

**Official Notice of Decision  
City of Albuquerque  
City Council**

**September 4, 2008**

**AC-08-15 Vogel Campbell & Bleuher, P.C., Agent for T-Mobile USA, Inc. Appeals the Planning Director's Decision to Deny a Request for Administrative Approval of a 65 foot light pole Wireless Telecommunications Facility (WTF) at 6521 Paradise Blvd. NW (Ventana Square Shopping Center), Zoned "SU-1 for C-2 Restricted Uses as Described in File 00110-00408"**

**Decision**


On September 3, 2008, by a vote of 9 FOR and 0 AGAINST, the City Council voted to accept the findings and recommendation of the Land Use Hearing Officer as to the issue of whether the proposed Wireless Telecommunications Facility violates the condition imposed by the Environmental Planning Commission to the site development plan for subdivision for the Ventana Square shopping center, but take no position on any other issue recommended by the Land Use Hearing Officer.

**Attachments**

1. Land Use Hearing Officer's Recommendation
2. Action Summary from the September 3, 2008 City Council meeting

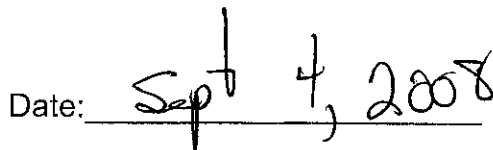
**Appeal of Final Decision**

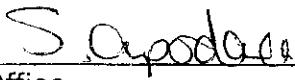
A person aggrieved by this decision may appeal the decision to the Second Judicial District Court by filing in the Court a notice of appeal within thirty (30) days from the date this decision is filed with the City Clerk.



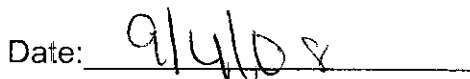
Brad Winter, President  
City Council

Date:



Received by:   
City Clerk's Office

Date:



## LAND USE HEARING OFFICER'S RECOMMENDATION

APPEAL NO. AC-08-015,  
Project No. 1002346;

T-MOBILE WEST CORPORATION, Appellant,

CITY OF ALBUQUERQUE PLANNING DEPARTMENT, Party Opponent.

### I. PROCEDURAL BACKGROUND

This is another appeal concerning the City Planning Department Staff's interpretation of the City's Wireless Telecommunications Regulations. Appellant, T-Mobile West Corporation (T-Mobile) submitted to the City an application to place a concealed wireless telecommunications facility in the Ventura Shopping Center on a parcel of land zoned SU-1 for C-2. Appellant's application was presented to the City Planning Department on November 20, 2007.

Appellant's application was denied in a letter opinion from a City Planner on June 13, 2008. On July 7, 2008, Appellant filed a timely appeal of the denial of the application. The appeal hearing was held on August 11, 2008. Three exhibits, submitted on behalf of Appellant, were accepted as relevant new evidence and are included in the record of the appeal. The photograph exhibits depict three wireless telecommunications facilities (WTF) that were approved by the City and are similar in design and appearance with the WTF in this appeal.

### II. ISSUES PRESENTED BY APPELLANTS

The Appellant's appeal presents several issues. The substantive general issue in this matter, however, concerns the question: whether, or not, a concealed WTF designed as a parking lot light pole is a free standing wireless telecommunications facility. Another significant issue has to do with the meaning of the term "architecturally integrated." In addition, the question has been raised of whether, or not, the 2008 Regulations can be applied to the 2007 application.

### III. STANDARD OF REVIEW

A review of an appeal is a whole record review to determine if there is error:

1. In applying adopted city plans, policies, and ordinances in arriving at the decision;
2. In the appealed action or decision, including its stated facts;
3. In acting arbitrary, capriciously or manifestly abusive of discretion.

The decision and record must be supported by a preponderance of the evidence to be upheld.

1 The Land Use Hearing Officer may not substitute his judgment for that of the reviewing Body  
2 below. The Land Use Hearing Officer's opinion is advisory to the City Council. The Land Use  
3 Hearing Officer may recommend that the Council "grant, in whole or in part, an appeal, deny, in  
4 whole or in part, an appeal, or remand an appeal for reconsideration if the remand is necessary to  
5 clarify or supplement the record, or if the remand would expeditiously dispose of the matter."<sup>1</sup>  
6  
7  
8

#### 9 IV. DISCUSSION

10  
11 I recommend that the City Council affirm the City Planner's denial of the Appellant's  
12 application. Notably, though, the City Planner denied the application on several grounds. After a  
13 careful review of each of the reasons for denial, I find that only one of the rationales for denial  
14 should be upheld.  
15

##### 16 17 **A. It was Not Unlawful for Planning Staff To Review The November, 2007** 18 **Application Using the January 2008 Version of the Wireless** 19 **Telecommunications Regulations.** 20

21 In a trilogy of previous appeals, the City Council considered three appeals concerning the  
22 issue as to whether, or not, the 2008 Wireless Telecommunications Regulations can be applied to  
23 review an application that was submitted to the Planning Department in 2007.<sup>2</sup> The City Council  
24 determined that the Planning Department can apply the 2008 Regulations to an application that was  
25 submitted months before the Regulations went into effect. This case, with regards to that issue,  
26 presents a similar question.  
27

28 Appellant herein asserts that the November, 2007 application should have been reviewed  
29 under the applicable rules on the books at that time.<sup>3</sup> Notwithstanding, the general rule in New  
30 Mexico, and the previous decisions on the subject from the City Council do not support Appellant's  
31 claims. In AC-08-12 through AC-08-14 it was held:  
32

33 "In New Mexico, the determination of whether, or not, new regulations, rules  
34 or ordinance will be applied retroactively, as the Planning Staff did in these  
35 matters, is analyzed under a "vested rights approach." That is, it is unlawful

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<sup>1</sup> See Rules of the Land Use Hearing Officer adopted by the City Council, February 18, 2004. Bill No. F/S OC-04-6.

<sup>2</sup> See AC-08-12, AC-08-13, and AC-08-14.

<sup>3</sup> The City Planning Staff reviewed Appellant's application using the amended Wireless Telecommunications Regulations that went into effect in January, 2008.

1 if the Planning Staff applied the 2008 regulations to Appellants' applications  
2 if Appellants obtained a vested right to have their applications reviewed under  
3 the regulations which existed at the time the applications were submitted to the  
4 City. There are two prongs that must be met for a vested right to exist. First  
5 there must be approval by the regulatory body, and secondly, there must be a  
6 substantial change in position in reliance thereon. Here, Appellants have not  
7 proven that they received any assurance to expect approval and there was no  
8 actual approval of the three applications. Nor have Appellants demonstrated  
9 that there was any substantial reliance or any change in position. Accordingly,  
10 Appellants have no vested right and are subject to the City's 2008 Regulations.  
11 As harsh as this may be it is "black letter law" in New Mexico."<sup>4</sup>  
12

13 This matter, like the previous appeals discussed above are similar in all respects regarding  
14 the question of which Rules apply. There is no evidence that Appellant has garnered a vested right  
15 in this matter. Thus, I find that the Planning Staff was free to apply the Regulations that took effect  
16 in January 2008 to the Appellant's November 2007 application.  
17  
18

#### 19 **B. Basis For City Denial**

20

21 The City Planner who reviewed the Appellant's application denied it essentially on three  
22 grounds. First, she denied it because she determined that the design of the WTF fit into the  
23 category of "free standing." A free-standing wireless telecommunications facility (FSWTF) must  
24 be set back from a residential property line by 100 feet. The proposed location of Appellant's WTF  
25 is only 85 feet from the nearest residential property line. Second, the application was denied because  
26 the City Planner determined that the WTF was not "architecturally integrated" on another structure.  
27 If the proposed WTF is not an "architecturally integrated" facility then it cannot be placed within 660  
28 feet of designated flood control arroyos that are also identified by the City as part of an existing or  
29 future trail system. It is stipulated that Appellant's proposed WTF is located approximately 145 feet  
30 from a designated flood control right-of-way that is also identified as a future trail. Third, the  
31 application was denied on the ground that the Environmental Planning Commission (EPC) set a  
32 condition on its approval of the Ventana Ranch Subdivision that prohibits FSWTF and requires that  
33 WTF antennae must be integrated into a building structure. It is undisputed that the proposed  
34 location of the subject WTF is in the Ventana Ranch Subdivision.  
35

36 Appellant, on the other hand claims that the proposed WTF is not a FSWTF because the  
37 antennae are designed to be mounted onto a "light standard" and replaces an approved placement  
38 of a parking lot light pole. The definition of a FSWTF in the City Zoning Code excludes from the  
39 definition a "wireless telecommunications antenna which is mounted on a....light standard..."  
40 Appellant also claims that, not only is the WTF a concealed WTF but its antennae are also  
41 "camouflaged into the structure on which it is located." Thus, by definition, it is an architecturally

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<sup>4</sup> See AC-08-12 to 14.

1 integrated wireless telecommunications facility (AIWTF).  
2

3 **1. A Wireless Telecommunications Antenna designed into a Parking Light**  
4 **Pole Is Not a Free Standing Wireless Telecommunications Facility**  
5

6 With regard to her interpretation of a FSWTF, I find that the City Planner erred in applying  
7 the applicable law to the Appellant's application. After a careful review of the definition of a  
8 FSWTF in the Zoning Code, I find that the subject WTF fits squarely within one of three  
9 exceptions, and is, therefore, excluded from the definition of a FSWTF. The applicable definition  
10 states in full:

11  
12 "Free-Standing Wireless Telecommunications Facility. A wireless  
13 telecommunications facility that consists of a stand-alone support structure,  
14 antennas, and associated equipment. The support structure may be a wooden  
15 pole, steel monopole, lattice tower, or similar structure. **This does not include**  
16 **a wireless telecommunication antenna which is mounted on a public utility**  
17 **structure or light standard, or a Community Identity Feature.**" (Emphasis  
18 added).  
19

20 Zoning Code, § 14-16-1-5, Definitions.  
21

22 Accordingly, a FSWTF is a facility with wireless telecommunications antennae that are  
23 supported on various types of support structures such as a "wooden pole, steel monopole, lattice tower  
24 or similar structure." Clearly, Appellant's application includes such a structure. That is, it includes  
25 antennae that are supported on a steel monopole. There is no dispute on this fact.  
26

27 However, the steel monopole is designed as a light standard pole and the telecommunications  
28 antennae are mounted and concealed onto the light standard pole. Moreover, the evidence reveals  
29 that Appellant's light standard pole on which the antennae are to be placed, will actually replace an  
30 approved parking lot light pole that was approved as part of a building permit for the Ventura  
31 Shopping Center. There is also no dispute about this fact.  
32

33 As the definition of a FSWTF clearly enunciates in the Zoning Code, a wireless  
34 telecommunications antenna that is mounted on a light standard is not included under the definition  
35 of a FSWTF. Although it can be argued that the exclusion only allows antennae to be mounted on  
36 already existing light standard poles. There is no requirement in the Zoning Code or in the WTF  
37 Regulations of this requirement. Furthermore, it is inappropriate to construe the Code to include  
38 such a condition when there is none. Similarly, although the height of Appellant's proposed light  
39 pole is 65 feet—much taller than a customary parking lot light pole, the City Planner did not raise this  
40 as an issue in this appeal and there is no requirement in the Code that a wireless telecommunications  
41 pole stand at a height less than 65 feet.  
42  
43  
44

1                                   2.     **Appellant's WTF is An Architecturally Integrated Facility**  
2

3             As stated above, the City Planner also denied the application on the premise that the design  
4 of the WTF is not architecturally integrated into the structure on which it is located. The definition  
5 of an architecturally integrated WTF is a term of art. The Zoning Code includes two classes of an  
6 architecturally integrated WTF.  
7

8             First, an architecturally integrated WTF is:  
9

10                   “A wireless telecommunications facility which is **camouflaged into the**  
11 **structure on which it is located** by means of color, texturing, architectural  
12 treatment, massing, size, design, and/or shape. An architecturally integrated  
13 wireless telecommunications facility is a concealed facility.” (Emphasis  
14 added).  
15

16             Zoning Code, § 14-16-1-5, Definitions.  
17

18             The above definition of an architecturally integrated WTF was applied to Appellant's  
19 proposed light pole WTF and was the basis for denial. The City Planner reasoned that a WTF  
20 cannot be architecturally integrated into itself. That is, it must be integrated into another structure  
21 other than the light standard. I disagree.  
22

23             The shortcoming of this reasoning can be found in the definition itself. It is without any  
24 doubt that an architecturally integrated WTF is a concealed facility. The definition above makes this  
25 crystal clear. The record establishes that the subject light pole design WTF is a concealed facility.  
26 In her letter of denial, dated June 13, 2008, Senior City Staff Planner, Lehner, specifically found that  
27 “[t]he proposed light pole WTF is considered a **concealed design** because the antennas would be  
28 hidden inside of a canister.”<sup>5</sup> (emphasis added). Therefore, as a concealed facility, it is by definition  
29 also an architecturally integrated facility.  
30

31             There is additional support for this logical conclusion in the Zoning Code's definition of a  
32 concealed WTF. It states, a concealed WTF is:  
33

34                   “A wireless telecommunications facility which is architecturally integrated  
35 **with** existing buildings, structures, and landscaping, including height, color,  
36 style, massing, placement, design, and shape, and which does not stand out  
37 as a wireless telecommunications facility when viewed with the naked eye.”  
38 (Emphasis added).  
39

40             Zoning Code, § 14-16-1-5, Definitions.

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<sup>5</sup> See Letter from Senior Staff Planner Catalina Lehner, Dated June 13, 2008, Finding No. 2, Page 13 of the record.

1  
2 In summary, there are two types of architectural integration. The first can be found in the  
3 definition of an architecturally integrated WTF. This type requires that a concealed WTF be  
4 integrated **into** the structure on which it is located. The second type is a concealed WTF that is  
5 “architecturally integrated **with** existing buildings, structures, and landscaping.” This second type  
6 is found in the definition of a concealed WTF.  
7

8 Therefore, as a general rule, and for purposes of clarity, a WTF that is concealed is also  
9 architecturally integrated. Next, a WTF can be architecturally integrated into a structure with  
10 existing buildings, structures and landscaping.  
11

12 Finally, the record demonstrates that the light pole design is designed to be architecturally  
13 integrated with other light poles in the parking lot in which it will be placed. There is no evidence  
14 that it does not have similar qualities with other light poles in the proposed area. Nor was any  
15 argument made by the City Staff on this issue.  
16

17 Finally, there appears to be precedent for this design in the area. Although not determinative,  
18 the fact that the Planning Staff have approved similar WTFs weighs in favor of Appellant’s position.<sup>6</sup>  
19 Notably, the Planning Staff position that they believe the three approved light pole designed WTFs  
20 were mistakenly approved adds little to the analysis. There is no supporting evidence in the record  
21 of a mistake.  
22

23  
24 **3. The Proposed Light Pole WTF, If Approved Would Violate EPC**  
25 **Condition J.**  
26

27 The third ground for the denial of the application is valid. The City Planner denied  
28 Appellant’s proposal on the basis that the proposal would run afoul of a condition which was placed  
29 on development in the Ventana Ranch Subdivision. The EPC condition states “*No freestanding cell*  
30 *towers or antenna shall be permitted, antenna shall be integrated into the building architecture.*”<sup>7</sup>  
31

32 Clearly this condition is consistent with the definition of a concealed WTF. However,  
33 Appellant’s proposed light pole is not integrated into the building architecture. Rather, the only  
34 argument made during the appeal hearing on this issue is that the proposed WTF is integrated into  
35 the light pole which it is designed to simulate.  
36

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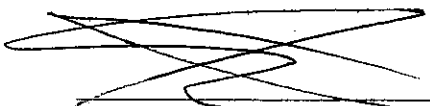
<sup>6</sup> As stated above, Appellant proffered proof of three similar light pole design light poles in the general area but not in the Ventana Ranch development. These exhibits are made part of the Record.

<sup>7</sup> See EPC Official Notice of Decision, Dated May 18, 2000, Condition to Zoning, letter J, pg.5, Page 63 of the Record.

1            Thus, the preponderance of the evidence supports the decision reached by the City Planner  
2 on this issue. And, because there is insufficient evidence that the light pole design is not  
3 architecturally integrated into building architecture, I find that Appellant has not satisfied his burden  
4 and the appeal should be denied on this basis.  
5  
6

7            **III. RECOMMENDATION**  
8

9            After reviewing each of the bases for denial by the City Staff Planer in this case, I find that  
10 only one should be upheld. The proposed WTF is concealed and is an architecturally integrated  
11 WTF. However, it is not of the class (type) of architecturally integrated WTF that the EPC  
12 specifically allowed in the Ventana Ranch Subdivision. Similarly the EPC excluded all other types  
13 of WTFs except those that are architecturally integrated into building architecture. Appellant's WTF  
14 is not designed to be integrated into any building architecture. The proposed WTF, therefore, would  
15 contravene an otherwise valid condition the EPC placed on development in the Ventana Ranch  
16 development. Accordingly, I respectfully recommend that this appeal be denied on the single basis  
17 stated herein and above.  
18  
19

20  
21   
22 \_\_\_\_\_  
23 Steven M. Chavez, Esq.  
24 Land Use Hearing Officer

August 22, 2008





# City of Albuquerque

## Action Summary

### City Council

Albuquerque/Bernalillo  
County  
Government Center  
One Civic Plaza  
Albuquerque, NM 87102

*Council President, Brad Winter, District 4*  
*Vice-President, Debbie O'Malley, District 2*

*Council Members: Ken Sanchez, District 1;*  
*Isaac Benton, District 3; Michael J. Cadigan, District 5;*  
*Rey Garduño, District 6; Sally Mayer, District 7;*  
*Trudy E. Jones, District 8; Don Harris, District 9*

*TTY Phone # - 1-800-659-8331*  
*For Weekly Schedule of Meetings Call: 768-4777*

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Wednesday, September 3, 2008

5:05 PM

Vincent E. Griego Chambers  
One Civic Plaza  
Albuquerque/Bernalillo County  
Government Center

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**O-08-24** A Franchise Ordinance Granting Time Warner Municipal Authority To Rent, Use and Occupy Rights-of-Way and Other Public Places In The City of Albuquerque, New Mexico, and Fixing The Terms and Conditions Thereof (Jones)

**Motion:** *Postpone, due back on October 6, 2008*

**Status:** Passed

**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris

**O-08-26** Amending Chapter 13, Article 4, Part 10, ROA 1994, Concerning Use of Public Rights-of-Way For Telecommunications Services (Sanchez, by request)

**Motion:** *Postpone, due back on October 6, 2008*

**Status:** Passed

**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris

**O-08-45** Authorizing The Issuance and Sale of \$34,725,000 City of Albuquerque, New Mexico Airport Revenue Bonds In Two Series For The Purpose of Financing The Cost of Refunding All of The City's Outstanding Airport Subordinate Lien Adjustable Tender Refunding Revenue Bonds, Series 1995 (Harris, by request)

**Motion:** *Postpone, due back on September 15, 2008*

**Status:** Passed

**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris

**EC-08-71** Revenue Report for Second Quarter Fiscal Year 2008

**Motion:** *Receipt Be Noted*

**Status:** Passed

**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris

- EC-08-73** Internal Affairs Quarterly Report October - December 2007  
**Motion:** *Receipt Be Noted*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- EC-08-80** FY08 Priority Objective Report: Public Safety Goal 2, Objective 13 - Mesa del Sol Staffing and Facilities, 2nd Qtr Report  
**Motion:** *Receipt Be Noted*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- EC-08-85** FY08 Priority Objective Report: Public Safety Goal 2, Objective 11 - Capture Program, 2nd Qtr Report  
**Motion:** *Receipt Be Noted*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- EC-08-101** Mid Year Status Report on FY/08 Objectives Adopted in R-07-221  
**Motion:** *Receipt Be Noted*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- EC-08-103** FY08 Priority Objective Report: Public Safety Goal 2, Objective 4 - Red Light Photo Enforcement, 2nd Qtr Report  
**Motion:** *Receipt Be Noted*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- EC-08-104** FY08 Department of Family and Community Services Goal 1, Priority Objective #6 Report Regarding the Albuquerque Teen Arts and Entertainment Center  
**Motion:** *Receipt Be Noted*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- EC-08-117** FY08 Goal 3, Annual Objective 8 - Reactivate GIS Task Force  
**Motion:** *Receipt Be Noted*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris

- EC-08-118** Status Report for Priority Objective 16, Goal 4 - Develop a Joint Use Agreement With APS For The Operation, Maintenance And Use of The New Highland High School Lighted Synthetic Turf Soccer Field, The CNM Soccer Complex, And The LBJ Middle School Athletic Fields  
**Motion:** *Receipt Be Noted*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- EC-08-120** Parks and Recreation Department FY08 Priority Objective Report Goal 1, Objective 11; Identify a Suitable Alternative Venue to Operate the Mondo Track  
**Motion:** *Receipt Be Noted*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- EC-08-121** FY 2008 Objective 13 (Public Infrastructure Goal #3) Construction of the 7 Bar Loop Park & Ride Facility  
**Motion:** *Receipt Be Noted*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- EC-08-122** FY 2008 Objective #17 (Public Infrastructure Goal #3) Expansion of Rapid Ride Service  
**Motion:** *Receipt Be Noted*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- EC-08-125** Internal Affairs Yearly Report January - December 2007  
**Motion:** *Receipt Be Noted*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- EC-08-131** 2007 Annual Report of the Police Oversight Commission  
**Motion:** *Receipt Be Noted*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- EC-08-132** 2008 First Quarter Report of the Police Oversight Commission  
**Motion:** *Receipt Be Noted*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris

- EC-08-133** FY08 Priority Objective Report: Public Safety Goal 2, Objective 3 - 1st Phase Albuquerque Police Department Technology Plan, 2nd Quarter Report  
**Motion:** *Receipt Be Noted*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- EC-08-134** Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2007  
**Motion:** *Receipt Be Noted*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- EC-08-135** Parks and Recreation Department FY08 Priority Objective Report Goal 5, Objective 9; Conduct a Study to Consider the Feasibility of Converting the Ladera Golf Course to a Target or Desert Golf Course  
**Motion:** *Receipt Be Noted*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- EC-08-140** Development of a Sustainability Plan for the Airport System, Update Report  
**Motion:** *Receipt Be Noted*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- EC-08-159** FY07 Objective 8 (Public Infrastructure Goal #3) Develop an Enhanced ADA Certification Process  
**Motion:** *Receipt Be Noted*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- EC-08-167** FY07 Objective 7 (Public Infrastructure Goal #3) Evaluate Future Paratransit Demand for The Next 2, 5 and 10 Year Periods  
**Motion:** *Receipt Be Noted*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- EC-08-175** Mayor's Recommendation of Gannett Fleming West, Inc. for Engineering Consultants for Bikeways and Trails Master Plan Update  
**Motion:** *Approve*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris

- EC-08-180** Contract With the New Mexico Symphony Orchestra  
**Motion:** *Withdrawn by Administration*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- EC-08-181** Priority Objective Progress Report on STEPS (Southeast Team for Entrepreneurial Success) Project  
**Motion:** *Receipt Be Noted*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- EC-08-182** Revenue Report for Third Quarter Fiscal Year 2008  
**Motion:** *Receipt Be Noted*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- EC-08-204** Mayor's Reappointment of Mr. Jerrold Widdison to the Open Space Advisory Board  
**Motion:** *Confirm*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- EC-08-206** Mayor's Reappointment of Ms. Kim Kloeppel Hensen to the Personnel Board  
**Motion:** *Confirm*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- EC-08-208** Mayor's Appointment of Ms. Sydney Leanne Farrell to the Library Advisory Board  
**Motion:** *Confirm*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- EC-08-211** Mayor's Appointment of Mr. William A. Richardson to the Transit Advisory Board  
**Motion:** *Confirm*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris

- EC-08-212** Mayor's Appointment of Mr. Gerald P. Chavez to the Transit Advisory Board  
**Motion:** *Confirm*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- EC-08-213** Mayor's Appointment of Ms. Jayne Frandsen to the Advisory Committee on Transit for the Mobility Impaired  
**Motion:** *Confirm*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- R-08-92** Approving The FY09 Audit Plan As Submitted By The Accountability In Government Oversight Committee (Mayer, by request)  
**Motion:** *Do Pass*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- R-08-101** Authorizing The Mayor To Execute a Contract Agreement With The New Mexico Department of Children, Youth and Families; Providing An Appropriation To The Department of Family And Community Services/Division of Child and Family Development, Temporary Assistance For Needy Families Program (TANF) (Garduño)  
**Motion:** *Do Pass*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- R-08-102** Authorizing The Mayor To Execute a Grant Agreement With The U.S. Department of Health and Human Services; Providing An Appropriation To The Department of Family and Community Services for the Early Head Start Program (O'Malley, by request)  
**Motion:** *Do Pass*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- R-08-103** Authorizing The Mayor To Execute a Contract Agreement With The New Mexico Department of Children, Youth and Families; Providing An Appropriation To The Department of Family and Community Services/Division of Child and Family Development, Pre-Kindergarten Program (Benton, by request)  
**Motion:** *Do Pass*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris

- R-08-104** Approving and Authorizing The Filing of a Grant Application For a Food Service Program For Children With The New Mexico Department of Children, Youth and Families; Providing An Appropriation To The Department of Family and Community Services, Division of Early Childhood and Family Development (Jones)
- Motion:** *Do Pass*
- Status:** Passed
- Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- R-08-110** Authorizing The Mayor To Execute a Contract Agreement With The New Mexico Department of Children, Youth and Families; Providing An Appropriation To The Department of Family and Community Services/Division of Child and Family Development, Teen Parent Residence Program (TPRP) (Sanchez)
- Motion:** *Do Pass*
- Status:** Passed
- Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- R-08-111** Approving and Authorizing The Filing of Grant Application For An FY08-09 Bulletproof Vest Partnership Grant From The United States Department of Justice, Office of Justice Programs; Providing For An Appropriation To The Police Department (Harris)
- Motion:** *Do Pass*
- Status:** Passed
- Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- R-08-124** Revising The Official List of City Council Meetings For November 2008 (Mayer)
- Motion:** *Do Pass*
- Status:** Passed
- Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- OC-08-9** Progress Report of the Impact Fee Advisory Committee
- Motion:** *Receipt Be Noted*
- Status:** Passed
- Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- AC-08-15** Vogel Campbell & Bleuher, P.C., Agent for T-Mobile USA, Inc. Appeals the Planning Director's Decision to Deny a Request for Administrative Approval of a 65 foot light pole Wireless Telecommunications Facility (WTF) at 6521 Paradise Blvd. NW (Ventana Square Shopping Center), Zoned "SU-1 for C-2 Restricted Uses as Described in File 00110-00408"
- Motion:** *To Accept the Land Use Hearing Officer Recommendation*
- Status:** Passed
- Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris

- AC-08-10** Vogel, Campbell & Bleuher, P.C., Agent for Church of Scientology, Appeals the Code Compliance Official's Declaratory Ruling Requiring Churches to Apply for a Conditional Use in the SU-3 Downtown 2010 Plan Area  
**Motion:** *Postpone, due back on September 15, 2008*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- R-08-113** Sector Development Plan Map Amendment 08EPC-40039, Amending The West Route 66 Sector Development Plan To Change The Zoning Designation From SU-1 For C-2 (10 Acres), O-1, and PRD 20 Du/Ac (7 Acres) To C-2 For Tracts 1A, 1B, 2A, 2B, 3A, 3B, and 6, V.E. Barrett Subdivision, Located In The Southwest Quadrant of The Unser Boulevard/Central Avenue Intersection, Containing Approximately 36 Acres (Sanchez, by request)  
**Motion:** *Do Pass*  
**Status:** Passed  
**Votes:** For: 8 - Council Members: Winter, O'Malley, Sanchez, Benton, Garduño, Mayer, Jones and Harris  
Against: 1 - Council Members: Cadigan
- OC-08-12** Appointment to the Board of Ethics and Campaign Practices  
**Motion:** *Confirm*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- EC-08-224** Mayor's Veto Message on Bill No. 0-08-38: Amending Section 3-2-14 ROA 1994, the Impasse Procedures of the City's Labor-Management Relations Ordinance to Provide for Impasse Resolution for Non-Economic Issues Through Arbitration Even if Both Parties Do Not Agree (O'Malley, Garduño)  
**Motion:** *Override*  
**Status:** Failed  
**Votes:** For: 5 - Council Members: O'Malley, Sanchez, Benton, Cadigan and Garduño  
Against: 4 - Council Members: Winter, Mayer, Jones and Harris
- EC-08-169** Recommendation of Award to "Develop, Design, and Operate Food and Beverage Concessions at the Albuquerque International Sunport"  
**Motion:** *Postpone, due back on September 15, 2008*  
**Status:** Passed  
**Votes:** For: 5 - Council Members: O'Malley, Benton, Cadigan, Garduño and Harris  
Against: 4 - Council Members: Winter, Sanchez, Mayer and Jones
- EC-08-189** Supplement to the ERP Design and Implementation Contract  
**Motion:** *Approve*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris



- EC-08-193** United States Geological Survey Joint Funding Agreement, July 2008 - June 2009  
**Motion:** *Approve*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- O-08-7** Amending Sections 13-3-1-2, 13-3-1-4, 13-3-1-6 and 13-3-1-8 ROA 1994, The Business Solicitations Ordinance; Amending Definitions; Requiring Permit And Bond; Include No Knock Provisions (Sanchez, by request)  
**Motion:** *Do Not Pass*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- O-08-41** Adopting a Uniform Administrative Code and Technical Codes Prescribing Minimum Standards Regulating The Construction, Alteration, Moving, Repair and Use and Occupancies of Buildings and Structures and Building Service Equipment and Installations (Benton, by request)  
**Motion:** *Do Pass*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- R-08-91** Directing The Administration To Establish A Small Business Assistance Center And To Conduct An Annual Small Business Survey For The City Of Albuquerque (Cadigan)  
**Motion:** *Postpone, due back on September 15, 2008*  
**Status:** Passed  
**Votes:** For: 8 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer and Jones  
Excused: 1 - Council Members: Harris
- R-08-105** Creating Storm Drainage Projects In The Capital Acquisition Fund 305; Adjusting Appropriations To Provide Funding For The Projects (Cadigan, Benton, O'Malley)  
**Motion:** *Do Pass as Amended*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- R-08-112** Amending The Adopted Capital Implementation Program of The City of Albuquerque By Approving New Projects, Supplementing Current Appropriations and Changing The Scope of Existing Projects (Cadigan, by request)  
**Motion:** *Do Pass as Amended*  
**Status:** Passed  
**Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris

- R-08-120** Declaring The Intent of The City Council of The City of Albuquerque To Consider For Adoption A Resolution Approving The Formation of Quorum At ABQ Uptown Tax Increment Development District; Approving, Subject To Further Proceedings of The City Council, A Tax Increment Development Plan; Authorizing and Directing The Posting, Mailing and Publication of A Notice of Public Meeting and Hearing To Be Held On October 6, 2008 To Consider For Adoption The Resolution Approving The Formation of The District (Mayer)
- Motion:** *Do Pass*
- Status:** Passed
- Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- R-08-121** Declaring The Intent of The City Council of The City of Albuquerque, New Mexico To Consider For Adoption A Resolution Approving The Formation of Winrock Town Center Tax Increment Development Districts 1 and 2; Approving, Subject To Further Proceedings of The City Council, A Tax Increment Development Plan For The Districts; Authorizing and Directing The Posting, Mailing and Publication of A Notice of Public Meeting and Hearing To Be Held On October 6, 2008 To Consider For Adoption The Resolution Approving The Formation of The Districts (Mayer)
- Motion:** *Do Pass*
- Status:** Passed
- Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- EC-08-119** FY08 Goal 3, Annual Objective 4 - Median Landscaping
- Motion:** *Receipt Be Noted*
- Status:** Passed
- Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- EC-08-123** FY 2008 Objective #18 (Public Infrastructure Goal #3) Establish at Least Two New Fixed Routes in Both the Northwest and Southwest Mesa Areas
- Motion:** *Postpone, due back on September 15, 2008*
- Status:** Passed
- Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris
- EC-08-176** Mayor's Recommendation of Morrow Reardon Wilkinson Miller, Ltd. For On-Call Prototype Median and Interstate Design and Construction Services
- Motion:** *Approve*
- Status:** Passed
- Votes:** For: 9 - Council Members: Winter, O'Malley, Sanchez, Benton, Cadigan, Garduño, Mayer, Jones and Harris



**CHAVEZ LAW FIRM, P.C.**

STEVEN M. CHAVEZ  
ATTORNEY AT LAW

August 22, 2008

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Albuquerque, NM 87102  
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RE: Albuquerque Appeal  
No. AC-08-15-08-14

Dear Parties:

Enclosed is a copy of my recommendation on the above referenced appeal matter. The Original has been forwarded to the City Council with the Exhibits, if any. Please call the City Council for information about when this matter will be reviewed by the Council. Thank you.

Cordially,

CHAVEZ LAW FIRM, P.C.

By:  for  
STEVEN M. CHAVEZ  
Land Use Hearing Officer

cc/ Office of the City Council

## LAND USE HEARING OFFICER'S RECOMMENDATION

APPEAL NO. AC-08-015,  
Project No. 1002346;

T-MOBILE WEST CORPORATION, Appellant,

CITY OF ALBUQUERQUE PLANNING DEPARTMENT, Party Opponent.

### I. PROCEDURAL BACKGROUND

This is another appeal concerning the City Planning Department Staff's interpretation of the City's Wireless Telecommunications Regulations. Appellant, T-Mobile West Corporation (T-Mobile) submitted to the City an application to place a concealed wireless telecommunications facility in the Ventura Shopping Center on a parcel of land zoned SU-1 for C-2. Appellant's application was presented to the City Planning Department on November 20, 2007.

Appellant's application was denied in a letter opinion from a City Planner on June 13, 2008. On July 7, 2008, Appellant filed a timely appeal of the denial of the application. The appeal hearing was held on August 11, 2008. Three exhibits, submitted on behalf of Appellant, were accepted as relevant new evidence and are included in the record of the appeal. The photograph exhibits depict three wireless telecommunications facilities (WTF) that were approved by the City and are similar in design and appearance with the WTF in this appeal.

### II. ISSUES PRESENTED BY APPELLANTS

The Appellant's appeal presents several issues. The substantive general issue in this matter, however, concerns the question: whether, or not, a concealed WTF designed as a parking lot light pole is a free standing wireless telecommunications facility. Another significant issue has to do with the meaning of the term "architecturally integrated." In addition, the question has been raised of whether, or not, the 2008 Regulations can be applied to the 2007 application.

### III. STANDARD OF REVIEW

A review of an appeal is a whole record review to determine if there is error:

1. In applying adopted city plans, policies, and ordinances in arriving at the decision;
2. In the appealed action or decision, including its stated facts;
3. In acting arbitrary, capriciously or manifestly abusive of discretion.