

can be requested in writing to the Planning Director prior to the expiration date.

Attachments: Appeal
Planning Commission minutes and staff report for November 3, 2003
Letters from neighbors
Plans and APN map
c: Margot and Chris Enbom, applicants/appellants

AGENDA ITEM 6

TOWN OF SAN ANSELMO TOWN COUNCIL STAFF REPORT

January 2, 2004

For the meeting of January 13,

2004

TO: Town Council
FROM: Tom Bell, Planning Director
SUBJECT: ER-0304, Z-0303 Environmental review and consideration of an ordinance amending Ordinance Number 1001 establishing zoning regulations for **Wireless Communication Facilities**.

RECOMMENDATION

Authorize an outside counsel (as recommended by the Town Attorney) to revise the draft ordinance as deemed appropriate, and refer the subsequent revision to the Planning Commission for further review and recommendations.

PREVIOUS ACTION

December, 1998: Town Council adopted Ordinance 1001 establishing regulations for wireless communication facilities.

March 12, 2002: Town Council adopted urgency Ordinance 1023 temporarily prohibiting the construction of wireless communication facilities.

April 9, 2002: Town Council adopted Ordinance 1025 extending the prohibition of wireless facilities.

August 27, 2002: Town Council extended Ordinance 1025 until March 12, 2004 and received a preliminary draft ordinance from concerned citizens regarding wireless facilities.

December 15, 2003 & January 5, 2004: Planning Commission reviewed ER-0304 and Z-0303 and forwarded a recommendation to Town Council.

DISCUSSION

As the Council is aware, a wireless communication facilities moratorium has been in effect since March, 2002 and will expire March 12, 2004. In an effort to develop an acceptable alternative ordinance, staff has been working with a citizen committee over the past year. The attached draft ordinance represents the result of that effort.

The proposed draft ordinance is modeled after a recently adopted Santa Cruz County ordinance modified and condensed to meet San Anselmo's format. Due its technical orientation, the draft provides for extensive third party peer review.

The most significant aspects of this draft are:

1. Technical determination of need (that a "significant gap" in coverage exists).
2. Alternative site analysis (determination of technically feasible alternative sites).
3. Verification and monitoring of Non-Ionizing Electromagnetic Radiation (NIER) levels consistent with federal/state law.

Because these provisions are extremely technical in nature, peer review and analysis would be required to accomplish.

The Federal Telecommunications Act generally limits local agency authority to land use/zoning. In reviewing the draft, the Town Attorney had some initial concerns and requested additional review by an expert in the field. That review conducted by the firm of Miller & Van Eaton is attached. As a result, the Town Attorney recommended that the firm revise the ordinance draft as deemed appropriate and return to the Planning Commission for final review and recommendation to Council.

At its meeting of January 5, 2004, the Planning Commission recommended:

1. **Approval of the Negative Declaration based upon the draft ordinance provided, and**
2. **That an outside counsel revise the draft ordinance as appropriate, and return to the Planning Commission for final recommendation consideration.**

Notice of both the Planning Commission meeting and tonight's hearing has been provided to the state and other interested parties including the telecommunication operators. As of the date of preparation of this report, staff has not received comments from those agencies.

B. _____ OPTIONS AVAILABLE TO COUNCIL

1. Approve the Negative Declaration and adopt the attached ordinance subject to any minor corrections, spelling changes, deletions, etc. This alternative would allow the Council to adopt the ordinance provided that no significant changes occur that would be materially different from the Planning Commission's draft review.
2. Authorize the revision/preparation of the ordinance by an outside expert in the telecommunications field as recommended by the Town Attorney and Planning Commission. This would cost approximately \$7,500.
3. Do nothing. This option would allow telecommunication facilities to be processed in accordance with the Town's current requirements (Chapter 10-3.2810 through 10-3.2818) as of March 13, 2004.

Respectfully submitted,

Tom Bell
Planning Director

- Attachments:
1. Draft ordinance
 2. Negative Declaration and environmental checklist
 3. Ordinance review prepared by Miller & Van Eaton
 4. Planning Commission minutes of 12/15/03 & 1/05/04
- DRAFT

ORDINANCE NO. _____

**AN ORDINANCE OF THE TOWN OF SAN ANSELMO AMENDING ORDINANCE
NUMBER 1001 ESTABLISHING
ZONING REGULATIONS FOR
WIRELESS COMMUNICATION FACILITIES**

C. _____ SECTION I. Sections 10-3.2810 through 10-3.2818 of the San Anselmo
Municipal Code are hereby repealed and replaced to read as follows:

10-3.2810 Purpose and intent.

The purpose of this Article is to establish regulations, guidelines and circumstances for the siting, design, construction, major modification, and operation of wireless communication facilities in the Town of San Anselmo. It is also the purpose of this Section to locate wireless communication towers/facilities so as to minimize negative impacts, such as, but not limited to, visual impacts, attractive nuisance, noise and falling objects, diminution of property values, and the general safety, welfare and quality of life of the community. ["Design" here should be narrowly understood to mean those aspects of a facility which relate to visual effects, safety, etc. rather than design of a wireless system to maximize reliable communication. The former are acceptable local government concerns, the latter is not.]

10-3.2811 Findings.

- (a) The location, design, and construction of antennas, towers, and or satellite dishes may create significant, adverse impacts as set forth in 3.2810; therefore, there is a need to regulate such to ensure that the appearance, safety and general welfare of the community is maintained.
- (b) General Order 159A of the Public Utilities Commission (PUC) of the State of California acknowledges that local citizens and local government are often in a better position than the PUC to measure local impact and to identify alternative sites. Accordingly, the PUC will generally defer to local governments to regulate the location and design of cell sites, wireless communication facilities and Mobile Telephone Switching Offices (MTSOs). [This comes very close to saying that the PUC and local governments have a say over "system" design. See comment at 2810 above.]
- (c) While the licensing of wireless communication facilities is under the control of the Federal Communication Commission (FCC), and certain other regulations are the responsibility of the Public Utilities Commission (PUC) of the State of California, local government must address public health, safety, welfare, zoning, and environmental concerns where not preempted by federal statute or regulation.
- (d) In order to protect the public health, safety and the environment, it is in the public interest for local government to establish rules and regulations addressing certain land use aspects relating to the construction, design, siting, major modification, and operation of wireless communication facilities and their compatibility with surrounding land uses.

10-3.2812 Applicability

Facilities regulated by this ordinance include the placement, construction, and modification of all wireless communication facilities, including Federal Communication Commission (FCC) regulated dish antennas, antennas used for Multi-channel, Multi-point Distribution Services (MMDS) or "Wireless Cable" and personal wireless service facilities. ["Operation" of personal wireless facilities is not within the province of local governments.] [Were radio and TV broadcast facilities intentionally left out?]

The regulations in this ordinance are intended to be consistent with state and federal law, particularly the Federal Telecommunications Act of 1996, Section 704 in that they are not intended to: 1. be used to unreasonably discriminate among providers of functionally equivalent services; 2. have the effect of prohibiting personal wireless services within the Town of San Anselmo; or 3. have the effect of prohibiting the siting of wireless communication facilities on the basis of the environmental/health effects of radio frequency emissions, to the extent that the regulated services and facilities comply with the regulations of the Federal Communications Commission concerning such emissions.

10-3.2813 Definitions:

"Antennas" (Including parabolic, omnidirectional, dipole, monopole, or bi-directional) Any system attached to a telecommunications tower or other structure, used for the transmission or reception of electromagnetic waves. Also including any wires, poles, rods, reflecting discs, flat panels, or similar devices. [The reciting of

various kinds of antennas gives rise to the inference that any style left out is not covered. It might be better to remove the parenthesized enumeration.]

"Available Tower Space" The space on a tower or structure to which telecommunications providers' antennas are both structurally and electromagnetically able to be attached.

"BS Base Station" A Base Station is a wireless telephony network component-node that makes connections with allowed Mobile Stations in a wireless telecommunications network.

"BSC Base Station Controller" A wireless telephony network component-node that governs/controls the operation/use of Base Station sites in a wireless telecommunications network.

"Cell Site or Base Station" Any local cellular tower and/or radio antenna including the radio, controller switch interconnect, etc. which is the primary sending and receiving site in a wireless telecommunications network. More than one cell site or base station and/or more than one telecommunications service provider can be located on a single structure. [This seems to duplicate the definition of "base station" above, yet it describes the term differently and is confusing.]

"Cellular Service" A personal communications service that provides two-way voice and data communication through handheld portable, and car-mounted phones. [In common parlance, a handheld phone is a portable phone.]

"Channel" The segment of the radiation spectrum from an antenna which carries one signal. An antenna may radiate many channels simultaneously.

"Co-location or Co-located Facility" When more than one wireless service provider share a single wireless communication facility, such as a telecommunications tower. A co-located facility is comprised of a single tower or mast/pole including a public utility pole or tower, that supports two or more wireless service providers' antennas, dishes, or similar wireless communication devices, that are separately owned or used by more than one public or private entity.

"dB" Unit of measure of the power level of an electromagnetic signal expressed in decibels referenced to 1 milliwatt. [When dB is referenced to 1 milliwatt, it usually is abbreviated "dBm."]

"Dish Antenna" Any device incorporating a reflective surface that is solid, open mesh or bar configured, that is shallow dish, cone, horn or cornucopia shaped and is used to transmit and/or receive electromagnetic signals.

"Facility Site" A property, or any part thereof, which is owned or leased by one or more wireless service provider and upon which one or more wireless service providers are co-located.

"FCC" Federal Communications Commission, the government agency chiefly responsible for regulating wireless telecommunications in the United States. [Note: State PUCs have a lot to say about intrastate wire telecommunications.]

"Ground-Mounted Wireless Communication Facility" Any wireless communications facility with its base placed directly on the ground or that is attached to a mast or pipe, with an overall height of not exceeding sixteen (16) feet from the ground to the top of the antenna. [There is potential danger from RF radiation at such low-rise facilities. See discussion at 2814(a) below.]

"Least Visually Intrusive" Technically feasible facility site and/or design alternatives that render the facility the most inconspicuous relative to other technically feasible sites and/or designs. It does not mean that the facility must be completely hidden, but it may require screening or other camouflaging so that the

facility is not immediately recognizable as a wireless communication facility from adjacent properties and roads used by the public.

"Macrocell Site" A low power radio transceiver facility (up to 100 watts per radio transmitter) that is comprised of an unmanned equipment shelter approximately 300 square feet per licensed provider, omni-directional whip, panel or microwave dish antennas mounted on a support structure or building. A macrocell site typically includes 60 radio transmitters. [I could not find "macrocell" or "microcell" used subsequently in the ordinance. What is the need to define them?]

"Major Modification of an Existing Wireless Service" Any major modifications or reconfigurations of any physical or electronic equipment components. These include but are not limited to proposed increase in power output gain, in size or number of antennas, change in antenna type or model, repositioning of antenna(s), or change in number of channels per antenna above the maximum number of an existing and permitted telecommunications tower. This also applies to any other structure designed to support telecommunication transmissions, receiving and/or relaying antennas and/or equipment previously approved by the Town of San Anselmo. Included are changes to any/all RF-generating equipment attached to antennas resulting in an increase in the wireless communication facility's power output and/or increase in the intensity or change in the directionality of NIER propagation patterns. [Many cellular and PCS antennas change power dynamically and constantly. I assume these operational fluctuations are not meant to be recertified each time they occur.]

"Major Modification to Visual Impact" Any increase or intensification, or proposed increase or intensification, in dimensions of an existing and permitted telecommunications tower or other structure designed to support telecommunications transmission, receiving and/or relaying antennas and/or equipment, resulting in an increase of the visual impact of said wireless communications facility.

"Megahertz -MHz" One million hertz.

"Microcell Site" A small low power radio transceiver facility (10 watts per radio transmitter) comprised of an unmanned equipment cabinet with a total volume of one hundred (100) cubic feet or less that is either under or aboveground, and one omni-directional whip antenna with a maximum length of five feet, or up to three small (approximately 1'x 2' or 1'x 4') directional panel antennas, mounted on a single pole, an existing conventional utility pole, or some other similar support structure.

"Minor Antenna" or "Minor Wireless Communication Facility" any of the following: a) A ground- or building-mounted receive-only radio or television antenna ten (10) feet or less tall (including mast or pipe), and six (6) inches or less in diameter or width, and, for building mounted antennas, not exceeding the height limit for non-commercial antennas in the zoning district. b) A ground- or building-mounted citizens band radio antenna ten (10) feet or less tall (including mast or pipe), and six (6) inches or less in diameter or width, and, for building mounted antennas, not exceeding the height limit for non-commercial antennas in the zoning district. c) A ground- or building-mounted satellite receiving dish not more than one (1) meter in diameter for a residential zoned parcel, and two (2) meters in diameter for a commercial or industrial zoned parcel. d) A ground-, building-, or tower-mounted antenna operated by a federally licensed amateur radio operator as part of the Amateur Radio Service, the height of which (including tower or mast) does not exceed the height limit for non-commercial antennas in the zoning district. [Is there a need to define both minor and major? What about making "minor" anything not "major?" The risk of defining both is that something will fall through a crack in between.]

"Monitoring Protocol" An industry accepted radio-frequency (RF) radiation measurement protocol used to determine compliance with FCC RF radiation exposure standards, in accordance with the National Council on Radiation Protection and Measurements Reports 86 and 119 and consistent with the RF radiation modeling specifications of OET Bulletin 65 (or any superceding reports/standards), which is to be used to measure the emissions and determine radio-frequency radiation exposure levels from existing and new telecommunications facilities. RF radiation exposure measurements are to be taken at various locations, including those from which public RF exposure levels are expected to be the highest.

"MMDS" Multi-channel, Multi-point Distribution Services (also known as "wireless cable").

"MTSOs" Mobile Telephone Switching Offices/Centers .

"Monopole" A single pole-structure, erected on the ground to support one or more wireless communication antennas groups and inter-connecting appurtenances.

"Non-Ionizing Electromagnetic Radiation"(NIER) Radiation from the portion of the electromagnetic spectrum with frequencies of approximately 1 million GHz and below, including all frequencies below the ultraviolet range, such as visible light, infrared radiation, microwave radiation, and radio frequency radiation. [Why is "microwave radiation" enumerated separately from "radio frequency radiation?"]

"Personal Communications Services"(PCS) Service that bundles voice communications, numeric and digital text messaging, voice mail and other features into one device or service.

"PUC or CPUC" California Public Utilities Commission. (Use FCC definition of PCS to avoid confusion.)

"Personal Wireless Services" Commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services. These services include: cellular services, personal communication services, specialized mobile radio services, and paging services. (Use statutory definition at Sec. 332(c)(7)(C)(i) to avoid confusion.)

"Radial Plots" The result of drawing equally-spaced lines (radials) from an antenna, calculating the expected signal graphically.

"RF" Radio Frequency

"RFR or Radio Frequency Radiation" Radiation from the portion of the electromagnetic spectrum with frequencies below the infrared range (approximately 100 GHz and below), including microwaves, television VHF and UHF signals, radio signals, and low to ultra low frequencies.

"Significant Gap" A gap in a service provider's personal wireless services network within the Town of San Anselmo as defined in federal case law and the Federal Telecommunications Act of 1996 and any amendments thereto.

"Telecommunication Tower (Tower)" A mast, pole, monopole, guyed tower, lattice tower, free-standing tower, or other structure designed and primarily used to support antennas.

"Wireless Communication (or Telecommunications) Facility" A facility, including all associated equipment, that supports the transmission and/or receipt of electromagnetic/radio signals. Wireless communication facilities include cellular radio-telephone service facilities; personal communications service facilities (including wireless internet); specialized mobile radio service facilities and commercial paging service facilities.

10-3.2814**Exemptions:**

The following are types of wireless communications facilities that are exempt from the provisions of this Article.

- a) A ground or building-mounted citizens band or two-way radio antenna. [Two-way radio is a very broad term. I would be concerned about a bank of cellular or PCS antennas mounted only 16 feet above the ground, in the same way that rooftop antennas are of concern to persons who work on rooftops.]
- b) A ground-, building- or tower-mounted antenna operated by a federally licensed amateur radio operator as part of the Amateur or Business Radio Service. [Business Radio is a very broad category. Amateur radio is not off-limits to local regulation. I do not understand the reason for these exemptions.]
- c) A ground- or building-mounted receive-only radio or television antenna which does not exceed the height requirements of the zoning district, or television dish antenna which does not exceed three (3) feet in diameter if located in a residential district within the exclusive use or control of the antenna user.
- d) A television dish antenna that is no more than six (6) feet in diameter and located in any commercial district.
 - e) Temporary mobile wireless services, including mobile wireless communication facilities and services providing public information coverage of news events, of less than two-weeks duration. Any mobile wireless service facility intended to operate in any given location for more than two weeks is subject to the provisions of this Article.
- f) Hand held devices such as cell phones, business-band mobile radios, walkie-talkies, cordless telephones, garage door openers and similar devices.
- g) Wireless communication facilities and/or components of such facilities to be used solely for non-commercial public safety purposes, installed and operated by authorized public safety agencies.
- h) Any "minor" antenna or facility described in Section 10-3.2813.
- i) Any non-major modification or maintenance activities carried out as part of the routine operation of wireless communication facilities. [The use of different definitions for "minor" and "non-major" is confusing.]
- j) Small scale, low powered, short-range wireless internet transmitter/receivers (e.g., "Wi-Fi hotspots").

10-3.2815**General Requirements:**

- a) Required permits. All new wireless communication facilities shall be subject to a Use Permit in accordance with the requirements herein and Article 13 of this Chapter. Such Use Permit shall be acted upon by the Planning Commission. Additionally, a building permit shall be required for the construction of all such facilities.
- b) Prohibited Areas. Wireless communication facilities are prohibited in:
 - 1. all residential zoning districts, subject to the exception procedure described herein,
 - 2. all public and private K-12 school sites and within five hundred (500) feet of such schools, subject to the exception procedure described herein. [It seems to me the "exception procedure" is nothing more than: "If you (the applicant) can prove that refusal of a residential site is unlawful, we will consider an exception." This is

problematic because it is not an affirmative safety valve; rather, the carrier is forced to prove the Town has violated federal law.]

In addition to the above prohibited zones, wireless communications shall be prohibited unless there exists a need for such facilities, as determined herein. [Putting the Town in the position of determining "need" is highly risky, as discussed further below.]

- c) **Site Selection - Visual Impacts.** Wireless communication facilities shall be sited in the least visually intrusive location technically feasible. [Argument over whether a given site is the least intrusive from a visual perspective may become endless and heavily subjective. The Town may wish to write this in such a way that visual and other factors are "balanced."]
- d) **Inter-Carrier Service Agreements.** Inter-Carrier Service Agreements shall be required where feasible to assist in minimizing the number of wireless facilities necessary to provide communication services in the Town. If Inter-Carrier Service Agreements cannot be obtained, documentation of the effort and the reasons why these agreements were not possible shall be provided. [The Town should not place itself in the position of requiring carriers to agree with each other, especially with the subjective qualifier, "where feasible." It's OK to express a preference for co-location, but not so wise to attempt to force literal carrier agreements. Better for the carriers to exercise the initiative of voluntary agreement in order to meet co-location preferences.]
- e) **Co-location.** Co-location of facilities may be required by the approving authority. Where the visual impact of an existing tower/facility must be increased to allow for co-location, the potential increased visual impact shall be weighed against the potential visual impact of constructing a new separate tower/facility nearby. Where one or more wireless communication tower/facilities already exist on the proposed site location, co-location shall be required if it will not, in the opinion of the Planning Director or approving body, significantly increase the visual impact of the existing facilities. If a co-location agreement cannot be obtained, or if co-location is determined to be technically infeasible, documentation of the effort and the reasons why co-location was not possible shall be provided.
- f) **Public Notification.** Public hearing notice shall be provided pursuant to the Government Code. However, due to the potential adverse visual impacts of wireless communication facilities the neighboring parcel notification distance for wireless communication facility applications is increased from the normal 300-feet to 1,000-feet from the outer boundary of the subject parcel. [Is this the California Government Code? What is the citation?]
- g) **Major Modification to Power Output.** Any proposed major modification that would increase the power output of a wireless communication facility, as defined herein shall require the submission of an affidavit by a professional engineer registered in the State of California that the proposed facility improvements will not result in RF exposure levels to the public in excess of FCC's NIER exposure standard. In addition, within 90-days of commencement of operation of the modified facility, the applicant shall conduct RF exposure level monitoring at the site, utilizing the Monitoring Protocol, and shall submit a report to the Planning Department documenting the results of said monitoring. [Reading the definition and this section

together, it looks like any power increase, no matter how small, is considered "major." Why?]

- h) Major modification to Visual Impact. Any proposed major modification that would increase the visual impact of a wireless communication facility, shall be subject to all requirements herein. [The highlighted words define change in visual impact differently than in the definition at 3.2813. This invites arguments over which set of words to use.]
- i) Transfer of Ownership. In the event that the original permittee sells its interest in a wireless communication facility, the succeeding carrier shall assume all responsibilities concerning the project and shall be responsible for maintaining consistency with all project conditions of approval, including proof of liability insurance. A new contact name for the project shall be provided by the succeeding carrier to the Planning Department at the time of transfer of interest of the facility.
- j) Onsite Visual Demonstration Structures (Story poles) shall be required for all proposed wireless communication facilities except for co-located and microcell facilities. The applicant will be required to arrange to raise a temporary mast/story poles at the height and at the location of the proposed facilities. At minimum, the onsite demonstration structure shall be in place prior to the first public hearing to consider project approval or earlier as determined necessary by the Planning Commission.
- k) Third Party Technical Review. An independent third party review shall be conducted regarding the following: (1) conformance with expected FCC RF radiation exposure levels; (2) determination of need for a facility; and (3) analysis/suitability of alternatives to a proposed facility. The Planning Director shall employ, on behalf of the Town, an independent technical expert or experts to review any technical materials submitted including but not limited to those required under this Article. The applicant shall pay all the costs of said review and shall be required to deposit funds in advance to cover the estimated costs of said review. Any application shall not be deemed complete until such third party completes said review. [Generally speaking, the Town should not second-guess a carrier's decision to install a new site. Yes, the law allows the Town to question whether a gap in service is "significant." But this analysis should take place with particular facts in hand. An abstract requirement for proof of need does not belong in a generic ordinance. The Town risks being challenged by the carrier for attempting to regulate its "entry" into service, in violation of Section 332(c)(3) of the Communications Act. The fact that the carrier would be forced to pay for the second-guessing simply rubs salt in the wound.]
- l) Non-Ionizing Electromagnetic Radiation (NIER) Safety Monitoring Requirements for Wireless Communication Facilities. Regular and ongoing monitoring of wireless communication facility NIER/radio-frequency (RF) emissions is required for all wireless communication facilities constructed under this Article. Wireless communications service providers are required to provide ongoing documentation that all wireless communications operate in compliance with the FCC RF radiation exposure standards. NIER monitoring is to be conducted annually utilizing the Monitoring Protocol, as described herein. The required NIER/RF radiation monitoring reports will be prepared and submitted to the Town by a professional engineer in the State of California. Such reports shall certify that the facility is in conformance with all federal and state standards and conform to the following: [This

entire subsection "pushes the envelope" in an area that is federally preempted. The Town should limit itself to what is required to be assured of compliance with federal standards.]

- a. **Public Health and Safety.** No wireless communication facility shall be located or operated in such a manner that it poses, either by itself or in combination with other such facilities, a potential threat to public health. To that end, no telecommunication facility or combination of facilities shall produce at any time power densities in any area that exceed the FCC-adopted standard for human exposure, as amended, or any more restrictive standard subsequently adopted or promulgated lawfully by the Town, the State of California, or the federal government. Areas in the immediate vicinity of all antennas or other transmitting devices in which the FCC RF radiation exposure guidelines could potentially be exceeded, especially near rooftop antennas, must be clearly demarcated and/or fenced off, with warning signs in English and Spanish and International Symbols clearly visible. [On publicly-owned sites where the governmental body is acting as a proprietary lessor in the commercial marketplace, it is possible that NIER restrictions could exceed federal standards. This topic can be explored later if the Town is interested.]
- b. **Initial Post-Construction Monitoring of NIER.** Initial compliance with the FCC's NIER standards shall be demonstrated for all new wireless communication facilities for all new wireless communication facilities and for all wireless communication facilities proposing to undergo a major modification of power output through submission of a report documenting initial NIER monitoring at the facility site upon six months after the commencement of operations or within 90-days after any major modification to power output of the facility. The NIER measurements shall be taken at various locations, including those from which public RF exposure levels are expected to be the highest. The report shall list and describe each transmitter/antenna present at the facility, indicating the effective radiated power of each (for co-located facilities this would include the antennas of all other carriers at the site). The report shall include field measurements of NIER emissions generated by the facility and also other nearby emission sources, from various directions and particularly from adjacent areas with habitable structures. The report shall compare the measured results to the FCC NIER guidelines for such facilities. [Why the difference is these two time intervals?]
- c. **Ongoing Monitoring of NIER Levels and Structural Integrity/Appearance.** Every wireless communication facility authorized under this section, shall demonstrate continued compliance with the NIER standard established by the FCC, and any NIER guidelines of other regulatory agencies as may become effective. By July 1st of each year, a report listing and describing each transmitter antenna present at the facility and the effective radiated power of each shall be submitted to the Planning Director. This annual report shall also include field measurements of NIER emissions generated by the facility and other nearby emission sources including the power generator, utilizing the Monitoring Protocol, from various directions and particularly from adjacent areas with habitable structures and/or other locations from which public RF exposure levels are expected to be the highest, during typical peak-use periods. [The detail of this section invites challenge by carriers who see the law as requiring no more than a periodic demonstration of compliance with federal standards. What does ERP have to do with this? Power levels are only one factor in the formulas for calculating human bioexposure.]

Application Requirements

Application Submittal Information. For all wireless communication facilities, except exempt facilities as described in herein, the Planning Director shall establish and maintain a list of information that must accompany each application. Said information shall include, but may not be limited to: [This list of requirements is so voluminous as to invite the carrier's challenge on the ground that the Town is regulating his entry into wireless service in violation of Section 332(c)(3). Much of the information has little, if anything, to do with the Town's zoning responsibilities.]

- a) The identity and legal status of the applicant, including any affiliates; the name, address and telephone number of the property owner, officer, agent, or employee responsible for the accuracy of the application, including a 24-hour emergency contact phone number.
 - b) The address and assessor parcel number(s) of the proposed wireless communication facility site, including the precise latitude/longitude coordinates (NAD 83) in digital degree format, of the proposed facility location on the site.
- c) Evidence of need for the proposed new wireless communication facility through written documentation demonstrating that a significant gap exists and existing facility sites in the Town or its incorporated areas cannot reasonably be used to provide wireless services to the intended service area. The documentation shall include a description of the applicant service provider's complete existing wireless communication facilities network and proposed/anticipated future facilities for all proposed sites for which an application has been submitted, and for all proposed sites for which site access rights or agreements have been secured by the provider. Information regarding proposed network expansions will be kept confidential by the Town if identified in writing as trade secrets by the applicant. ["Evidence of need" is problematic for the reasons discussed above. The carrier will take the position that as long as he can meet the other zoning standards, "need" is none of the Town's business.]
- d) Map of facility sites in town
- e) Table listing facility sites/addresses, site names/identification, facility types and precise latitude/longitude coordinates (in NAD 83) in digital degree format
- f) Base Station Controller
- g) Mobile Telephone Switching Offices
- h) Transit Switching Centers
- i) Elevation at base of tower or structure to which antenna(s) are attached
- j) Height above average grade of tower or structure to which antenna(s) are

attached

- k) Height of antenna(s) above average grade on tower or structure
- l) Antenna type(s), manufacturer(s) and model number(s)
- m) Operational multiplexing system - Analog, IDEN, CDMA, TDMA, or GSM (If TDMA, specify 16 to 32 channel combiner per antenna)
- n) Amplifying equipment manufacturer(s) and model number(s)
- o) Physical & electrical tilt of each antenna
- p) Operating transmit and receive frequencies of each antenna
- q) Minimum and maximum number of operating channels per antenna
- r) Maximum power input and output per channel per antenna (and per the aggregate of
 - s) provider's antennas in incorporated and unincorporated areas of San Anselmo)
 - t) DB gain per antenna
 - u) Predictions for and the actual levels of RFR per antenna
 - v) Radiated propagation analysis pattern of each antenna
 - w) Radiated spread sheets of power output of each antenna
 - x) Polarization of each antenna (horizontal, azimuth, or circular)
 - y) ERP and EIRP of the main lobe antenna(s) pattern(s)
 - z) Minimum power level at ground level with minimum channels
 - aa) Maximum power level at ground level with maximum channels
 - bb) Available Inter-Carrier Service Agreement potential
 - cc) Available space on the tower/facility for potential co-location
- dd) Information sufficient to determine that the applicant has applied for and/or received any certificate of authority, operating license or other approvals which may be required by the FCC or California Public Utilities Commission (if applicable) to provide wireless communications services or facilities within the incorporated areas of San Anselmo.
 - ee) Information demonstrating that the proposed facility will be in compliance with the FCC's non-ionizing electromagnetic radiation (NIER) standards, provided by a professional engineer registered in the State of California at the time of application. Such information shall be evaluated and verified by a qualified Town-approved third-party telecommunications engineer utilizing Monitoring Protocol defined herein.
- ff) proposed measures to ensure that the public would be kept at a safe distance from any NIER transmission source associated with the proposed wireless communication facility, consistent with the NIER standards of the FCC or any potential future superceding standards, must be submitted as part of the application. The submitted plans must also show that the outer perimeter of the facility site (or NIER hazard zone in the case of rooftop antennas) will be posted with bilingual NIER hazard warning signage that also indicates the facility operator and an emergency contact. Each wireless communication facility shall have an on-site emergency shut-off switch to de-energize all RF-related circuitry/componentry at the base station site (including a single shut off switch for all facilities at a co-location site), or some other type of emergency shut-off by emergency personnel acceptable to the local Fire Chief, unless the applicant can prove that the FCC public exposure limits cannot be exceeded in the vicinity of the proposed facility. [The FCC has no requirements like this. It simply tells the carrier to keep to the exposure limits and the carrier decides

whether signs, fences, etc are needed. This pushes the envelope and makes it appear that the Town is regulating in an area preempted by the federal government.]

gg) A detailed Visual Analysis, including computer photo simulations of the proposed wireless communication facility from various public viewing locations. Photo-simulations shall be submitted of the proposed wireless communication facility from various locations and/or angles from which the public would typically view the site. The Visual Analysis shall include an assessment of the cumulative visual impacts of the proposed and shall include all potential mitigation measures for visual impacts.

hh) An Alternatives Analysis which shall at a minimum:

1. Identify all technically feasible alternative locations and/or facility designs or types. This should include assessment of the relative environmental impacts of constructing multiple facilities (e.g., on top of existing utility poles) in lieu of the single proposed facility.
2. Address the potential for co-location with existing facilities.
3. Explain the rationale for selection of the proposed site in view of the relative merits of any of the technically feasible alternatives, including evidence that none of the technically feasible potential alternative sites or facility design-types are environmentally superior to the proposed site.
4. Include photo-stimulations and preliminary/conceptual facility diagrams/plans of all technically feasible and potentially environmentally superior alternative designs and sites.
5. Document attempts to rent, lease, purchase or otherwise obtain the use of technically feasible alternative sites, which may be environmentally superior to the proposed project site.

Review and verification of the Alternatives Analysis by a qualified Town-approved third-party telecommunications engineer shall be required, at the applicant's expense. Said review shall be complete prior to determination of complete application.

ii) Detailed site plans, elevations, sections to scale showing existing and proposed improvements with appropriate dimensions and details necessary to consider the proposal. [The risk of putting all the alternatives on the table at once is that the Town and the carrier will "lock" themselves into a prior record and leave no room to negotiate an alternative that nobody could foresee at the beginning.]

10-3.2817 Fees/Deposit.

Fees for review of Use Permits for wireless communication facilities shall be established by Resolution of the Town Council.

10-3.2818 Indemnification

Each permit issued pursuant to Article shall have as a condition of the permit, a requirement that the applicant defend, indemnify and hold harmless the Town and its officers, agents, and employees from any claim (including attorney fees) against the Town of San Anselmo, its officers, employees or agents to attack, set aside, void or annul the approval of the permit or and subsequent amendment of the permit.

10-3.2819 Failure of Compliance

Failure to meet conditions of approval of a Use Permit required by this Article or comply with ongoing monitoring requirements of this Article shall render any Use Permit authorized hereunder subject to revocation.

10-3.2820 Prohibited Area Exception Procedure

If the limitations set forth in Section 10-3.2815(b) regarding prohibitions within certain land uses would have the effect of violating the Federal Telecommunications Act as amended, the approving body shall grant an exception to the offending requirement or application. The applicant shall have the burden of proving that application of the requirement or limitation would violate the Federal Telecommunications Act, and that no alternatives exist which would render the approval of an exception unnecessary. [It is difficult, if not impossible, to "prove a negative" such as this. The ordinance should consider language such as: "If non-residential sites are unavailable or infeasible, the Town will consider residential siting." This is a far cry from "In order to gain a residential site, you will have to show that our refusal is a prohibition in violation of federal law." This potentially makes a lawsuit out of every application.]

10-3.2821 Findings for Approval of Wireless Communication Facility Use Permits

In addition to the findings for Use Permits required in Section 10-3.1305 and, as applicable, Design Review findings in Section 10-3.1505, the Planning Commission shall make the following findings:

1. A "significant gap" exists.
2. The site location is superior to available alternative locations.
3. The facility as approved is determined to be "Least Visually Intrusive".

10-3.2822 Site Restoration Upon Termination/Abandonment of Facilities:

Upon termination of any wireless communication facility, the site shall be restored as nearly as possible to its natural, or pre-construction state within six months of termination of use or abandonment of the site.

SECTION II TABLE 3A, Chapter 3, Title 10 is hereby amended to add the following:

Zoning District: R-1H R-1C R-1 R-2 R-3 P C-1 C-2 C-3

Wireless Communication Facilities - - - - - C(10) C(10) C(10) C(10)