

CERTIFICATE FOR ORDINANCE

I.

On the 19 day of May, 2016, the City Council of the City of Conroe, Texas, consisting of the following qualified members, to-wit: **Webb K. Melder, Mayor; Guy Martin, Mayor Pro Tem, Council Members Marsha Porter, Gil Snider, Seth Gibson and Duke Coon** did convene in public session in the Council Chambers of the City Hall at 300 West Davis in Conroe, Texas. The roll being first called, a quorum was established, all members being present except —. The Meeting was open to the public and public notice of the time, place and purpose of the Meeting was given, all as required by Chapter 551, Texas Government Code.

II.

WHEREUPON, AMONG OTHER BUSINESS transacted, the Council considered adoption of the following written Ordinance, to-wit:

ORDINANCE NO. 2315-16

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CONROE, TEXAS MAKING CERTAIN FINDINGS WITH RESPECT TO AN APPLICATION FOR THE CONSTRUCTION OF A NEW 100 FOOT TELECOMMUNICATIONS TOWER AT 1007 WILSON ROAD IN CONROE, TEXAS; DECLARING THE ACTION OF THE CITY OF CONROE PLANNING COMMISSION WITH RESPECT TO THE GRANT OF CERTAIN WAIVERS TO BE CONTRARY TO THE PUBLIC INTEREST AND VOID AB INITIO AND DENYING THE PERMIT APPLICATION; PROVIDING FOR EFFECTIVE DATE AND OTHER RELATED MATTERS

III.

Upon motion of Council Member (NPT) Martin, seconded by Council Member Gibson, all members present voted for adoption of the Ordinance, except the following: N/A. A majority of those Council Members present having voted for adoption, the presiding officer declared the Ordinance passed and adopted.

A true, full and correct copy of the Ordinance adopted at the Meeting is attached to and follows this Certificate.

SIGNED AND SEALED this 19 day of May, 2016.


SOCO GORJON, City Secretary

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WHEREAS, the City of Conroe acting by and through its elected City Council has ordained and enacted Chapter 98, Code of Ordinances, City of Conroe, Texas styled "Telecommunications Towers" and being hereinafter referred to as the "Tower Ordinance"; and

WHEREAS, on or about January 13, 2016 Pyramid Network Services ("the Applicant") acting on behalf of Eco-Site Inc. ("the Tower Owner") did make application for a permit to allow the construction of a new 100 foot telecommunications tower to be located at 1007 Wilson Road in Conroe, Texas on property owned by Gracia Abundante Church, which tower is initially intended to be used and occupied by T-Mobile; and

WHEREAS, a copy of the application is on file with the City of Conroe Department of Community Development and is incorporated herein by reference and considered by the City Council; and

WHEREAS, the Applicant acknowledged in the application that the Tower Ordinance prohibited the issuance of a permit for the proposed tower location due to its proximity to a residential structure and because the proposed location was within a residential area; and

WHEREAS, pursuant to Section 98-34 of the Tower Ordinance the Applicant requested a waiver of the restrictions on location of a tower in a residential area and adjacency to residential structures; and

WHEREAS, on April 7, 2015 the Planning Commission conducted a public hearing on the requested waivers at which time the proposed waiver was the subject of various protests; and

WHEREAS, at the close of the April 7, 2016 public hearing the Applicant requested that the Planning Commission table the waiver request in order to allow the Applicant the opportunity to address the protests with neighboring landowners; and

WHEREAS, at the request of the Applicant the waiver request was removed from the table and brought forward for consideration by the Planning Commission on May 5, 2016 at which time the Applicant was represented by legal counsel and presented additional information and argument in support of the waiver request, whereupon by majority vote the Planning Commission approved the waivers requested by the Applicant; and

WHEREAS, an audio recording of the May 5, 2016 Planning Commission meeting is on file with the Secretary of the City of Conroe Planning Commission and such recording together with the Community Development Department files and Planning Commission meeting packets and minutes approved through the date of this ordinance are hereby incorporated herein by reference and have been considered by the City Council; and

WHEREAS, on May 16, 2016 prior to the issuance and delivery of the Applicant's requested permit the City Administrator did suspend issuance of the permit pending a review of the waivers by the City Council; and

WHEREAS, on May 19, 2016 at a duly called and noticed meeting the City Council did review and consider the permit application and the supporting materials presented to the Planning Commission and did further receive additional information and argument in support of the waivers from the Applicant and its legal counsel;

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CONROE, TEXAS:

Section 1. That the recitals set forth above in the preamble to this ordinance are hereby adopted as the findings of fact and conclusions of the City Council.

Section 2. The City Council further finds and determines that Planning Commission exceeded its authority and acted unlawfully and contrary to the public interest by purporting to waive the provisions of Code of Ordinances Section 98-71 prohibiting approval for a permit to construct a tower in a residential area or at a location within the residential structure setback zone established by such section and that such waiver would be detrimental to the public health, safety and welfare. The City Council further finds and declares such purported waiver was and is void ab initio and orders that it be given no force or effect by any officer or agent of the City of Conroe.

Section 3. The City Council, acting pursuant to Sec. 3.07 of the home rule charter of the City of Conroe wherein all powers of the City of Conroe are vested in the City Council hereby denies the permit application on the grounds that the proposed tower location is in a residential area and is within the required residential structure setback zone and the applicant has failed to establish that a literal application of the provisions of Code of Ordinances Section 98-71 will result in undue and unnecessary hardship to the

applicant taking into account any federal or state licenses the applicant may have received to conduct its business.

Section 4. This ordinance shall be effective immediately upon adoption.

PASSED AND ADOPTED this 19 day of May, 2016.


WEBB K. MELDER, Mayor

APPROVED AS TO FORM:


MARCUS L. WINBERRY, City Attorney

ATTEST:


SOCO GORJON, City Secretary