

(Appeal of Planning Commission Action)

RESOLUTION NO. A-_____

SPECIAL PERMIT NO. 1892

1 WHEREAS, Qwest Wireless, L.L.C. has submitted an application designated
 2 as Special Permit No. 1892 for authority to construct a 123' tall personal wireless facility,
 3 with associated ground equipment, and a waiver of the fall zone requirement on property
 4 located at N. 7th Street and Fletcher Avenue, and legally described to wit:

5 The remaining portion of Lot 32, Cumberland Heights, located
 6 in the Southwest Quarter of Section 35, Township 11 North,
 7 Range 6 East of the 6th P.M., Lancaster County, Nebraska,
 8 being more particularly described as follows:

9 Referring to the South Quarter corner of said Section 35;
 10 thence northerly north 01 degrees 46 minutes 40 seconds west
 11 on the east line of the Southwest Quarter of said Section 35,
 12 415.33 feet; thence westerly south 88 degrees 13 minutes 28
 13 seconds west, 134.92 feet to the point of beginning for the
 14 described lease site; thence westerly south 90 degrees 00
 15 minutes 00 seconds west, 22.00 feet; thence northerly north 00
 16 degrees 00 minutes 00 seconds east, 10.00 feet; thence
 17 easterly north 90 degrees 00 minutes 00 seconds east, 22.00
 18 feet; thence southerly south 00 degrees 00 minutes 00
 19 seconds west, 10.00 feet to the point of beginning for the
 20 described lease site, containing a total calculated area of
 21 220.00 square feet, more or less;

22 WHEREAS, the Lincoln City-Lancaster County Planning Commission has
 23 held a public hearing on said application and by Resolution No. PC-00657 has conditionally
 24 approved Special Permit No. 1892; and

25 WHEREAS, Arlon E. and Corrine D. Bartels; Dale and Jennie M. Meiner;
 26 Deanna Mumgaard; Mary Mumgaard; David Watts; Drennen Watts; M. Laimons Iesalnieks;
 27

1 and Larry and Denise Maack have appealed the action of the Lincoln City-Lancaster
2 County Planning Commission approving Special Permit No. 1892; and

3 WHEREAS, the City Council of the City of Lincoln, Nebraska has held a
4 public hearing thereon and find that the community as a whole, the surrounding
5 neighborhood, and the real property adjacent to the area included within the site plan for
6 this wireless communications facility will not be adversely affected by granting such a
7 permit; and

8 WHEREAS, said site plan together with the terms and conditions hereinafter
9 set forth are consistent with the intent and purpose of Title 27 of the Lincoln Municipal
10 Code to promote the public health, safety, and general welfare.

11 NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of
12 Lincoln, Nebraska:

13 That the application of Qwest Wireless, L.L.C., hereinafter referred to as
14 "Permittee", to construct a 123' tall personal wireless facility on the property legally
15 described above, be and the same is hereby granted under the provisions of Section
16 27.63.720 of the Lincoln Municipal Code upon condition that construction and operation
17 of said wireless communications facility be in strict compliance with said application, the
18 site plan, and the following additional express terms, conditions, and requirements:

19 1. This permit approves a 123' tall wireless communications facility for
20 a period of 15 years with a waiver of the fall zone required by 27.68.110(g).

21 2. Before receiving building permits:

22 a. The Permittee must complete the following instructions and
23 submit the documents and plans to the Planning Department
24 office for review and approval:

- 1 i. Revise sheet "Z-3" to place the street names in the
2 proper locations.
- 3 ii. Provide five full sets of plans to the Planning
4 Department for distribution.
- 5 iii. Revise the structural drawings to the satisfaction of the
6 Building and Safety Department, to show a 123' pole,
7 not a 70' pole.
- 8 iv. Provide documentation from the FAA that the proposed
9 tower is in compliance with all FAA regulations.
- 10 b. The Board of Zoning Appeals must grant a variance of the
11 height allowed in an airport turning district. This Special Permit
12 approval does not imply that the Board of Zoning Appeals will
13 grant such a variance.
- 14 c. The Permittee must post a surety, approved by the City
15 Attorney, in the minimum amount necessary to guarantee the
16 removal of the facilities. The surety may not be revoked or
17 terminated during the term of the permit.
- 18 3. Before operating this personal wireless facility, all development and
19 construction must conform to the approved plans.
- 20 4. The personal wireless service provider shall comply at all times with
21 the current applicable FCC and FAA standards and regulations, and any of those of other
22 agencies of the federal government with authority to regulate towers and antennas.
- 23 5. The tower shall be inspected and maintained in accordance with the
24 applicable standards for towers that are published by the Electronic Industries Association,

1 as amended from time to time. At the time of this Special Permit, those standards were
2 contained in the TIA/EIA-222-F. The facility operator shall conduct safety inspections in
3 accordance with the EIA and FCC Standards and within 60 days of the inspection, file a
4 report with the Department of Building and Safety.

5 6. All privately-owned improvements, including landscaping, must be
6 permanently maintained by the Permittee.

7 7. The site plan approved by this permit shall be the basis for all
8 interpretations of setbacks, yards, locations of buildings, location of parking and circulation
9 elements, and similar matters.

10 8. The terms, conditions, and requirements of this resolution shall be
11 binding and obligatory upon the Permittee and the Permittee's successors and assigns.
12 The building official shall report violations to the City Council which may revoke the special
13 permit or take such other action as may be necessary to gain compliance.

14 9. The Permittee shall, within 10 days of written demand, reimburse the
15 City for all direct and indirect costs and expenses as provided in Section 27.68.090 in
16 connection with the issuance and review of this permit.

17 10. As part of this approval, the Permittee agrees that the Permittee, its
18 successors and assigns shall, at its sole cost and expense, indemnify and hold harmless
19 the City, its officers, officials, boards, commissions, agents, representatives, and
20 employees against any and all claims, suits, losses, expenses, causes of actions,
21 proceedings, and judgments for damage arising out of, resulting from, or alleged to arise
22 out of or result from the construction, operation, repair, maintenance or removal of the
23 provider's facilities. Indemnified expenses shall include, but not be limited to, all out-of-

1 pocket expenses, such as costs or suit and defense and reasonable attorney fees, and
2 shall also include the reasonable value of any services rendered by the City Attorney's
3 office and any employees of the City and any consultants retained by the City.

4 11. The Permittee shall sign and return the City's letter of acceptance to
5 the City Clerk within 30 days following approval of the special permit, provided, however,
6 said 30-day period may be extended up to six months by administrative amendment. The
7 City Clerk shall file a copy of the resolution approving the special permit and the letter of
8 acceptance with the Register of Deeds, filing fees therefor to be paid in advance by the
9 Permittee.

10 12. The terms, conditions, and requirements of this resolution shall be
11 binding and obligatory upon the Permittee, its successors, and assigns. The building
12 official shall report violations to the City Council which may revoke the special permit or
13 take such other action as may be necessary to gain compliance.

Introduced by:

Approved as to Form & Legality:

City Attorney

Staff Review Completed:

Administrative Assistant

Approved this ___ day of _____, 2001: _____ Mayor
