

Planning Commission Staff Report

July 24, 2013
Item 5.b.

SUBJECT: P12-1718

APPLICANT: Radha Sharma/AT&T

PROPERTY OWNER: Jeff Main

PURPOSE: Application for Design Review approval to install a wireless facility consisting of a 60-foot tall monopine and a 17-foot high platform for related wireless equipment.

GENERAL PLAN: Industrial, Commercial & Offices – Retail/Highway/Service Commercial, Business and Professional Office; General and Limited Industrial

ZONING: PUD-I (Planned Unit Development – Industrial) District

LOCATION: 1056 Serpentine Lane

EXHIBITS:

- A – Draft Conditions of Approval
- B – Site Plan, Floor Plan, and Elevations of the Proposed AT&T Wireless Facility; Photosimulations, Coverage Map, and Radio Frequency Report and Equipment Noise Report by Hammett and Edison
- C – Site Analysis
- D -- Peer Review Report by Telecom Law Firm, P.C.
- E -- Email from Bruce Takens and Julie Pascualy
- F – Location Map and Notification Map

BACKGROUND

AT&T Wireless wishes to construct a personal wireless facility at the property located at 1056 Serpentine Lane behind the existing building. Section 18.110.020 of the Pleasanton Municipal Code (PMC) (Personal Wireless Service Facility) requires all personal wireless service facilities be subject to design-review approval by the zoning administrator and requires all property owners within 600 feet of a property on which a personal wireless service facility is proposed to be notified of the application. The PMC also allows the zoning administrator to refer any personal wireless service application to the Planning Commission for review and action.

SITE DESCRIPTION

Valley Business Park, approximately 69 acres in size, is located south of Valley Avenue and east of Santa Rita Road. Its internal streets are Serpentine Lane and Quarry Lane. It is zoned PUD-I (Planned Unit Development – Industrial) and has a mix of uses that include offices, light industrial, and other uses such as indoor recreational facilities, a rehearsal theatre, tutorial facilities and private schools.

Properties adjacent to the business park are industrial/warehouse uses to the east (Boulder Court), Union Pacific Railroad and single-family residential (California Reflections) to the south, single-family residential (Jensen Tract) to the west, and Valley Avenue and single-family residential (Heritage Valley) to the north. Sound walls separate the business park from the residential neighborhoods to the south, west and north.

The subject site is an approximately 1.16-acre parcel located on the east side of Serpentine Lane. The site contains one building, approximately 21,000 square feet in building area. Two driveways on each side of the building provide access to the site. Two loading docks are located in the rear of the building, and a total of 48 parking spaces are currently provided (including four parking spaces in front of the roll-up doors).

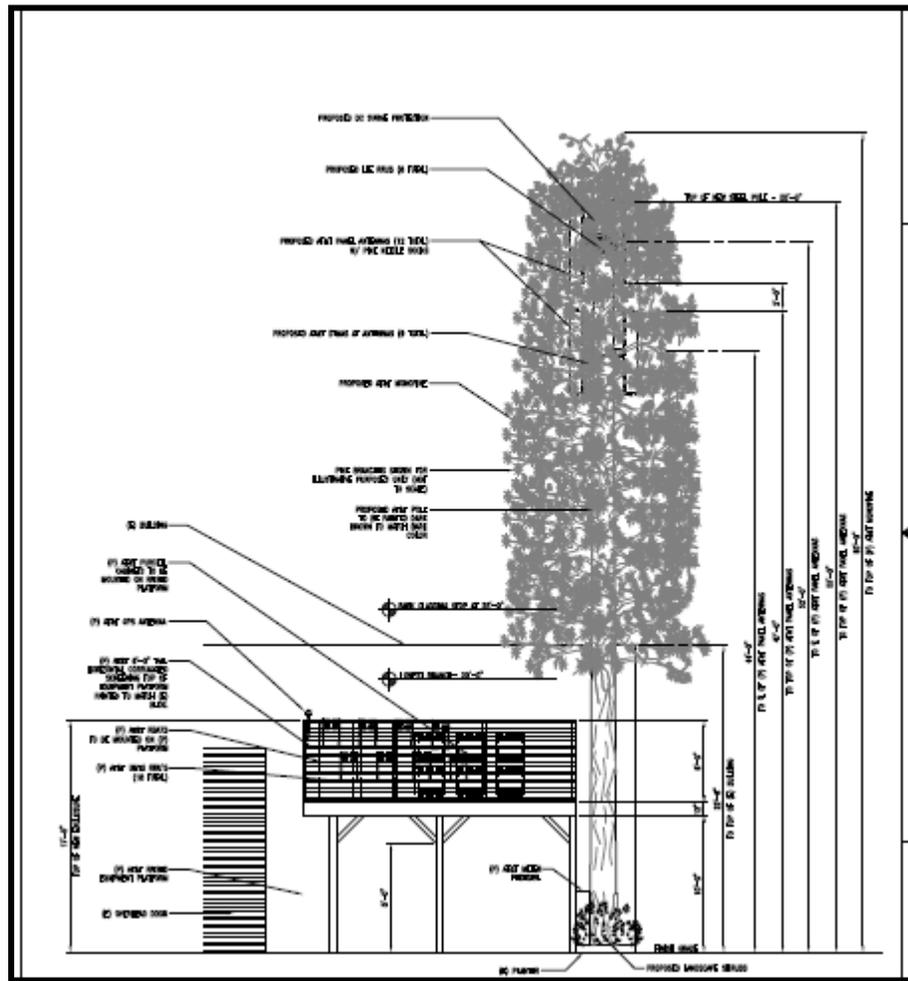


Location Map

PROJECT DESCRIPTION

The proposed AT&T wireless facility consists of the following equipment which will be located within a 20'-5" by 13'-6" lease area:

- a 60'-0" tall monopine (faux pine tree);
- Twelve 6'-0" tall panel antennas to be mounted on the monopine;
- A 17-foot tall, approximately 276-square-foot platform to be constructed behind the existing building to the north of the roll-up door and over the existing parking spaces;
- 18 Remote Radio Units (RRUs); six of which would be mounted on the antenna masts and the 12 would be located in the equipment platform area;
- One Surge Protector (one unit will be mounted and hidden in the monopine; the other three units will be ground mounted.);
- A 10'-6" tall prefabricated equipment shelter (20'-0" x 11'-5");
- Two GPS antennas mounted on the platform;



Proposed AT&T Wireless Facility

ANALYSIS

Legal Background/Federal Law

The Telecommunications Act of 1996 provides that local governments: (a) shall not unreasonably discriminate among providers of functionally equivalent services (i.e., favor one wireless carrier over another); (b) shall not prohibit or have the effect of prohibiting the provisions of personal wireless services (e.g., cannot prevent a wireless carrier from closing a significant gap in service coverage); and (c) shall not regulate the placement and construction of personal wireless service facilities on the basis of the environmental effects of radio frequency (RF) emissions to the extent that such facilities comply with the FCC's regulations concerning such emissions (47 USC 332(c)). The effect of this federal law is to enable personal wireless service providers to establish networks for their services and to preclude local governments from regulating the potential health impacts of wireless facilities. While local governments may not establish or regulate RF emissions standards, they may review those applications to ensure compliance with the RF standards set by the FCC (Govt. Code section 65850.6(f)) and they may take aesthetics into consideration when reviewing an application.

In 2009, the FCC adopted what is commonly referred to as the "shot clock" rule to encourage expansion of the wireless network. The rule says that local governments have to either approve or deny an application for the construction of a *new* wireless facility within 150 days and must approve or deny a request to collocate a wireless facility within 90 days. If the local agency fails to comply with these deadlines, wireless applicants are authorized to file a lawsuit within 30 days of the "shot clock" having run.

Section 18.110 of the Pleasanton Municipal Code (Wireless Ordinance)

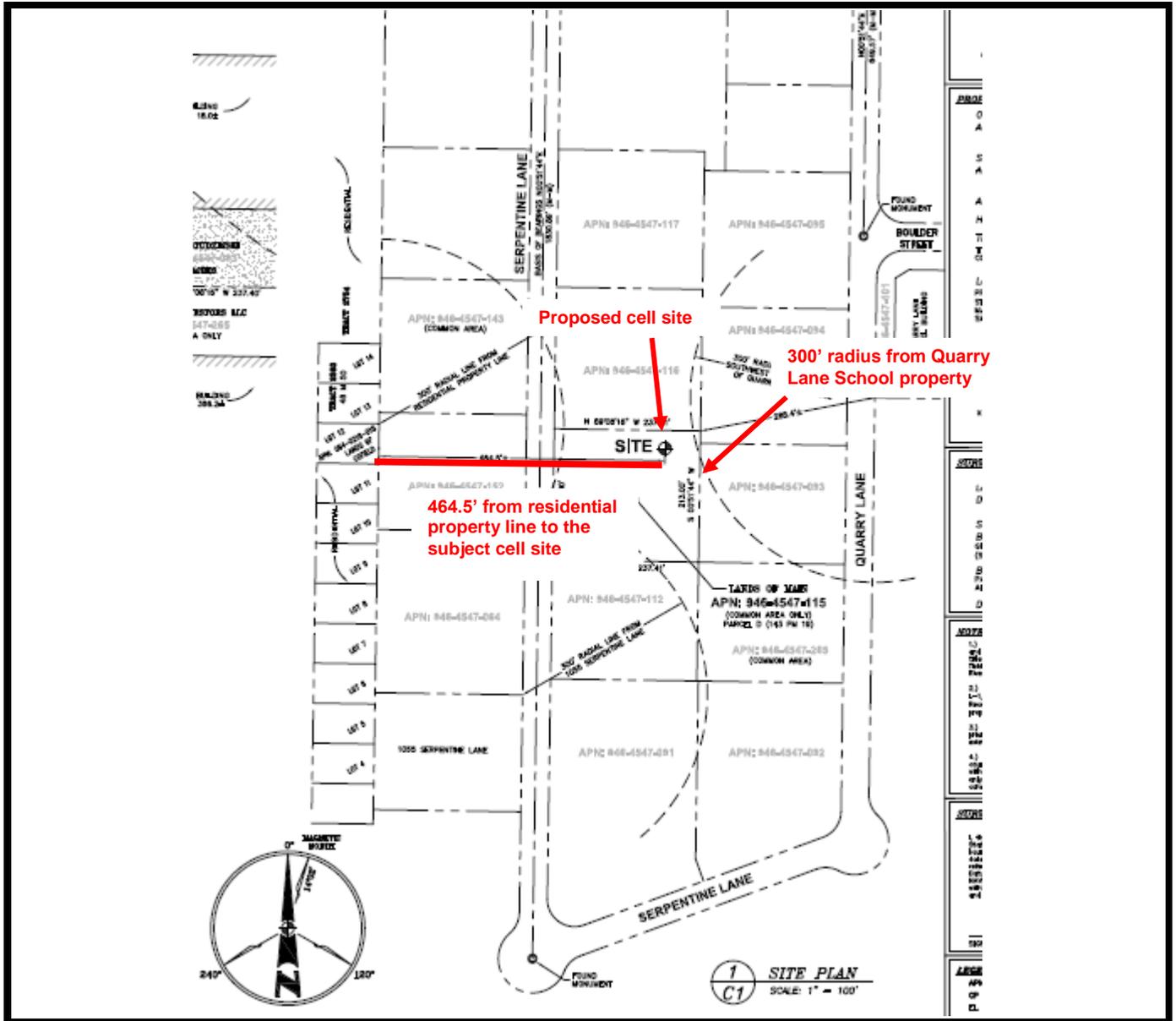
In 1998, the City Council adopted the Personal Wireless Service Facilities ordinance (PMC section 18.110). The ordinance allows the installation of wireless facilities once the applicant has provided the required radio frequency emission report prepared by a licensed engineer, has demonstrated that there is a coverage gap in the target area, and the proposed wireless facility meets the ordinance's locational requirements. In addition, the ordinance requires wireless facilities to mitigate visual impacts by using stealth techniques and requires collocation of the wireless facility if it is structurally and technically feasible.

Radio Frequency Emission Report

A radio frequency emission report was prepared by Hammett & Edison, Inc., Consulting Engineers, to evaluate the proposal's compliance with FCC regulations limiting human exposure to radio frequency emission. The report concluded that the proposed facility will comply with the FCC guidelines concerning limiting public exposure to radio frequency emission. A copy of the report is attached in Exhibit B.

Location Requirements

Per §18.110.050 of the PMC, no personal wireless service facility shall be located within three hundred feet (300') from any residences, residentially or agriculturally zoned property, schools, parks, childcare centers, or senior care/assisted living facilities. As shown in the radius map below, the nearest residential property line is 364.5 feet from the center of the monopine, and the Quarry Lane School is located more than 300 feet from the proposed cell site. In sum, this application meets all of the locational requirements of the City's ordinance.



Stealth Techniques

All personal wireless service facilities are required to visually blend with the environment and not be readily apparent, or “stealth.” The proposed panel antennas would be mounted onto faux tree branches and be covered by faux pine needles. The faux tree would be similar to a conifer tree where the tree trunk narrows as its height increases. Likewise, the foliage on the tree tapers; however, the tree branches would always extend beyond the face of the panel antennas so that the panel antennas would not be readily visible. The applicant has provided a faux tree sample which shows the colors and details of the needles and bark. (The sample is available upon request and staff will bring it to the meeting.) Please see photo-simulations below and on the following page of the proposed facility taken from the business park as well as from Kolln Street (a residential street that borders the business park on the west).



Photo-simulation of the faux tree (looking west)



Photo-simulation of the faux tree (looking north)



Photo-simulation of the faux tree viewed from Kolln Street

Peer Review

As part of the wireless application process, staff retained Jonathan Kramer, Esq. of Telecom Law Firm, P.C. to “peer review” AT&T’s application to determine whether a significant gap in coverage exists, whether the radio frequency emission report is correct, whether the proposed facility could be improved aesthetically, and any other issues that may be relevant to the application. A copy of Kramer’s report is attached as Exhibit D. Mr. Kramer confirmed that a significant gap in coverage exists and that the proposed wireless facility meets the FCC regulations. With regard to aesthetics, Mr. Kramer recommended that the following details be incorporated into the design.

- Panel antennas must be located within the tree canopy. Thus, it is recommended that there be a minimum of 12” of branches extending past all panel antennas and antenna-related equipment that are installed in the monopine at each level of the monopine.
- Panel antennas must be treated to be camouflaged. Thus, it is recommended that all antenna panels, antenna-related equipment that would be installed in the monopine, and mounts at each level be painted green(s) and brown(s) to match the tree.
- Panel antennas must be covered with pine-needle socks.
- Three-dimensional bark cladding is required on all portions of the tree trunk and branches.
- Tree trunk and branches must be painted brown.
- Tree branches need to start at 12’ or 13’ above grade to avoid a bottle-brush appearance.
- The number of branches per foot should generally be 3.5 branches per vertical foot between the starting height and the top. Therefore, a schedule of proposed braches should be included in the plans listing the minimum branch length, mounting height, and angular orientation from true north.
- All cables should be run only inside the tree trunk.
- Retractable, not pull-down stairs shall be used on the platform.

Parking at the Subject Site

As proposed, the raised equipment platform would be constructed to the north of a roll-up door and over the existing parking spaces. The peer review report raised concerns about the safety of this raised platform. In response to Mr. Kramer’s comments on the platform design, staff has included in a condition requiring a report from a structural engineer, licensed by the State of California, to ensure that the proposed equipment platform would be structurally sound, and that no building permit should be issued until the Chief Building Official reviews and approves the structural report. Staff also looked at whether or not the two parking spaces could be removed and thus to allow cabinets and equipment to be placed on the ground.

In May 2004, the Planning Commission approved a conditional use permit (Case No. PCUP-108), allowed the operation of an indoor gymnastic and cheerleading training facility within the subject building. The facility had an extensive training program which required each on-site parking space be countable. The previously approved cheerleading program is no longer

offered at the subject site. As the Commission is aware, conditional use permit approval runs with the land. It means that if a similar program is interested in operating at the subject site, and if the program is found to be in substantial conformance to the previously approved conditional use permit, it could operate at the subject site without applying for a new conditional use permit. Knowing the history of the previously approved conditional uses and the parking situation at the subject site, the applicant opted for a raised platform design instead of requesting the removal of two parking spaces.

Neighborhood Meeting

In response to the City's notice of AT&T's application, staff received an email from Mr. Bruce Takens (a resident of Kolln Street), spoke with David and Julie Pascualy, residents of Kolln Street, and Hal Cranston owner of property on Serpentine Lane who both expressed concerns regarding the aesthetics, property values, and health effects of the proposed facility.

On July 9, 2013, staff noticed and then held a neighborhood meeting regarding the proposal. Chris Studzinski, business owner on Serpentine Lane, and Frank Fiala, business owner on Quarry Lane, attended the neighborhood meeting. Both of them expressed concerns related to the proposed location and RF emission.

Here is some information offered by Planning Staff and the City Attorney's Office which addresses the various concerns raised by members of the public by e-mail, phone, or at the neighborhood meeting:

RF Concerns: With regard to RF concerns, the Federal Telecommunications Act of 1996 prohibits any local government from "regulat[ing] the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions." (47 USC 332(c)) Local governments may not establish RF emissions regulations. The FCC does this. So long as the wireless applicant can show that its equipment will meet the standards set by the FCC, a local government may not deny an application on the basis of RF emissions. Local governments may, however, review applications for compliance with the RF emission standards. (See Govt. Code 65850.6(f)) With the current application, AT&T submitted an RF report demonstrating that it met these standards. The City then hired a consultant to "peer review" that RF report; the consultant has confirmed the findings in the RF report are accurate.

Impact on Property Values: With regard to property values, federal preemption applies whether the local decision is explicitly based on environmental effects (RF fears), or through some proxy such as decline of property values. Moreover, a federal district court in California determined that in light of the federal preemption of RF regulation, "concern over the decrease in property values may not be considered as substantial evidence if the fear of property value depreciation is based on concern over the health effects caused by RF emissions." *AT&T Wireless v. City of Carlsbad* (308 F. Supp. 2d 1148, 1159. Also, in *Sprint Spectrum v. Borough of Ringwood*, 386 N.J. Super.62 (2005), the court held that an ordinance imposing unusual setback requirements on wireless facilities was preempted RF-based regulation.

Aesthetic Concerns: While cities do have the ability to influence the aesthetics of a wireless facility, state or local governments shall not unreasonably discriminate among providers of functionally equivalent services and shall not prohibit or have the effect of prohibiting the provision of personal wireless services. More specifically, state and local governments cannot prevent a wireless carrier from closing a “significant gap” in service coverage by that applicant (*Metro PCS v. City and County of SF* (2005) and *T-Mobile v. City of Anacortes* (2009)). Here, the City asked its peer review consultant to review AT&T’s application. The consultant determined that a significant gap in service coverage exists and that AT&T’s chosen location is the least intrusive means to fill that gap. The consultant did recommend that various conditions be placed on the applicant to improve the aesthetics of the faux monopine. Staff has incorporated those suggestions into the draft conditions of approval that AT&T must follow.

Site Selection:

The applicant investigated 19 locations as possible candidates; 18 locations were within the business park, and one location was outside the business park approximately 0.27 miles northeast from the proposed site. The investigated sites were determined to be not feasible either because they are located outside the target search ring, or they don’t meeting the city’s locational requirement. A copy of the site analysis is attached as Exhibit C.

PUBLIC NOTICE

Notices regarding the proposed wireless design review application, the neighborhood meeting, and this public hearing were mailed to the surrounding property owners as required by the municipal code. A map showing the noticing area is attached to this report. The public notice was also published in *The Valley Times*. No one has contacted staff regarding the current notice as of the date the staff report was prepared.

ENVIRONMENTAL ASSESSMENT

This project is categorically exempt from environmental review pursuant to California Environmental Quality Act Guidelines, Section 15303, New Construction or Conversion of Small Structures. Therefore, no environmental document accompanies this report.

CONCLUSION

The proposed wireless facility meets the requirements of the ordinance. The subject site is an appropriate location for the proposed installation. With the proposed conditions requiring design details, the proposed faux monopine will meet the stealth requirements of the wireless ordinance. With the operation of the wireless facility, the wireless coverage in the area will be improved.

STAFF RECOMMENDATION

Staff recommends that the Planning Commission approve Case P12-1718 subject to the conditions listed in Exhibit A.

Staff Planner: Jenny Soo; 925.931.5615, or email: jsoo@cityofpleasantonca.gov

Exhibit A

Draft Conditions of Approval P12-1718 (AT&T) 1056 Serpentine Lane

1. The installation of the wireless shall be constructed and maintained substantially as shown on the plans and photo simulations, Exhibit B, dated "March 26, 2013," and Coverage Map "Received June 3, 2013," on file with the Planning Division, except as modified by these conditions. Minor changes to the project may be allowed subject to prior approval by the Director of Community Development if found to be in substantial conformance with the approved exhibits.
2. The personal wireless service facility shall adhere to the regulations contained in Chapter 18.110, (Personal Wireless Service Facilities) of the Pleasanton Municipal Code.
3. All conditions of approval for this case shall be written by the project developer on all building permit plan check sets submitted for review and approval. These conditions of approval shall be on, at all times, all construction plans kept on the project site. It is the responsibility of the applicant to ensure that the project contractor is aware of, and abides by, all conditions of approval. Prior approval from the Planning Division must be received before any changes are constituted in design of the wireless facility.
4. The construction plans submitted for issuance of a building permit shall clearly show the following:
 - Panel antennas and antenna-related equipment that are to be mounted on the faux monopine shall be located within the tree canopy. There shall be a minimum of 12" of branches extending past all panel antennas and antenna-related equipment at each level of the monopine.
 - Panel antennas and antenna-related equipment that are to be mounted on the faux monopine shall be camouflaged. All antenna panels, antenna-related equipment that are to be mounted on the faux monopine, and mounts at each level shall be painted green(s) and brown(s) to match the tree. Paint colors (manufacture and color number) shall be included in the construction plans.
 - Panel antennas, antenna-related equipment that are to be mounted on the faux monopine, and antenna mounts at each level shall be covered with pine-needle socks.
 - Three dimensional bark cladding shall be required on all portions of the tree trunk and branches.

- Tree trunk and branches must be painted brown.
- Tree branches shall start at 12' or 13' above grade to avoid a bottle-brush appearance.
- The number of branches per foot shall be 3.5 branches per vertical foot between the starting height and the top. A schedule of proposed braches shall be provided to include the minimum branch length, mounting height, and angular orientation from true north.
- All cables shall be run only inside the tree trunk.
- Retractable stairs shall be used to access to the platform.

The above design details are subject to review and approval by the Director of Community Development prior to issuance of building permit.

5. Final detailed panel antenna drawings shall be included in the plans submitted for the issuance of a building permit. Said detailed drawings shall be consistent with the approved detailed drawings plus any conditions of approval, and shall be detailed in terms of dimensions.
6. Prior to operating the antennas, the applicant shall install all signage required by the Federal Communications Commission.
7. Prior to the issuance of a building permit, the applicant shall submit to the Building and Safety Division a report from a structural engineer, licensed by the State of California, stating that the proposal would be structurally sound. No building permit shall be issued until the Chief Building Official reviews and approves the structural report.
8. Prior to the issuance of a building permit, the property owner or authorized agent for the project shall provide a financial guarantee to the Building and Safety Division for the removal of the facility in the event that the use is abandoned, or its approval terminated. The financial guarantee shall be 10% of the cost of constructing the facility and shall be submitted in cash or as a bond. If submitted as a bond, the bond shall be valid for a minimum of eleven (11) years from the date of building permit issuance. Prior to the issuance of a building permit, the property owner or the authorized agent for the project shall also sign an interest waiver for the financial guarantee. In the event that the entire facility is removed from the site, the property owner or authorized agent for the project may request a refund of the financial guarantee. All refund requests shall be made through the Planning Division.

9. The mounting equipment used to support the antennas shall be fire resistant, termite proof, and subject to all requirements of the Uniform Building Code.
10. The personal wireless service facility shall be reviewed and approved by the Livermore-Pleasanton Fire Department and the Building and Safety Division prior to the installation of the personal wireless service facility. All required City permits must be obtained prior to the installation of the personal wireless service facility.
11. Within 45 days of initial operation, AT&T Wireless shall submit to the Planning Division a written certification by an electrical engineer licensed by the State of California that the personal wireless service facility, including the actual radio frequency emission of the facility, is in compliance with the application submitted, all conditions imposed, and all provisions of Chapter 18.110 (Personal Wireless Service Facilities).
12. AT&T Wireless shall hire a qualified electrical engineer licensed by the State of California, and approved by the Zoning Administrator to measure the actual radio frequency emission of the personal wireless service facility and determine if it meets the Federal Communications Commission's standards. A report of all calculations, required measurements, and the engineering's findings, with respect to compliance with radio frequency standards shall be submitted to the Planning Division within 2-3 years of the date of approval for this case and every 3 years after.
13. As specified in Chapter 18.110 (Personal Wireless Service Facilities), approval of the personal wireless service facility in this case, Case P12-1718 is valid for a maximum of ten years from the date of approval, until August 9, 2023. After ten years, the applicant must reapply for approval to continue operation.
14. To the extent permitted by law, the project applicant shall defend (with counsel reasonably acceptable to the City), indemnify and hold harmless the City, its City Council, its officers, boards, commissions, employees and agents from and against any claim, action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside, or void the approval of the project or any permit authorized hereby for the project, including (without limitation) reimbursing the City its attorneys fees and costs incurred in defense of the litigation. The City may, in its sole discretion, elect to defend any such action with attorneys of its choice.

{end}