not regulate the wall height of all walls on the structure, only apply to walls along the interior side yards. The front wall, rear yard, or corner side yard are not regulated by the wall height regulation.

Mr. Milliner asked for clarification on what the Planning Commission would prefer, two feet or four feet for a routine and uncontested application.

Commissioners discussed the use of the IBC standard.

Mr. Milliner stated that the he felt it was a good standard, but would come back before the Planning Commission with more information.

Public Meeting
• Approval of Minutes from March 9, and April 13

Motion:
Commissioner Woodhead made the motion to approve the minutes of March 9, 2011. Commissioner Wirthlin seconded the motion. Vote: Commissioners Dean, Drown, De Lay, Luke, Wirthlin and Woodhead all voted "aye". Commissioner Gallegos abstained from the voting. The motion passed.

Motion:
Commissioner Woodhead made the motion to approve the minutes of April 13, 2011. Commissioner Wirthlin seconded the motion. Vote: Commissioners Dean, Drown, De Lay, Gallegos, Luke, Wirthlin and Woodhead all voted "aye". The motion passed unanimously.

Report of the Chair and Vice Chair:
Chairperson Fife and Vice Dean had nothing to report.

Report of the Director:
Planning Director Wilf Sommerkorn gave an update on the Sign Ordinance amendments that were adopted by the City Council at a prior meeting. Mr. Sommerkorn referred to a memo that was given to the Planning Commissioners in their reading material that included the provisions of the Sign Ordinance. He stated that the importance of this was that the Ordinance specified that the City Council would look at additional amendments for nine months. Mr. Sommerkorn added that the Planning Commission made the same kind of commitment when they made their recommendation. Mr. Sommerkorn stated that Mr. Doug Dansie was there to give a short update on the Ordinance that was passed, and what the Planning Department hoped to accomplish in the following months. The plan was to use the entire Planning Commission rather than subcommittees, and do briefing sessions to work through some of the issues on the Sign Ordinance.

Mr. Sommerkorn noted that the Sign Ordinance had received a lot of media attention, and that the Planning Department had received another appeal by Reagan Outdoor Sign Company. They had made claims that changing the face of their signs from regular billboards to electric billboards does not require new permits and that it was simply the same as changing the "face" of the billboard.

Mr. Dansie stated that the City Council had adopted an ordinance on April 12, 2011 and was in effect on April 13, 2011.
He stated that the City Council adopted what the Planning Commission had recommended with one significant change. The Utah State Legislature passed a bill that stated that illumination standards for "on and off premise" electronic signs needed to be consistent. Mr. Dansie clarified that it was illumination, not animation, size, or placement. Mr. Dansie added that the City Council made an attempt to apply the standards for electronic signs more toward "on premise" signs. He said that the standards would not take effect for nine months and acknowledge the State Legislature's intent.

Mr. Dansie stated that the important issue was that the City now had an ordinance that prohibits the conversion to electronic billboards.

Mr. Dansie said that the Planning Commission could look forward to a presentation that would focus more on policy issues rather than give a sample ordinance. The intent was to establish policy and then move forward with an ordinance.

Mr. Dansie stated that sufficient data was collected to create a GIS layer of all of Salt Lake City's electronic mapping. He stated that the Planning Division was in the process of verifying the existing sites of all of the billboards in the City. This would provide a parcel number and also would provide a picture of every billboard in the City.

Commissioner De Lay asked about freeway signs that are provided by UDOT and wondered if they were considered electronic signs.

Mr. Dansie said that by definition, a billboard was something that sold goods or services, not sold on site. Mr. Dansie clarified that the UDOT signs were traffic regulation signs, and that the Planning Department did not regulate traffic signs.

PLNPCM2010-00045, Telecommunications Ordinance Amendment – A petition to amend Zoning Ordinance Section 21A.40.090 – Antenna Regulations. The purpose of the proposal is to bring the Ordinance up-to-date by encouraging the colocation of wireless facilities, clarifying screening requirements for roof mounted antennas, allowing stealth antennas as a permitted use, clarifying where electrical equipment shall be placed on a lot, refining area limitations for wall and roof mounted antennas, removing conditional use requirements for antennas located on noncomplying buildings that exceed maximum height, and eliminating optional performance bond language for abandoned facilities. Related provisions of Title 21A – Zoning may also be amended as part of this petition. The subject text amendments would apply citywide if adopted by the City Council (Staff contact: Lex Traughber at 801.535.6184 or lex.traughber@slcgov.com)

Chairperson Fife recognized Lex Traughber as staff representative.

Lex Traughber introduced Breanne McConkie, intern with the Planning Department. He stated that she had been instrumental in preparing the presentation regarding the Wireless Telecommunications regulations.

Ms. McConkie stated that the Telecommunications Ordinance had not been updated since 1995. Since that time, regulations had become quite outdated. The request was initiated by Mayor Becker to amend the Ordinance.
The primary objectives were to update the current regulations by encouraging co-location, allowing stealth facilities and to encourage the appropriate location by streamlining the process.

Ms. McConkie stated that some of the problems with the existing regulations were:
- Co-location was not currently recognized as a permitted use.
- Screening requirements could be visually intrusive.
- Stealth antennas were limited to flag poles.
- Unclear where electronic equipment could and should be located.
- Limitations for wall and roof mounted antennas were arbitrary and did not take into consideration building size.
- Conditional Use was required to locate on non-complying buildings that exceeded the maximum height limit.

The proposal before the Planning Commission addresses co-location. Ms. McConkie stated that co-location required conditional user approval. The proposed changes would add co-location as a permitted use and thus make it possible for a structure that had been approved as a conditional use for a wireless facility, could add additional wireless facilities and would be considered permitted uses as long as they fill the other requirements.

Mr. Traughber added that the City wanted to encourage co-location to minimize visual impact. This change would be advantageous to the City.
Commissioner Woodhead wondered if too many towers on one location would become problematic.

Mr. Traughber responded that even if there were ten antennas located on one spot the visual impact would be reduced more than having them in ten locations.
Commissioner Dean asked about the current screening requirements and wondered if there were examples of problems with screening.

Ms. McConkie stated that the problem with screening requirements was that the panels themselves are small, but the boxes that surround them are quite large. The screening requirement would only apply to roof tops.

Ms. McConkie discussed the next proposed change that would expand the definition of stealth antennas and would include stealth facilities as a permitted use. The way the code was written stealth antennas were limited to flag poles or antennas that were completely enclosed within a structure with no exterior evidence whatsoever. The new expanded definition would include facilities completely disguised as another object or otherwise concealed from view. There was a stipulation that they would have to fit the size and shape of what they are being disguised as, and that they would have to be in concert with their surroundings. Ms. McConkie added that final determination of Stealth Facilities could be approved by the Planning Director. Ms. McConkie stated that another change would be in regard to electrical equipment. Currently, electrical equipment was only specific to utility poles and would have had to conform to the location requirements for an accessory structure. The proposed changes were for all electrical equipment and would be universal for all wireless facilities electrical equipment and that it would be allowed to be within the buildable area, as long as it was not located on the front yard or front façade between the building and the public right of way. This change would allow electrical equipment to be located next to a building or an antenna structure. another issue addressed was the maximum coverage. Ms. McConkie stated that the change would modify and refine the area limitation for wall mounted antennas. The current code was 40 square feet per exterior wall, with a maximum of 160 square feet per building. Ms. McConkie stated that the numbers were arbitrary because they did not take into account the building size. The proposed change would be "the lesser of 60 square feet or 5 percent of an exterior wall." The reason was because it could be difficult to measure the exact square footage, where a percentage would be easier to measure from the street view. Ms. McConkie stated that another issue was that the current code allowed an applicant to increase the height of a utility pole by ten feet, but the industry standard had a minimum of ten feet between the utility lines and the proposed wireless facility. The problem was that the industry was not able to locate wireless facilities on utility poles. Staff recommended that adding a structure onto a utility pole should have been encouraged, rather than to build a new mono-pole that would have been specific only to a wireless facility. Staff had found that the City did not regulate pole height, and so it was written in the code, but it was not actually regulated.

Ms. McConkie stated that to encourage antennas, they proposed to remove the ten foot replacement pole height restriction and also increase the width from 24 inches to 30 inches for the actual antenna addition.
Other changes include:

- The removal of the screening requirements, because often the screen was more visually intrusive than the actual panel.
- Removing the conditional use for non-complying buildings that exceed that maximum height limit to try and encourage wireless facilities to locate on existing buildings versus to having to build a new structure.
- Removal of optional performance bond language.
- Addition of approval needed from all governing agencies for facilities trying to locate on City owned property or on property located within an open space zoning district or subject to the City's open space land program.

Ms. McConkie stated that it was the staff's opinion that the proposed project generally meets the applicable standards and therefore she recommends that the Planning Commission forwards a favorable recommendation to City Council.
Questions from the Commissioners:

Commissioner Dean asked about location of electrical equipment and referenced page nine of the staff report. She asked if staff felt that the wording was inclusive enough.

Mr. Traughber stated that it was the buildable area, not the side yards and he felt that the language could be changed to make the intent more clear.
Commissioner Drown asked about defining electrical equipment, and wanted clarification of what staff was calling electrical equipment and if it only pertained to wireless facilities.

Ms. McConkie stated that the electrical equipment referenced was in association with mono-poles. The definition was specific to cell phone towers.
Commissioner Dean asked about removal of abandoned poles.

Mr. Traughber responded that it would be done on a complaint basis and would use traditional enforcement methods.

Open of Public Hearing
Seeing no one choosing to speak, Chairperson Fife closed the Public Hearing.

Motion:
Commissioner De Lay made the motion in regard to PLNPCM2010-00045, Telecommunications Ordinance Amendment – A petition to amend Zoning Ordinance Section 21A.40.090 – Antenna Regulations based on the findings listed in the staff report and the testimony heard this evening, I move that the Planning Commission transmit a favorable recommendation to the City Council. Second by Commissioner Drown.

Discussion: Commissioner Woodhead asked if there would be the addition of the amendments made by Commissioner Dean.

Commissioner Dean added to clarify language of item 3b with location of electrical equipment and front and side yards. Commissioner De Lay accepted the amendment.

Commissioner De Lay made the motion in regard to PLNPCM2010-00045, Telecommunications Ordinance Amendment – A petition to amend Zoning Ordinance Section 21A.40.090 – Antenna Regulations based on the findings listed in the staff report and the testimony heard this evening, I move that the Planning Commission transmit a favorable recommendation to the City Council, with clarification of language of of item 3b with location of electrical equipment and front and side yards. Second by Commissioner Drown Vote: Commissioners Dean, Drown, De Lay, Gallegos, Luke, Wirthlin and Woodhead all voted "aye". The motion passed unanimously.

Potential Action Item: this item is not a public hearing; The Planning Commission will hold a discussion and may make a decision regarding this item.
Request for specific action by the Planning Commission to stay its decision of March 9, 2011 regarding conditional use PLNPCM2011-00037 Regional Athletic Complex Restoration Area -Jordan River Parkway. – Petition area includes 44 acres on the east and west banks of the Jordan River between Redwood Road and the Davis County line. Appeal application CED2011-00001 by Jeff Salt, Coordinator, Jordan River Restoration Network appeals Salt Lake City Planning Commission decision of Conditional Use PLNPCM2011-00037. The filing of an appeal shall not stay the decision of the planning commission pending the outcome of the appeal, unless the Planning Commission takes specific action to stay a decision. The appeal applicant requests the Planning Commission consider staying its decision for approval of Conditional Use PLNPCM2011-00037 during the appeal process. (Staff: Everett Joyce at 801-565-7930 or everett.joyce@slc.gov.com).
Decision: No action taken.

Meeting adjourned

ATTACHMENT E: Public Process and Input

Notice of a Public Hearing was mailed on March 25, 2021

Property posted on March 29, 2021

Public Comments

No public comments were received prior to the publication of this report.

ATTACHMENT F: Photographs

Western Elevation of Subject Property

Eastern Elevation of Subject Property Taken From Parking Lot

Eastern Elevation of Subject Property Taken From Pedestrian Path Off Of Roxbury Road