

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, MAKING WRITTEN AND EVIDENTIARY FINDINGS RELATIVE TO THE DENIAL OF A REQUEST FROM ANTHEMNET FOR A SPECIFIC USE PERMIT FOR A COMMERCIAL ANTENNA ON THE SOUTH SIDE OF PROSPER TRAIL, WEST OF PRESTON COUNTRY LANE, IN THE TOWN, CASE NO. ZONE-22-0001; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Anthemnet (“Anthemnet”) has requested approval of a Specific Use Permit (“SUP”), Case No. ZONE-22-0001, to locate a commercial antenna and support structure, 105 feet (105’) in height, on an approximate 0.10 acre tract located on the south side of Prosper Trail, west of Preston Country Lane, and to establish equipment cabinets inside an approximate 50 feet (50’) by 50 feet (50’) lease area internal to the site; and

**WHEREAS**, the Anthemnet SUP application was noticed for Town Council consideration at a public hearing at the Town Council’s June 27, 2023, meeting; and

**WHEREAS**, at the Town Council meeting on June 27, 2023, Anthemnet’s representative presented additional comments related to its application for an SUP and the Town Council conducted a public hearing relative to said SUP application; and

**WHEREAS**, after the presentation of substantial evidence and testimony, on June 27, 2023, the Town Council voted to deny the SUP application request from Anthemnet; and

**WHEREAS**, it is the intent of the Town of Prosper to fully comply with all applicable provisions of the Telecommunications Act of 1996 (specifically 47 U.S.C. § 332 *et seq.*) relative to the siting of the proposed 105’ antenna and support structure; and

**WHEREAS**, federal law provides, in 47 U.S.C. § 332(c)(7)(B)(iii), that a local government that denies a request to place, construct or modify a cell tower must put the denial in writing, setting forth the basis for the denial, supported by substantial evidence; and

**WHEREAS**, the purpose of this Resolution is to provide the substantial evidence in writing for the reasons undergirding the Town Council’s denial of Anthemnet’s application for a specific use permit.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, THAT:**

**SECTION 1**

All of the above premises are hereby found to be true and correct legislative and factual findings of the Town of Prosper and they are hereby approved and incorporated into the body of this Resolution as if copied in their entirety.

**SECTION 2**

The Town Council of the Town of Prosper, Texas, hereby makes the following legal and factual findings:

1. Under the Telecommunications Act of 1996, while preserving local authority over the siting and construction of wireless communications facilities, there are five limitations on local authorities when dealing with cell towers and telecommunications carriers. A local government:

- (1) shall not prohibit or have the effect of prohibiting the provision of service [47 U.S.C. § 332(c)(7)(B)(i)(II)];
- (2) may not unreasonably discriminate between providers of functionally equivalent services [47 U.S.C. § 332(c)(7)(B)(i)(I)];
- (3) must act within a reasonable time after a request is filed [47 U.S.C. § 332(c)(7)(B)(ii)];
- (4) any decision by the local government must be in writing and supported by substantial evidence [47 U.S.C. § 332(c)(7)(B)(iii)]; and
- (5) any decision is subject to judicial review [47 U.S.C. § 332(c)(7)(B)(v)].

2. For purposes of the Telecommunications Act of 1996, the Town considered the following substantial evidence in support of its denial of Anthemnet's application for an SUP for the 105 foot (105') antenna and support structure in question.

3. The property on which the antenna is proposed to be located is zoned for Agricultural (A) uses; however, the Town's Comprehensive Plan authorizes Low Density Residential development on the site as well as on adjoining tracts. According to the Comprehensive Plan, Low Density Residential is generally defined as "large-lot single-family homes, with lot sizes generally ranging between 15,000 square feet and 1+ acre in size." While a variety of lot sizes may be utilized, the total gross density of low density residential neighborhoods should not exceed 1.6 dwelling units per acre, according to the Town's Comprehensive Plan, thus providing a continuation of the rural atmosphere and feel that was intensely expressed by Town residents during the comprehensive planning process.

4. The proposed 105-foot antenna and support structure are located within twenty-five feet (25') of the existing right-of-way for Prosper Trail in the Town. While the Town Council is supportive of increasing cell coverage in the Town, and recognizes the need for such coverage, serious concerns were expressed about the proposed location of this telecommunication antenna.

5. The antenna is located within twenty-five feet (25') of the right-of-way of Prosper Trail, a heavily traveled thoroughfare in the Town. The close proximity of the antenna to a heavily traveled thoroughfare presents unique and serious safety concerns.

6. The scale of the proposed antenna immediately adjacent to Prosper Trail is large and imposing, creating visual blight. The stealth water tower design also is imposing and inappropriate for such close roadway proximity. Additionally, the antenna with a water tower design is proposed to be brown with the name of a nearby residential subdivision on it, giving the impression of advertisement for the subdivision. Moreover, also located near the proposed tower site is an equestrian farm with the same name, again creating the possible connection of the

antenna as a point of advertisement for the equestrian farm. Renderings of the site provided by the applicant at the public hearing (which renderings were not included in the Town Council's agenda packet), with the large brown water tower feature figuring prominently, heightened concern about the aesthetics of the antenna as well as the foregoing safety concerns.

7. There are additional nearby sites for the proposed antenna that should be considered—sites that are further off the roadway's right-of-way and still meet the applicant's objectives in providing adequate cell coverage. There are several Town-owned sites nearby and the Town would be open to considering a lease site with the applicant.

8. The currently proposed site for the antenna would impact residential development in the immediate vicinity due to the scale and location of the antenna. Low density residential development, in accordance with the Town's Comprehensive Plan, would not be enhanced by such a large structure immediately adjacent to Prosper Trail and near any entrance to such development.

9. The applicant was unable to provide verification or justification for not considering alternative, nearby locations for the proposed antenna other than general information that Anthemnet had presumably considered other sites and concluded this was the best alternative. The Town Council would consider other nearby sites for the location of the antenna, but the applicant did not address other specific sites and probable issues with such other sites.

10. In considering any SUP application, pursuant to Section 25.3 of the Zoning Ordinance, the Town Council "shall consider the following criteria in determining the validity of the SUP request:

1. Is the use harmonious and compatible with its surrounding existing uses or proposed uses?
2. Are the activities requested by the applicant normally associated with the requested use?
3. Is the nature of the use reasonable?
4. Has any impact on the surrounding area been mitigated?"

11. The Town Council determined, as reflected in the agenda materials and after the closing of the public hearing at the June 27, 2023, Town Council meeting: (1) the use is not harmonious and compatible with surrounding existing uses or proposed uses; (2) the activities and use requested by the applicant are not normally associated with low density residential development, particularly considering the proximity of the antenna to Prosper Trail and any potential entryways into such low density residential development; (3) for the reasons stated in this Resolution, the use is not reasonable for the character called for in the Town's Comprehensive Plan; and (4) the proposed antenna site has not been mitigated with regard to future low density development adjacent to the site and safety concerns have not been adequately addressed to date.

12. Anthemnet did not demonstrate that existing or proposed antennas within the proposed service area cannot accommodate the proposed antenna.

13. Anthemnet did not produce any evidence or testimony of efforts to co-locate with other carriers on existing antennas within the service area.

14. Anthemnet did not provide evidence of alternative locations within the proposed service area on which to locate an antenna.

15. The propagation maps provided by Anthemnet reflect certain “dead spots” in coverage within its service area, but those propagation maps did not reflect a significant gap in service.

16. While Anthemnet provided a propagation map relative to the location of an antenna at the proposed site, no other alternative or co-location sites were presented to the Town for consideration.

17. Anthemnet did not present evidence that “further reasonable efforts are so likely to be fruitless that it is a waste of time even to try” to comply with Town guidelines, zoning regulations, comprehensive plan and service-related concerns expressed by the Town in denying this application.

18. It is Anthemnet’s burden, not the Town’s burden, to show and verify that alternative sites do, or do not, exist to accommodate Anthemnet’s service requests.

19. In making these findings, the Town relied upon the SUP application and all related submittals to date by Anthemnet, the evidence adduced at all public hearings before the Planning and Zoning Commission and Town Council, as well as statements and related information from representatives of Anthemnet, included correspondence and documentation presented by Anthemnet, all of which are incorporated by reference.

### **SECTION 3**

This Resolution is effective immediately upon its passage.

**DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, THIS 11TH DAY OF JULY, 2023.**

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**David F. Bristol, Mayor**

**ATTEST:**

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**Michelle Lewis Sirianni, Town Secretary**

**APPROVED AS TO FORM AND LEGALITY:**

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**Terrence S. Welch, Town Attorney**