



4751 Fox St. Denver, CO 80216

Letter of Intent
Written Responses to the El Paso County CMRS Zoning Code

To: Development Services, Zoning
and Building Permitting
El Paso County, CO

From: Kenneth Trujillo
Subject: DN02728A - T-Mobile Temporary Tower
Date: 2/26/2023
Location: S Powers Blvd and Fontaine Blvd
Address: No address assigned at the time of this submission
Latitude: 38.738106° Longitude: -104.682031°
Parcel #: 5500000015
Valuation: \$40,000.00

Below in **black** is the applicable code in regard to our CMRS project. Also below in **red** are our responses to this code.

5.2.19. Commercial Mobile Radio Service Facility (CMRS) Facilities

(A) **General.** Acknowledged.

(1) **Purpose.** The purposes of this Section are:

- To facilitate the provision of wireless telecommunication services, including personal wireless services, throughout the unincorporated area of El Paso County;
- To allow the location of commercial mobile radio service facilities (CMRS facilities) in El Paso County subject to certain standards;
- To encourage co-location of CMRS facilities; and
- To prevent unreasonable discrimination among providers of functionally equivalent services. Acknowledged.

(2) **Applicability.** The standards in this Section apply to all CMRS facilities located, constructed or modified after the effective date of this Code. Acknowledged.

(3) **Relationship to Other Provisions.** A CMRS facility shall comply with all applicable provisions of this Code. Where a conflict exists between the requirements of this Section and

another applicable standard in this Code, the most restrictive standard shall control. Where a conflict exists between the requirements of this Section and another applicable State or Federal standard the State or Federal standards shall control. **Acknowledged.**

(B) General Standards.

(1) **Co-Location.** Co-location of **CMRS** facilities is encouraged when feasible to minimize the number of **CMRS** facility sites. To further the goal of co-location:

- An applicant for a new freestanding **CMRS** facility shall demonstrate that a good faith effort has been made to co-locate on existing **CMRS** facilities. The applicant shall demonstrate that due to physical constraints, or economic or technological infeasibility, no such location or co-location is available. The applicant shall also demonstrate that contact has been made with the owners of all suitable structures within the search area of the proposed site and was denied permission to locate its **CMRS** facility on those structures; This application is the result of the current T-Mobile site going away. **There were no existing **CMRS** facilities in the immediate area that could be collocated to that would replace the existing site's coverage.**
- If a telecommunications competitor attempts to co-locate a **CMRS** facility on an existing or approved **CMRS** facility or location, and the parties cannot reach an agreement, the County may require a third-party technical study to be completed at the expense of both parties to determine the feasibility of co-location; and **There were no existing **CMRS** facilities in the immediate area that could be collocated to that would replace the existing site's coverage.**
- All facilities shall be designed and constructed to allow for co-location of a minimum of 2 users except for a small cell **CMRS**, pole mounted **CMRS**, or those otherwise specifically exempted by the BOCC. **This tower will be a temporary tower. This will be a pole mounted **CMRS** and will be just for T-Mobile's use. It is highly unlikely that another carrier would want to collocate at a temporary location such as this one. However, in the highly unlikely event that a carrier would want to collocate, we would support it.**

(2) **Compliance with FCC Standards.** At the request of the PCD Director, which request shall occur no more than once per year, **CMRS** facility owners and operators shall certify that:

- The **CMRS** facility complies with the current FCC regulations prohibiting localized interference with reception of television and radio broadcasts; and **T-Mobile only broadcasts on spectrum licensed by the FCC and will not interfere with the reception of television and radio broadcasts**
- The **CMRS** facility complies with the current FCC standards for cumulative field measurements of radio frequency power densities and electromagnetic fields.

In adopting this requirement, the County is not attempting to regulate radio frequency power densities or electromagnetic fields, which regulation is controlled by the FCC. **This site will adhere to all FCC regulations and guidelines. T-Mobile will operate only on licensed FCC**

spectrum and will operate its equipment within all FCC standards for cumulative field measurements of radio frequency power densities and electromagnetic fields.

(3) **Abandonment and Expiration.** If the CMRS facility ceases operation for any reason for a period of one year:

- The CMRS facility shall be removed within 6 months of the expiration; and

This is a temporary site and it will only be in use for up to two years. This model of temporary tower is specifically designed to be easily removed at the end of its usefulness. Once a permanent location is developed, this tower will be removed and the area will be restored to its current undeveloped state.

- Any permit or approval authorizing the CMRS facility shall be considered expired. At the end of the temporary tower's usefulness, we will remove the tower and we acknowledge that the temporary tower's permits will then be expired.

(4) **Application Approval or Denial.** In considering an application for a CMRS facility, the County shall base its decision as to the approval or denial of the application on whether the proposed CMRS facility meets the design standards set forth in this Section and any approval criteria associated with the applicable application or review process. **Acknowledged.**

(5) **Accessory Equipment for a CMRS Facility.** All accessory equipment for a CMRS Facility shall be 100% screened from view. All equipment shelters shall be located within the lease area for the CMRS facility. No equipment storage shelter shall exceed 15 feet in height. Equipment storage shelters shall be grouped as closely together as practical, so as to minimize impact on adjoining properties. The total area of all accessory equipment, including equipment storage shelters, shall not exceed 400 square feet per CMRS facility, except for a small cell facility where 17 square feet shall be the maximum allowed. **The accessory equipment for this tower will be shielded from view by a 6' tall slated chain-link fence. All equipment will be housed within the fenced in lease area. None of the accessory equipment will exceed 15 feet. The equipment is grouped as closely as possible given the clearance needed for the generator. The footprint of the equipment is 8'x8'. The footprint of the Tower base will be 32'x32'. The Generator will be 14'x5'.**

(6) **Standards for Freestanding CMRS Facilities.**

(a) **Tower/Structure Removal Agreement.** Prior to commencing construction of a new freestanding CMRS facility or any alteration of an existing freestanding CMRS facility, a Tower/Structure Removal Agreement shall be signed by the owner of the property and filed for recording with the Clerk and Recorder. **Acknowledged. This will be a temporary tower that is designed to be removed easily.**

(b) **Financial Assurance Required.** Prior to commencing construction of a new freestanding CMRS facility or any alteration of an existing freestanding CMRS facility, the

owner of a freestanding CMRS facility shall be required to provide the County with adequate financial assurance to cover removal of the facility if abandoned. The form of financial assurance shall be approved by the PCD Director. New financial assurance will be required prior approval of alteration of an existing freestanding CMRS facility and when the ownership of the lease or facility changes hands. **Acknowledged. This will be a temporary tower that is designed to be removed easily.**

(c) Minimum Setbacks for Freestanding CMRS Facilities.

(i) Located Within 250 Feet of Residential Zoning District. A freestanding CMRS facility located within 250 feet of any property zoned for residential use shall be set back from any residential property line one foot of distance for every foot of facility height (as measured from grade elevation), plus an additional 10 feet. **This 60' tall temporary tower will be set back 70' from the West property line (Powers Blvd) and 100' from the South property line (Fontaine Blvd). There are no residential properties that directly touch this parcel but to the south are properties on the South side of Fontaine Blvd.**

(ii) Located Over 250 Feet from Residential Zoning District. A freestanding CMRS facility located greater than 250 feet from property zoned for residential use shall meet the minimum setback requirements for structures and structures of the underlying zoning district and located in a manner to contain any freefall or icfall on the same property. **N/A**

(d) Maximum Height for Freestanding CMRS Facilities. A freestanding CMRS facility, including antennae, shall not exceed the maximum structure height limit in the zoning district unless otherwise specifically authorized as a part of the special use or variance of use approval. Any tower that exceeds 200 feet shall require FAA approval prior to approval of a special use or variance of use. **This property's zoning is A-5: Agricultural (5 acres) this tower will meet all set back requirements of one foot of setbacks for one foot of height plus ten feet. This 60' tower will be below the 200' FAA limit in this section of code.**

(e) Administrative Special Use or Variance of Use Amendment. The PCD Director may administratively amend the special use or variance of use approval for a minor modification to the CMRS facility provided the modifications do not constitute a Substantial Change. A modification constitutes a Substantial Change if:

(i) It increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater. Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act; **N/A**

(ii) It involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet; **N/A**

(iii) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure; **This is not an eligible support structure**

(iv) It entails any excavation or deployment outside the current site; **This is not an existing site and the only excavation will be some leveling of the tower location.**

(v) It would defeat the concealment elements of the eligible support structure; or **This is not an existing site**

(vi) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in the Middle Class Tax Relief Act of 2012. **This is not an existing site.**

(f) **Design Standards for Freestanding CMRS Facilities.** A freestanding **CMRS** facility shall adhere to the following design standards to minimize impacts:

(i) **Compatible with Surrounding Area.** A freestanding **CMRS** facility shall be designed to be compatible with surrounding buildings and structures and existing or planned uses in the area, subject to any applicable FAA regulations. **This temporary tower will ensure the surrounding buildings and structures continue to get the T-Mobile services they depend on. All FAA regulations will be adhered to.**

(ii) **Existing Vegetation.** Existing land forms, vegetation and structures shall be used to screen the facility from view and blend in with the surrounding environment, to the extent practicable. Existing vegetation shall be preserved or enhanced, where feasible. **There is only one tree on this very large property and it will not be disturbed by this temporary project. The very large parcel is just sticker bushes and local grass.**

(iii) **No Lighting.** The facility antennae shall not be lighted unless required by the FAA and authorized by the permit or approval. **No lighting is being proposed.**

(iv) Dangerous Equipment and Attractive Nuisance. Any equipment that could be dangerous to persons or wildlife shall be adequately fenced. The attractive nuisance potential shall be minimized through fencing and methods to discourage unauthorized climbing. **The T-Mobile equipment will be screened by a slated fence. Barbed wire is proposed to discourage unauthorized climbing.**

(v) Dish Diameter Limited. The diameter of a microwave dish antenna shall not exceed 4 feet. **The proposed microwave DISH will be 2' in diameter.**

(g) **Photo Simulations Required.** Photo Simulations are to be provided for any new freestanding **CMRS** facility or for a Substantial Change to an existing freestanding **CMRS** facility. The Photo Simulations shall illustrate a minimum of three different views of what the site will look like once the antennae and associated equipment have been installed. Photos and Photo Simulations should show the "existing" and "proposed" conditions. **These photo sims have been included in this package.**

(7) **Stealth CMRS Facility Design Standards.** A stealth **CMRS** facility shall meet the same design standards and maximum height allowance as a freestanding **CMRS** facility. **This temporary tower will not be a stealth tower.**

T-Mobile is requesting a variance on the strict enforcement of the below

The property 5500000015 is located within the Agricultural (A-5) zoning district which does not permit free standing CRMS towers as a principal use. The only way to gain land use approval would be through a variance of use application. Despite the tower being temporary we would still require full land use and site development plan approval.

Towers are permitted on Agricultural (A-5) zoning districts as accessory uses. However, this land has not yet been developed and has no principle use identified. As a result, this temporary tower has defaulted to this 320 acre parcel's primary use. This is somewhat unusual that a parcel's primary use would be for a temporary tower and we would like to request a variance to this determination. It is unusual that a property of this size has no current identified use but this is the rare situation that we find ourselves in. We would like El Paso County to consider allowing a temporary tower as an accessory use on this property while we work to develop a new replacement tower in the area.

A detailed analysis summarizing how the request complies with each of the following Criteria of Approval in Chapter 5 of the Land Development Code:

The strict application of any of the provisions of this Code would result in peculiar and exceptional practical difficulties or undue hardship

Processing this strictly as a primary use rather than an accessory use would drastically hurt T-Mobile's ability to continue providing service to the surrounding area that depends on this service. This unimproved property is a great location to continue T-Mobile's service in the area while a more permanent location can be identified and developed. This property has the most amount of setbacks from other uses and is a great location for a temporary tower that will not affect the nearby properties. It is out of the way and not breaking up any views or imposing on a nearby property.

The proposed use is compatible with the surrounding area, harmonious with the character of the neighborhood, not detrimental to the surrounding area, not detrimental to the future development of the area, and not detrimental to the health, safety, or welfare of the inhabitants of the area and County

T-Mobile has been providing great wireless services to this community for years from the water tanks. The surrounding community depends on T-Mobile's services and internet. This cell site will operate under all safety measures set forth by the FCC and FDA. This temporary site will operate no different than the site that has been in operation for years on the water tank.

The proposed use will be able to meet air, water, odor or noise standards established by County, State or federal regulations during construction and upon completion of the project

T-Mobile's project will be able to meet air, water, odor or noise standards established by County, State or federal regulations through out this project.

The proposed use will not adversely affect wildlife or wetlands

This temporary project will not affect wildlife or disturb the ground. This is a temporary tower that will not have a permanent foundation. The lands is not a wetland. This temporary tower's footprint will not affect the nearby wildlife in any way.

The applicant has addressed all off-site impacts

This site will not have any off site impacts to the surrounding community.

The site plan for the proposed variance of use will provide for adequate parking, traffic circulation, open space, fencing, screening, and landscaping.

This unmanned cell site will not need any parking and will not adversely affect nearby traffic. In fact, cell towers are the backbone of our traffic management systems and help redirect drivers to more favorable routes, alleviating traffic congestion. This privately owned large parcel is currently unimproved and this very small project will not affect any open space available to the public. No access to the public is currently available on this land owned by the State of Colorado. The project will be fenced by a slated chain-link fence. The fence will screen the ground equipment. No alterations to the existing landscaping is being proposed. Upon the development of a permanent tower in the area, this temp tower will be removed and the area will be restored to its current state.

Sewer, water, storm water drainage, fire protection, police protection, and roads will be available and adequate to serve the needs of the proposed variance of use as designed and proposed

This tower will not affect sewer, water, or storm water drainage infrastructure. Cell towers do not utilize water or sewage. No underground work is being proposed with this project.

This temporary tower will be critical in ensuring that the 911 services that fire protection and police protection rely on will not be disturbed. Many T-Mobile customers rely on T-Mobile's services and 911 accessibility for fire protection and police protection.

Respectfully,

Kenneth Trujillo

Site Acquisitions / Project Manager

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