



City of Santa Fe, New Mexico

200 Lincoln Avenue, P.O. Box 909, Santa Fe, N.M. 87504-0909
www.santafenm.gov

Javier M. Gonzales, Mayor

Councilors:

Peter N. Ives, Mayor Pro Tem, Dist. 2
Patti J. Bushee, Dist. 1
Signe I. Lindell, Dist. 1
Joseph M. Maestas, Dist. 2
Carmichael A. Dominguez, Dist. 3
Christopher M. Rivera, Dist. 3
Ronald S. Trujillo, Dist. 4
Bill Dimas, Dist. 4

Memorandum

To: Members of the Governing Body

From: Zachary Shandler
Assistant City Attorney *ZS*

Via: Kelley Brennan *KB*
City Attorney

Re: Appeal of the Santa Fe Alliance for Public Health and Safety from the December 2, 2014 Decision of the Land Use Department to Issue a Building Permit #13-2503 to New Cingular PCS, LLC (d/b/a AT & T) at St. John's Methodist Church at 1200 Old Pecos Trail
Case No. 2014-116

Date: February 2, 2015 for the February 11, 2015 Meeting of the Governing Body

The Appeal

On December 17, 2014, the Santa Fe Alliance for Public Health and Safety (SFAPHS or Appellant), filed a Verified Appeal Petition (Petition) appealing the December 2, 2014 issuance by the Land Use Department (LUD) of Building Permit No. 14-2503 (the Permit) to New Cingular PCS, LLC (d/b/a AT & T) (AT&T) to install *replacement* cell phone antennas (Project) on property owned by St. John's Methodist Church (the Church) at 1200 Old Pecos Trail (Property). Identical Verified Appeal Petition forms signed by four others were submitted with the Petition, but without the required fee. As a result, these additional submittals do not constitute valid appeals, and we consider the signatories as joining in SFPHS's appeal. (Petition attached as **Exhibit A**; Permit attached as **Exhibit B**).

The Property

The Property is located within the Historic Review Overlay District (District). The Church building on the Property includes a tower around an existing chimney to house cell tower antennas (the 2011 Project). The Permit allows AT&T to *replace* the antennas installed within the tower as part of the 2011 Project. The 2011 Project was approved by the City's Historic Districts Review Board (HDRB) on March 8, 2011 (the Design Decision) after the HDRB designated the Church as "non-contributing" to the District (the Status Decision). (Status Decision and Design Decision attached as **Exhibit C-1** and **Exhibit C-2** respectively.)

History of the Case

The Status Decision (*but not the Design Decision*) was appealed to the Governing Body by the Cellular Phone Task Force (CPTF), et al. The Governing Body heard and voted to deny that appeal on May 11, 2011. Findings of Fact and Conclusions of Law embodying the May 11, 2011 vote were adopted by the Governing Body on May 11, 2011 (the 2011 GB Decision).

On June 9, 2011, Arthur Firstenberg appealed the 2011 GB Decision to the First Judicial Court (*New Cingular Wireless PCS, LLC v. Firstenberg*, D-101-CV-201101868).¹ Mr. Firstenberg did not ask the Court to impose a stay on the 2011 Project while the case was being adjudicated. Instead, on May 25, 2012 Mr. Firstenberg asked for a "temporary restraining order" to be imposed on the 2011 Project. His legal theory was that City Code, SFCC 1987, Section 14-3.17(E)(1) dictates that no project can go forward while it is being adjudicated in the courts.

On June 1, 2012, Mr. Firstenberg also asked for a "preliminary injunction" to be imposed on the project. On June 1, 2012, the City Attorney's Office (CAO) filed a legal response to these requests stating: "Rather than operating to stay proceedings during the pendency of an administrative appeal to the District Court, however, Section 14-3.17(E)(1) only maintains the status quo while the appeal before the City runs its course." Therefore, once the Governing Body has taken final action, Section 14-3.17(E)(1) no longer stays a case. The Court took no action on Mr. Firstenberg's requests. While the underlying appeal is still pending, the Court has never imposed a stay in this matter (or adopted Mr. Firstenberg's legal interpretation of Section 14-3.17(E)(1)).

On December 2, 2014, Land Use Department issued Building Permit No. 14-2503 to AT&T to install *replacement* cell phone antennas on property owned by St. John's Methodist Church. On December 17, 2014, the Santa Fe Alliance for Public Health and Safety filed a Verified Appeal Petition appealing the decision.

Please note, prior to that, in 2010, the City's Board of Adjustment (BOA) heard CPTF's appeals from the issuance of building permits to AT&T for the modification of different cell phone

¹ This case was later consolidated with other cases: *New Cingular Wireless PCS LLC v. Firstenberg*, D-101-CV-201101869; *AT & T Mobility Services LLC v. Firstenberg*, D-101-CV-201101870; *AT & T Mobility Services LLC v. Firstenberg*, D-101-CV-201101871.

facilities at a different address. Following a final decision of the Governing Body on those matters, Mr. Firstenberg appealed to the First Judicial Court (*Firstenberg v. City of Santa Fe, AT & T Mobility Services, LLC*, D-101-CV-201004296). One of Mr. Firstenberg's arguments on appeal was that the BOA and the Governing Body should have factored into their decisions health and Americans with Disabilities Act (ADA) considerations. On October 30, 2013, Judge Sarah Singleton issued a ruling against Mr. Firstenberg. The Order stated: "[F]ederal law provided (and still provides) that to the extent that the facilities comply with the regulations of the FCC concerning such emissions, state and local governments may not regulate the placement or modification of wireless facilities based on the alleged environmental effects of RF emissions. 47 U.S.C. § 332(C)(7)(b)(iv)." (Emphasis supplied.) The Order added "Any suggestion that the City should regulate additional aspects of wireless facilities, in particular the level of RF emissions, does not state a claim under the ADA." (Emphasis supplied.) Mr. Firstenberg has appealed Judge Singleton's decision to the Court of Appeals. In a recent ruling,² the Court of Appeals affirmed the finding of the First Judicial Court that the City's interpretation of its own ordinances was entitled to deference by the Court.³

Basis of Appeal

The Appellant cites the following specific bases for appeal:

1. A building permit for replacement of antennas within the tower cannot be issued while the case is being appealed to District Court. (Claim 1).
2. A building permit for replacement of antennas within the tower damages the streetscape. (Claim 2).
3. A building permit for replacement of antennas within the tower cannot be issued because it violates the ADA and U.S. Constitution, Amendment 14 (Claim 3).

Discussion

Code §14-3.17(A)(2) provides that an appeal can only be filed if:

- (1) the final action appealed from does not comply with Code Chapter 14 or §§3-21-1 through 3-21-14 NMSA⁴ (the Statute);
- (2) Code Chapter 14 has not been applied properly; or
- (3) the decision appealed from is not supported by substantial evidence.

Pursuant to Code §14-3.17(D)(6)(a) the CAO has reviewed the Petition and for the reasons set forth below concurs with the determination of the LUD Director that it does not conform to the

² *Firstenberg v. City of Santa Fe*, (NMCA No. 33,441) (Jan. 12, 2015).

³ "Because the ... action concerned a city ordinance, this Court, as well as the district court, must give deference to the City's interpretation of its own ordinance." *Id.* ¶ 11.

⁴ Section 3-21-8 B. NMSA 1978 provides in pertinent part: "Any aggrieved person...affected by a decision of an administrative...commission or committee in the enforcement of Sections 3-21-1 through 3-21-14 NMSA 1978 or ordinance, resolution, rule or regulation adopted pursuant to these sections may appeal to the zoning authority. ..."

requirements of Code §14-3.17 in that it does not state a valid basis for appeal under any of the foregoing provisions.

General Claims. With respect to SFAPHS’s general claims, all of the matters have been addressed in other litigation and cannot be re-litigated at this time. As stated below, SFAPHS’s general claim does not fall within any of the three bases for appeal cited above and should be dismissed.

Claim 1. *A building permit for replacement of antennas within the tower cannot be issued while the case is being appealed to District Court.*

The Petition asserts that the: “[i]ssuance of [the Permit] for replacement of antennas in wireless facility ... is already under appeal in district court.” However, Mr. Firstenberg has appealed the City’s permit for the 2011 Project in *New Cingular Wireless PCS, LLC v. Firstenberg*, D-101-CV-201101868. (Emphasis supplied.) That appeal does not prevent the City from issuing a permit for the *replacement* of the existing antennas installed as part of the 2011 Project. First, as stated above, there is no judicial stay in place. In addition, Mr. Firstenberg asked the Court for a temporary restraining order and a preliminary injunction to stay the 2011 Project. Neither was granted. The Court’s silence may be interpreted to mean the Court has not overridden the City’s interpretation of Section 14-3.17(E)(1). Therefore, SFAPHS has failed to state a valid basis for appeal relating to the Permit under Chapter 14.

Claim 1 does not fall within any of the three bases for appeal cited above and should be dismissed.

Claim 2. *A building permit for replacement of antennas within the tower damages the streetscape.*

The Petition asserts the tower is an eyesore and has damaged the streetscape and makes reference to the appeal of the earlier HDRB decision. However, as noted above, Mr. Firstenberg appealed the Status Decision to the Governing Body and then to the Court, but he did appeal the Design Decision. Therefore, the Design Decision approving the design of the 2011 Project has not been challenged and the HDRB’s conclusion that “[t]he Project complies with the Design Standards and the Aesthetic Requirements and with all other applicable requirements under [Code Section 14-6.2(E)] that are within the jurisdiction of the [HDRB], including those requirements set forth in [Code] Sections 14-6.2(E)(10)(a) and (b) and 14-6.2(E)(3)(ix)A and B” stands. Nor has the Court issued a decision in *New Cingular Wireless PCS, LLC v. Firstenberg*, D-101-CV-201101868 and the Court retains jurisdiction over the matter at this time.

In addition, the issuance of the Permit for *replacement* antennas within the tower does not in any way affect the design of the tower or the visual character of the streetscape. Therefore, SFAPHS has failed to state a valid basis for appeal relating to the Permit under Chapter 14.

Claim 2 does not fall within any of the three bases for appeal cited above and should be dismissed.

Claim 3. *A building permit for replacement of antennas within the tower cannot be issued because it violates the Americans with Disabilities Act and U.S. Constitution, Amendment 14.*

The Petition asserts that the issuance of the permit violates the ADA and the Constitution. As noted above, Mr. Firstenberg appealed on the same ADA and constitutional basis in *Firstenberg v. City of Santa Fe, AT & T Mobility Services, LLC*, and lost. Therefore, the matter has been disposed of by the Court and SFAPHS has failed to state a valid basis for appeal relating to the Permit under Chapter 14.

Claim 3 does not fall within any of the three bases for appeal cited above and should be dismissed.

Conclusion

SFAPHS has not effectively alleged that the issuance of the Permit does not comply with applicable Code or the Statute; that the Code has been improperly applied; or is not supported by substantial evidence. As a result, the Appellant has failed to state a valid basis for appeal under Code §14-3.17(A)(2).

Option #1: The CAO recommends that the Governing Body vote to dismiss SFAPHS's appeal in Case No. 2014-116.

[MOTION: I move that the Governing Body accept the recommendation of the City Attorney and dismiss the appeal in Case No. 2014-116.]

Option #2: If the Governing Board does not wish to dismiss SFAPHS's appeal, the appeal will be set for a de novo hearing (with testimony, exhibits and witnesses) before the Board of Adjustment.

[MOTION: I move that the Governing Body not accept the recommendation of the City Attorney to dismiss the appeal in Case No. 2014-116 and that the appeal be scheduled for hearing by the Board of Adjustment.]



LUD Use Only

Time Filed: 2:15 PM

Fee paid: \$100.00

Receipt attached:

(date stamp)

RECEIVED

ggwulo

Case # 2014-116

VERIFIED APPEAL

PETITION

PLAINTIFF'S EXHIBIT

A

****Two originals of this form must be filed. The Land Use Department Director or his/her designee must sign and date of receipt and initial both originals. See Section 14-3.17(D) SFCC 2001 for the procedure.**

Appellant Information

Name: SANTA FE Alliance for Public Health and Safety

Address: 132 Romero St #13
 SANTA Fe NM 87501

Phone: (505) 660-3540 E-mail Address: MARY@MARY-LAYNE.COM

Additional Appellant Names: MARY E. LAYNE, President

Correspondence Directed to: Appellant Agent Both

Agent Authorization (if applicable)

I/We: _____

authorize _____ to act as my/our agent to execute this application.

Signed: _____ Date: _____

Signed: _____ Date: _____

Subject of Appeal

Project Name: Remove + install 12 antennas

Applicant or Owner Name: Owner: St. John's Methodist Church Applicant: New Cingular PCS, LLC, d/b/a AT&T

Location of Subject Site: 1200 Old Pecos Trail

Case Number: Permit No. 14-2503 (Permit Number) (if applicable): _____

Final Action Appealed:

Issuance of Building Permit Other Final Determination of LUD Director

Final Action of Board or Commission (specify): Planning Commission Board of Adjustment BCD-DRC HDRB

Basis of Standing (see Section 14-3.17(B) SFCC 2001):

§ 14-3.17(B)(3) and (5)

Basis for Appeal: The facts were incorrectly determined Ordinances/laws were violated and/or misrepresented

Description of the final action appealed from, and date on which final action was taken:

12/2/14 Issuance of Building permit No. 14-2503 for replacement of antennas in wireless facility that is already under appeal in district court.

Check here if you have attached a copy of the final action that is being appealed.

Description of Harm

Describe the harm that would result to you from the action appealed from (attach additional pages if necessary):

1. Aesthetic harm: the tower is an eyesore. It has damaged the streetscape. It violates §14-5.2 (F)(2)(b). See appeal, Case No. H-11-004B, filed 3-30-2011, attached.
2. Violation of Americans with Disabilities Act and U.S.

Explain the Basis for Appeal

Please detail the basis for Appeal here (be specific):

Constitution, Amendment 14. See Case No. D-101-CV-2011-1870, First Judicial District Court, Statement of appellate Issues, 9-30-2011, attached.

Signature and Verification

I hereby certify that the documents submitted for review and consideration by the City of Santa Fe have been prepared to meet the minimum standards outlined in the Land Development Code, Chapter 14 SFCC 2001. Failure to meet these standards may result in the rejection or postponement of my application. I also certify that I have met with the City's Current Planning staff to verify that the attached proposal is in compliance with the City's zoning requirements.

Appellant Signature: Mary E. Layne Date: 12/17/14

Agent Signature: _____ Date: _____

State of New Mexico)
) ss.
 County of Santa Fe)

I/We MARY E. LAYNE, being first duly sworn, depose and say: I/We have read the foregoing appeal petition and know the contents thereof and that the same are true to my/our own knowledge.

Petitioner/s:

Mary E. Layne
Signature

Signature

MARY E LAYNE
Print Name

Print Name

Subscribed and sworn to before me this 17th day of December, 2014.

[Signature]
NOTARY PUBLIC

My commission expires:
April 21, 2016



LUD Use Only

Time Filed: 2:15 PM
 Fee paid: \$ 100.00
 Receipt attached:

(date stamp)

RECEIVED
[Signature]

**VERIFIED APPEAL
 PETITION**

****Two originals of this form must be filed. The Land Use Department Director or his/her designee will enter the date and time of receipt and initial both originals. See Section 14-3.17(D) SFCC 2001 for the procedure.****

Appellant Information

Name: LAYNE MARY E
Last First M.I.

Address: 132 Romero Street #13
Street Address Suite/Unit #

Santa Fe NM 87501
City State ZIP Code

Phone: (505) 660-3540 E-mail Address: MARY@MARY-LAYNE.COM

Additional Appellant Names: _____

Correspondence Directed to: Appellant Agent Both

Agent Authorization (if applicable)

I/We: _____

authorize _____ to act as my/our agent to execute this application.

Signed: _____ Date: _____

Signed: _____ Date: _____

Subject of Appeal

Project Name: Remove + install 12 antennas

Applicant or Owner Name: Owner: St. John's Methodist Church Applicant: New
Location of Subject Site: 1200 Old Pecos Trail Cingular PCS, LLC,
Case Number: Permit No. 14-2503 d/b/a AT&T

Permit Number (if applicable): _____

Final Action Appealed:

Issuance of Building Permit Other Final Determination of LUD Director

Final Action of Board or Commission (specify): Planning Commission Board of Adjustment BCD-DRC HDRB

Basis of Standing (see Section 14-3.17(B) SFCC 2001):
§ 14-3.17(B)(3) and (5)

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Explain the Basis for Appeal

Please detail the basis for Appeal here (be specific):

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State of New Mexico)
) ss.
 County of Santa Fe)

I/We MARY E. LAYNE, being first duly sworn, depose and say: I/We have read the foregoing appeal petition and know the contents thereof and that the same are true to my/our own knowledge.

Petitioner/s:

Mary E. Layne
Signature

Signature

MARY E. LAYNE
Print Name

Print Name

Subscribed and sworn to before me this 17th day of December, 2014.

Charles J. Proctor
 NOTARY PUBLIC
 My commission expires:
April 21, 2016



LUD Use Only

Time Filed: 2:15 PM
 Fee paid: \$ 100.00
 Receipt attached:

(date stamp)

RECEIVED
Garrett

**VERIFIED APPEAL
 PETITION**

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Appellant Information

Name: Cellular Phone Task Force

Address: P.O. Box 6216
Santa Fe, NM 87502

Phone: (505) 471-0129 E-mail Address: info@cellphonetaskforce.org

Additional Appellant Names: Arthur Firstenberg, President

Correspondence Directed to: Appellant Agent Both

Agent Authorization (if applicable)

I/We: _____

authorize _____ to act as my/our agent to execute this application.

Signed: _____ Date: _____

Signed: _____ Date: _____

Subject of Appeal

Project Name: Remove + install 12 antennas

Applicant or Owner Name: Owner: St. John's Methodist Church Applicant: New Cingular PCS, LLC, d/b/a AT&T

Location of Subject Site: 1200 Old Pecos Trail

Case Number: Permit No. 14-2503 (Permit Number) (if applicable): _____

Final Action Appealed:

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Appellant Signature: Arthur Firstenberg Date: 12-17-2014
 Agent Signature: _____ Date: _____

State of New Mexico)
) ss.
 County of Santa Fe)

I/We Arthur Firstenberg, being first duly sworn, depose and say: I/We have read the foregoing appeal petition and know the contents thereof and that the same are true to my/our own knowledge.

Petitioner/s:

Arthur Firstenberg _____
 Signature Signature

Arthur Firstenberg _____
 Print Name Print Name

Subscribed and sworn to before me this 17th day of December, 2014.

[Signature]
 NOTARY PUBLIC

My commission expires:
April 21, 2016



LUD Use Only

Time Filed: 2:15 PM
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(date stamp)

RECEIVED
Quinn

**VERIFIED APPEAL
 PETITION**

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Appellant Information

Name: Ernstberg Arthur M.I. _____
Last First

Address: P.O. Box 6216 Suite/Unit # _____
Street Address

Santa Fe, NM 87502 State ZIP Code _____
City

Phone: (505) 471-0129 E-mail Address: bearstar@fastmail.fm

Additional Appellant Names: _____

Correspondence Directed to: Appellant Agent Both

Agent Authorization (if applicable)

I/We: _____
 authorize _____ to act as my/our agent to execute this application.

Signed: _____ Date: _____

Signed: _____ Date: _____

Subject of Appeal

Project Name: Remove + install 12 antennas

Applicant or Owner Name: Owner: St. John's Methodist Church Applicant: New
Cingular PCS, LLC,
d/b/a AT&T

Location of Subject Site: 1200 Old Pecos Trail

Case Number: Permit No. 14-2503 Permit Number (if applicable): _____

Final Action Appealed:

Issuance of Building Permit Other Final Determination of LUD Director

Final Action of Board or Commission (specify): Planning Commission Board of Adjustment BCD-DRC HDRB

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Appellant Signature: Arthur Firstenberg Date: 12-17-2011

Agent Signature: _____ Date: _____

State of New Mexico)
) ss.
County of Santa Fe)

I/We Arthur Firstenberg, being first duly sworn, depose and say: I/We have read the foregoing appeal petition and know the contents thereof and that the same are true to my/our own knowledge.

Petitioner/s:

Arthur Firstenberg
Signature

Signature

Arthur Firstenberg
Print Name

Print Name

Subscribed and sworn to before me this 17th day of December, 2011.

[Signature]
NOTARY PUBLIC

My commission expires:
April 24, 2016

CITY OF SANTA FE, NEW MEXICO
P.O. BOX 909
SANTA FE, NEW MEXICO 87504-0909

* * * * * B U I L D I N G P E R M I T * * * * *

Application Number 14-00002503 Date 12/02/14
Application pin number 481993
Property Address 1200 OLD PECOS TRL
Application type description TELECOMMUNICATION TOWER
Subdivision Name
Property Zoning RESIDENTIAL 1DU
Application valuation 50000

Owner

Contractor

ST. JOHNS METHODIST CHURCH
VERIFY OWNER ADDRESS AND ZIP
SANTA FE NM 87501

NEXIUS FUSION INC
1301CENTRALEXPRESSWAY STE 200
ALLEN TX 75013
(730) 650-7777

--- Structure Information 000 000 CELL TOWER ANTENNAS
Construction Type TYPE V-B
Occupancy Type UTILITY/MISCELLANEOUS
Flood Zone UPDATE

Permit BUILDING PERMIT COMMERCIAL

Additional desc
Phone Access Code 1169341
Permit pin number 1169341
Permit Fee 684.25 Plan Check Fee 483.19
Issue Date 12/02/14 Valuation 50000
Expiration Date 11/29/16

Special Notes and Comments

I, THE OWNER OR AGENT FOR THE OWNER HAVE
RECEIVED THE FOLLOWING REVIEW SHEETS. I
UNDERSTAND I AM TO COMPLY WITH ALL
CONDITIONS INDICATED ON THE REVIEW
SHEETS. INITIALS



For permits issued AFTER 08/01/2009, you MUST use VIPS
for scheduling inspections! Call in by 3:00 PM for a next-
day inspection (based on availability) 955-6110

APPROVED BY [Signature] DATE 12/02/14
APPLICANT [Signature] DATE 12/2/14

By my signature above I hereby agree to abide with all the laws of the City of Santa Fe as well as with all the conditions stated above. I further state that I understand that this is not a permit to construct anything in violation of the codes adopted by the State of New Mexico. Further, I understand that this permit may be appealed within fifteen (15) days of its issuance (the "appeal period") pursuant to 14-3.17 SFCC (1987) and in the event an appeal is upheld this permit may be revoked. I hereby agree that any grading, building, alteration, repairing or any other construction done pursuant to this permit during this appeal period is done at my own risk and without reliance on the issuance of this permit. I also agree that in the event an appeal is upheld and this permit is revoked I may be required to remove any building, grading, altering, repairing or any other construction done during the appeal period. I hereby certify that I have read the foregoing and understand the same and by my signature assent to the terms stated herein.

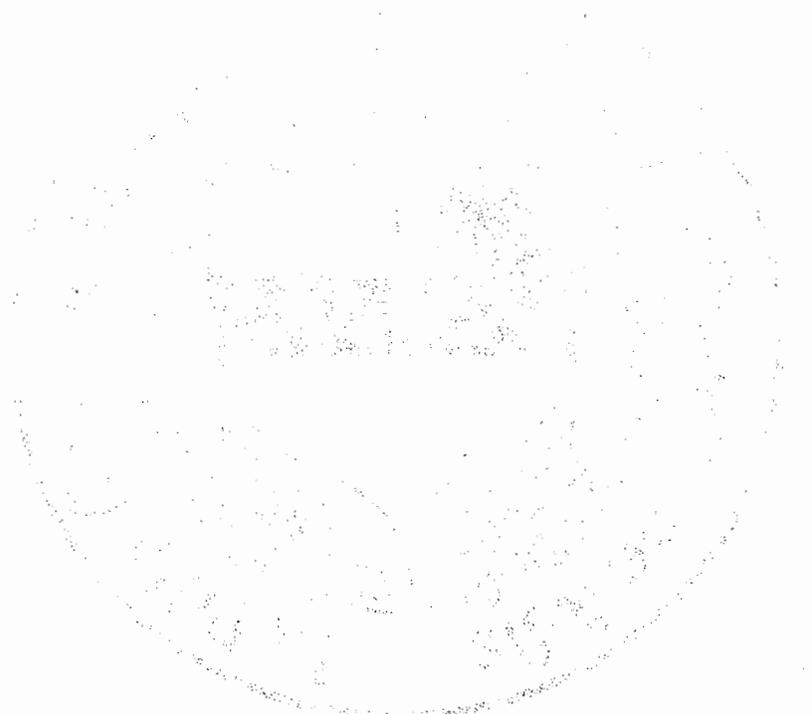
CITY OF SANTA FE, NEW MEXICO
P.O. BOX 909
SANTA FE, NEW MEXICO 87504-0909

* * * * * B U I L D I N G P E R M I T * * * * *

Application Number 14-00002503 Page 2
Application pin number 481993 Date 12/02/14

Other Fees ARCHEOLOGICAL FEE 10.00

Fee summary	Charged	Paid	Credited	Due
Permit Fee Total	684.25	684.25	.00	.00
Plan Check Total	483.19	483.19	.00	.00
Other Fee Total	10.00	10.00	.00	.00
Grand Total	1177.44	1177.44	.00	.00



For permits issued AFTER 08/01/2009, you MUST use VIPS
for scheduling inspections! Call in by 3:00 PM for a next-
day inspection (based on availability). 955-6110

APPROVED BY _____ DATE _____
APPLICANT _____ DATE _____

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CITY OF SANTA FE, NEW MEXICO
P.O. BOX 909
SANTA FE, NEW MEXICO 87504-0909

* * * * * B U I L D I N G P E R M I T * * * * *

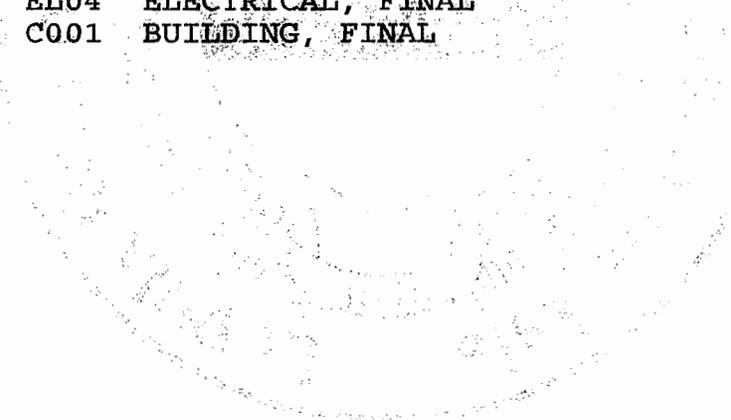
Application Number 14-00002503 Page 3
Property Address 1200 OLD PECOS TRL Date 12/02/14
Application description TELECOMMUNICATION TOWER
Subdivision Name
Property Zoning RESIDENTIAL 1DU

Permit BUILDING PERMIT COMMERCIAL

Additional desc
Phone Access Code 1169341
Permit pin number 1169341

Required Inspections

Seq	Phone Insp#	Insp Code	Description	Initials	Date
10	101	F001	FOOTING	_____	____/____/____
10	103	F007	FOUNDATION	_____	____/____/____
10	402	EL02	ELECTRICAL, ROUGH	_____	____/____/____
10	403	EL03	ELECTRICAL, PRE-FINAL	_____	____/____/____
10	499	EL04	ELECTRICAL, FINAL	_____	____/____/____
1000	199	C001	BUILDING, FINAL	_____	____/____/____



By my signature above I hereby agree to abide with all the laws of the City of Santa Fe as well as with all the conditions stated above. I further state that I understand that this is not a permit to construct anything in violation of the codes adopted by the State of New Mexico. Further, I understand that this permit may be appealed within fifteen (15) days of its issuance (the "appeal period") pursuant to 14-3.17 SFCC (1987) and in the event an appeal is upheld this permit may be revoked. I hereby agree that any grading, building, alteration, repairing or any other construction done pursuant to this permit during this appeal period is done at my own risk and without reliance on the issuance of this permit. I also agree that in the event an appeal is upheld and this permit is revoked I may be required to remove any building, grading, altering, repairing or any other construction done during the appeal period. I hereby certify that I have read the foregoing and understand the same and by my signature assent to the terms stated herein.

City of Santa Fe
Historic Design Review Board
Findings of Fact and Conclusions of Law

Case #H-11-004A

Address – 1200 Old Pecos Trail

Owner's Name – St. John's Methodist Church

Applicant's Name – City of Santa Fe

THIS MATTER came before the Historic Design Review Board (Board) for hearing on February 22, 2011 at the request of the City of Santa Fe (City) pursuant to Santa Fe City Code (SFCC) Section 14-5.2(C)(2)(c)(iii).

1200 Old Pecos Trail, known as the St. John's Methodist Church (the Church), is located within the Historic Review Historic District (District) on the northwest corner of the intersection of Old Pecos Trail and Cordova Road.

After conducting a public hearing and having heard from staff and all interested persons, the Board hereby FINDS, as follows:

FINDINGS OF FACT

1. The Board heard reports from staff and received testimony and evidence from the members of the public interested in the matter.
2. Pursuant to SFCC Section 14-5.2(C)(2)(b) the Board is authorized to designate a status for a structure with no status designated based upon an evaluation of data provided through survey or other relevant sources of information and the definitions of "significant", "contributing", or "noncontributing".
3. Pursuant to SFCC Section 14-5.2(C)(2)(c)(iii) the Board may review the status designation in response to a request initiated by the City after notification to the property owner.
4. Prior to the hearing on this matter the Church had no designated status.
5. SFCC Section 14-5.2(C)(2)(d) sets out notice requirements for the Board's review of status.
6. Board staff and the City complied with the notice requirements of SFCC Section 14-5.2(C)(2)(d).
7. Board staff provided the Board with a written report (Staff Report) recommending that the Board designate the Church as "contributing" based upon staff's evaluation of available data relating to the Church and the definition of "contributing" set out in SFCC Section 14-12.1.
8. A "contributing structure" is defined in SFCC 14-12.1 as "[a] structure, located in an Historic District, approximately 50 years old or older that helps to establish and maintain the character of the Historic District...[which] [a]lthough not unique in itself, ...adds to the historic associations and/or historic architectural design qualities for which a District is significant [and which...] may have had minor alterations, [but] its integrity remains."
9. The Church is comprised of the original section constructed in 1952 (the Original Structure) and two non-historic additions (collectively, the Additions), the first constructed in 1964 and the second constructed in 1999.
10. Together the Additions represent more than 50% of the overall mass of the Church.



Case #H-11-004A
1200 Old Pecos Trail – St. John’s Methodist Church

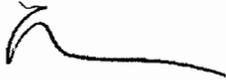
11. The Church does not meet the definition of “contributing” set out in SFCC Section 14-12.1 because more than 50% of the structure is less than 50 years old.

CONCLUSIONS OF LAW

Under the circumstances and given the evidence and testimony submitted during the hearing, the Board CONCLUDES and ORDERS as follows:

That the Church be designated “non-contributing” because the majority of the structure is not of historic age.

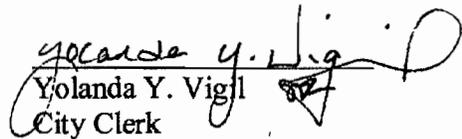
IT IS SO ORDERED ON THIS 8th DAY OF MARCH 2011 BY THE HISTORIC DESIGN REVIEW BOARD OF THE CITY OF SANTA FE.



Sharon Woods
Chair

3.8.11
Date:

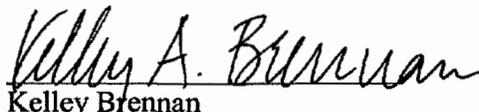
FILED



Yolanda Y. Vigil
City Clerk

3/9/11
Date:

APPROVED AS TO FORM



Kelley Brennan
Assistant City Attorney

3/4/11
Date:

City of Santa Fe
Historic Design Review Board
Findings of Fact and Conclusions of Law

Case #H-11-004B

Address: 1200 Old Pecos Trail
Owner's Name: St. John's Methodist Church
Applicant's Name: Peter Dwyer, Esq. for Basham & Basham PC
as the agent for New Cingular PCS, LLC, d/b/a AT&T

THIS MATTER came before the Historic Design Review Board (Board) for hearing on February 22, 2011 upon the application (Application) of Peter Dwyer, Esq. for Basham & Basham PC as the agent for New Cingular PCS, LLC, d/b/a AT&T (Applicant).

1200 Old Pecos Trail, known as the St. John's Methodist Church (the Church), is located within the Historic Review Historic District (District) on the northwest corner of the intersection of Old Pecos Trail and Cordova Road. It is non-contributing to the District.

The Applicant proposes to increase the height and mass of an existing chimney on the Church's southwest façade in order to screen a cellular antenna and related telecommunications facilities while permitting its continued use as a chimney venting a steam boiler and to construct a free-standing 500 square foot stuccoed mechanical enclosure up to 8' high (collectively, the Project). The Applicant requests a waiver pursuant to Santa Fe City Code (SFCC) Section 14-6.2(E)(10)(a) of the 16'4" maximum allowable height in order to extend the existing 44' high chimney to 53'.

After conducting a public hearing and having heard from staff, the Applicant and all interested persons, the Board hereby FINDS, as follows:

FINDINGS OF FACT

1. The Board heard reports from staff and received testimony and evidence from the Applicant and from members of the public interested in the matter.
2. Pursuant to SFCC Section 14-2.7(A)(1) the Board has authority to review and approve or deny all applications for new construction and exterior alteration of structures in the Historic Districts in accordance with the standards set forth in SFCC Section 14.
3. The standards set forth in SFCC Section 14 include the standards and requirements set forth in SFCC Section 14-6.2(E), entitled "Telecommunications Facilities" (the Telecommunications Ordinance).
4. Pursuant to SFCC Section 14-5.2(C)(3)(a) and (b) the Board is authorized to review all applications for new construction and alteration in the Historic Districts based on the standards set forth in SFCC Section 14-5.2 and to condition its approval on the condition that changes relating to exterior appearance recommended by the Board be made in the proposed work.



5. SFCC Section 14-5.2(C)(4) requires that all development located within the District comply with all applicable general development standards set forth in SFCC Section 14-5.2(D), as well as the specific development standards set forth in SFCC Section 14-5.2(F) (collectively, the Development Standards).
6. The Church is located in the District and is designated as non-contributing.
7. Pursuant to SFCC Section 14-6.2(E)(6)(a) antennas requiring approval of a Special Exception from the Board of Adjustment (BOA) may require review and approval by the Board as detailed in the Telecommunications Ordinance.
8. Pursuant to SFCC Section 14-6.2(E)(3)(ix)A, no Special Exception may be granted by the BOA in any Historic District unless the applicant can conclusively demonstrate to the Board that failure to grant the Special Exception would prohibit or effectively prohibit the applicant from providing services in a portion of the City; that all alternatives to location in the Historic District have been considered; and that the conditions of SFCC Section 14-5.2(C)(5)(c)(i) – (iii) and (v) – (vi) have been met.
9. SFCC Section 14-6.2(E)(10)(a) provides that the Board may grant a waiver of SFCC Section 14-5.2 requirements only if the Board makes certain written findings and SFCC Section 14-6.2(E)(10)(b) sets out factors to be considered in granting such a waiver (the Waiver Factors).
10. SFCC Section 14-6.2(E)(3)(e)(i) – (iv) sets out certain aesthetic requirements to be applied by the Board in its review of the Application (the Aesthetic Requirements).
11. Pursuant to SFCC Section 14-6.2(E)(3)(ix)B the BOA and the Board are required to conduct concurrent reviews of applications submitted under the Telecommunications Ordinance.
12. The BOA reviewed the Applicant’s Special Exception request for the Project at a public hearing on January 19, 2011 and denied that application.
13. Notwithstanding the BOA’s denial of the Applicant’s Special Exception request for the Project, the Board is required under SFCC Section 14-6.2(E)(3)(ix)B to hear the Application concurrently.
14. The Board has considered the information contained in the Staff Report and the testimony of the Applicant, viewed from the perspective of the Board’s typical jurisdiction under SFCC Section 14-5.2, and finds in accordance with the requirements of SFCC Section 14-6.2(E)(6)(a)(ix)A.1 and 2, that (a) the Board’s failure to approve the Project would prohibit or effectively prohibit the Applicant from providing services in the Historic Districts, in that there are limited existing sites with the elevation necessary to accommodate antennas, height limits and other aesthetic standards in the Historic Districts, including streetscape standards, mitigate against the construction of new towers and antennas, and the Applicant cannot provide services to identified areas in the Historic Districts; and (b) the Applicant has considered alternatives to the location of the Project in the District, but determined that it would not be possible to provide coverage in the north and east sides of the City if all telecommunications facilities were located outside the Historic Districts.
15. The Board has considered the Applicant’s request for a waiver of SFCC Section 14-5.2(D) height requirements in light of the Waiver Factors, viewed from the perspective of the Board’s typical jurisdiction under SFCC Section 14-5.2 and based upon the information contained in the Staff Report and the testimony of the Applicant and others, finds in accordance with the requirements of SFCC Section 14-6.2(E)(6)(a)(ix)A.3, that granting the waiver (a) does not damage the character of the streetscape in that the Application complies

- with the Development Standards and the Aesthetic Requirements by integrating the Project into the Church's existing elements in order to screen the antenna; (b) permits the Applicant to provide services to members of the public in the Historic Districts without damaging the character of the streetscape; (c) strengthens the heterogeneous character of the City by providing lease revenue to the Church to support its operations; (d) is due to special conditions and circumstances which are not the result of the actions of the Applicant, in that the geography of the north and east sections of the City and the Historic Districts overlay, together limit opportunities for the placement of antennas and towers with sufficient height to provide effective services; and (e) will permit the integration of the antenna into the Church's existing elements in order to screen the antenna, providing the least negative impact with respect to the purpose of SFCC Section 14-5.2 as set forth in SFCC Section 14-5.2(A)(1).
16. The Board has considered the Applicant's request for a waiver of SFCC Section 14-5.2(D) height requirements and finds in accordance with the requirements of SFCC Section 14-6.2(E)(10)(a), that granting the waiver (a) is in the best interest of the community as a whole, in that the visual impact of the Project is minimal and that it will permit the Applicant to provide services in an area of the City that has gaps in coverage; (b) will expedite the approval of an antenna, in that an antenna cannot be constructed in the District without Board approval; (c) ameliorates the adverse impact of antenna and tower proliferation by integrating the antenna into the Church's existing elements in order to screen the antenna, minimizing the visual impact of the Project; (d) will not jeopardize the public health, safety and welfare to the extent that the Board has jurisdiction to make such a determination and to the extent that the Project complies with the Design Standards and the Aesthetic Requirements; and (e) will serve the purposes of the Telecommunications Ordinance by ensuring that the height of towers in the City are to the maximum extent feasible integrated into the City's terrain and architecture and by minimizing adverse impact through careful design, siting, landscape screening and innovative camouflaging techniques.
17. The Project complies with the Design Standards and the Aesthetic Requirements and with all other applicable requirements under the Telecommunications Ordinance that are within the jurisdiction of the Board.

CONCLUSIONS OF LAW

Under the circumstances and given the evidence and testimony submitted during the hearing, the Board CONCLUDES and ORDERS as follows:

1. The Board has authority under SFCC Section 14-5.2 and under the Telecommunications Ordinance to review and approve the Project, including granting the Applicant's request for a waiver from SFCC Section 14-5.2(D) height limits.
2. The Project complies with the Design Standards and the Aesthetic Requirements and with all other applicable requirements under the Telecommunications Ordinance that are within the jurisdiction of the Board, including those requirements set forth in SFCC Sections 14-6.2(E)(10)(a) and (b) and 14-6.2(E)(3)(ix)A and B.
4. That Case #H-11-004B be approved, subject to the conditions that (a) the coaxial cables shown running diagonally across the roof and down the Church's southwest façade be

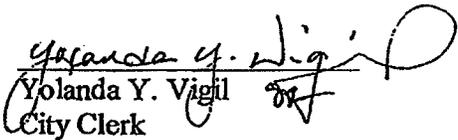
mounted to achieve the lowest visibility possible and brought to Board staff for approval and
(b) that the mechanical enclosure be stuccoed, not painted.

IT IS SO ORDERED ON THIS 8th DAY OF MARCH 2011 BY THE HISTORIC
DESIGN REVIEW BOARD OF THE CITY OF SANTA FE.


Sharon Woods
Chair

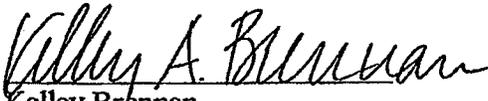
3.8.11
Date:

FILED


Yolanda Y. Vigil
City Clerk

3/9/11
Date:

APPROVED AS TO FORM


Kelley Brennan
Assistant City Attorney

3/7/11
Date: