



June 26, 2019

Mr. Michael Clara
974 South 1400 West
Salt Lake City, Utah 84104

VIA EMAIL

RE: 922 South Emery Street

Dear Mr. Clara,

This letter is to respond to a number of questions you have raised in connection with the T-Mobile cellular antenna installed on a Rocky Mountain Power ("RMP") Utility Pole at 922 South Emery Street. I understand it has been frustrating to get all of the accurate information on the approval process for this application. It has taken the City quite a bit of time to get everything straightened out, and we have made mistakes along the way. The City has revisited this permit application and approval process so that the permit complies with City code and processes. As we have investigated the process and where it can be improved, I thought it would be helpful to describe the process of this approval and try to provide some clarity about this permit.

A building permit application was initially submitted in September 2014 for T-Mobile to install a 30" antenna on a replacement RMP utility pole with the new pole height increased by 10' above the height of the then-existing pole. The building permit was issued on June 1, 2015 (Building Permit 2014-06707). Because the application was for a permitted use under the zoning code (a replacement utility pole and allowed antenna), an open house or public process was not required.

The work under the building permit was inspected and closed in March 2017. It appears that the permit inspector focused on the installation of the electric conduit and equipment installed on the adjacent private property, and not on the new utility pole or size of the antenna. As the electrical conduit and equipment was installed pursuant to the permit, the inspector closed the permit mistakenly signaling in the computer program that the installation was compliant. Consistent with our standard operating procedures, the information entered was subsequently utilized by other city staff in decision-making and in responding to community inquiries.

As you know, T-Mobile installed an antenna larger than the one that was approved and permitted under the zoning code. A larger antenna could be permitted under a conditional use permit, but was not requested. The City made a mistake at this time by not identifying the fact that a conditional use permit was required for the actual size of the antenna.

At the time of the application, the zoning code permitted an antenna to be installed on a new or existing utility pole in the public way. Instead of replacing the 50' pole, RMP installed a new 60' utility pole about 20' away from the original 50' pole. RMP has a Franchise Agreement with the City that allows RMP to install new and replacement utility poles. Utility poles are a permitted use in all zoning districts and are exempted from all other zoning regulations pursuant to City Code Section 21A.02.050. The City made an additional mistake here by not identifying the fact that the 60' utility pole was meant to be a replacement

utility pole under the permit application and the antenna would not be allowed on a new utility pole under the zoning code.

Lastly, when installing the 60' utility pole, RMP should have obtained a Permit to Work in the Public Way and did not. The penalty for not obtaining the permit is to pay double the amount of the application fee. The City required this payment when it came to the attention of the Engineering Department that RMP had not properly obtained a permit.

To be clear, what was installed is an antenna mounted on a utility pole as contemplated by City Code Section 21A.40.090(E)(2)(g). While terms have been used imprecisely and interchangeably, this is not a monopole or a cell tower under the zoning code.

It seems that when you originally raised questions in early 2017 after the utility pole and antenna were installed, that City staff relied on the submitted plans and permit approvals, which were compliant with the zoning code, and then on the closed building permit, instead of on the actual physical construction of the utility pole and antenna. The size of the antenna was not adequately researched right away.

Following your complaints, when the City determined that in fact the antenna exceeded the permitted size, Civil Enforcement notified T-Mobile that the antenna was out of compliance by delivering a notice of violation in June 2018. To correct the violation, T-Mobile needed only to apply for a conditional use permit for the antenna at its actual size, which application was made on July 24, 2018. As is common practice in the City, any civil enforcement action is stayed if the applicant is involved in a related City process, for example, the enforcement process is frequently stayed when work is done in historic districts without the proper permits to allow time for the owner to obtain the permits, or in the case of "special exceptions" such as over height fences. In this case, Civil Enforcement has not taken action while T-Mobile was going through the conditional use process.

T-Mobile's application was processed through a conditional use process, including a public meeting held on January 7, 2019, a presentation at the Poplar Grove Community Council meeting held on February 27, 2019, and a Planning Commission hearing held on March 27, 2019. The Planning Commission approved the antenna with the recommendation that the existing antenna be removed within 90 days. T-Mobile also obtained a Franchise Agreement from the City to install its equipment in the public way.

The conditional use permit and building permit to remove the existing antenna and install the permitted antenna have been issued. Because the application was to install on a replacement utility pole, the City has required that RMP remove the 50' pole. While the City had requested that RMP remove the 50' pole earlier this year, RMP has not yet removed it. The permit was issued with the condition that RMP remove the 50' pole within 30 days (July 22, 2019). As of June 25, T-Mobile's oversized antenna has been removed from the public way compliant with the Planning Commission's condition. The approved antenna will be installed by July 22, 2019 as well. Only RMP and T-Mobile have the right to remove the utility pole from the public way.

I am aware that you have submitted an appeal of decision dated June 24, 2019. You refer to a number of statements where the Planning Director and staff were discussing how to classify the antenna installation on the utility pole in the public way. This is not a timely appeal as there has not been a recent determination that can be appealed. The last determination made on this site was when the Planning Commission approved the conditional use permit to allow an antenna larger than 30" on March 27, 2019, and that decision provided a 10 day appeal period that expired April 8, 2019. As part of the conditional use review, the staff report correctly indicated that the RMP pole is a utility pole and also referenced an agreement between T-Mobile and RMP whereby RMP agreed to install a replacement utility pole and

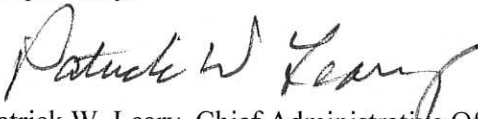
remove the 50' pole. A conditional use permit was determined to be required in 2018. Any applicable appeal period has expired.

I sincerely apologize for the frustration caused by this drawn out process and for the inaccurate information that has been provided along the way. In an effort to be responsive and helpful, City staff provided information to address inquiries, but did not always have the correct information. These responses were offered in good faith, and there was no intent to deceive you or the public, nor to act unethically, nor to camouflage corruption. It is unfortunate when every comment made by our public servants is taken out of context, assumed to be nefarious, and the personal character of individuals are maligned. We recognize that it also frustrating when City staff doesn't get a process right. Concerns need to be addressed in a civil manner in order to facilitate productive outcomes. In this situation the City has made mistakes and those mistakes have been corrected through lawful processes. We have required that T-Mobile go through the correct processes so that the antenna will be compliant with the zoning code and we have required that RMP remove the 50' pole leaving only the 60' replacement utility pole. We are also reviewing our processes so that in the future we can be confident that all aspects of a permit have been inspected.

While I understand that you and the community are unhappy about the installation of the antenna, it is an allowed use under the zoning code at the time of application. An application is entitled to be processed under the code in place when the application is submitted. If an application is submitted now for a permit to install an antenna in the public way, it will be reviewed under the State Small Wireless Facilities Deployment Act (Utah Code Section 54.20), the City's Code 14.56 (Wireless Facilities in the Public Way), and the City's Small Cell Design Guidelines, which all became effective September 1, 2018. The City's rights to regulate antennas in the public way has been severely restricted by state and federal law. For example, federal and state law allow an antenna to be installed as a permitted use in any public way in the City. If you have concerns about state and federal laws, I would encourage you to reach out to your state and federal legislators and to the Federal Communications Commission.

Respectfully, City staff has responded based on available information with the intent to answer your questions and address constituent concerns. This process has not been a smooth one on this application, and we plan to do better going forward. If you have any additional inquiries, please direct them to Jennifer Seelig in my office (Jennifer.seelig@slcgov.com or 801-535-7117). I know that Dr. Seelig looks forward to working with you on the system issues we have all uncovered by working together.

Respectfully,



Patrick W. Leary, Chief Administrative Officer
Office of the Salt Lake City Mayor

cc: Senator Luz Escamilla (via email)
Mike Harman, Co-Chair of the Poplar Grove Neighborhood Alliance (via email)
Cathy Hernandez, Co-Chair of the Poplar Grove Neighborhood Alliance (via email)
Representative Sandra Hollins (via email)
Councilmember Andrew Johnston (via email)
Representative Angela Romero (via email)
Dr. Jennifer Seelig, Director of Community Empowerment, Salt Lake City Mayor (via email)