

EXCERPT MINUTES OF SEPTEMBER 29, 2016 WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION MEETING

Case No.: DER2016-00002 - Adoption of the Wireless Communication Master Plan as an element of the Community Investments Plan 2015-2035, the Wichita-Sedgwick County Comprehensive Plan and Amendments to certain sections of the Wichita-Sedgwick County Unified Zoning Code (UZY) pertaining to the regulation of wireless communication facilities.

Background: Senate Substitute for House Bill No. 2131 was recently passed by the Kansas House and Senate. The bill has numerous State mandates regarding how local units of government can regulate wireless communication facilities. Wichita-Sedgwick County regulations of wireless communication facilities are based on the Wireless Communication Master Plan.

The following is a high-level summary of the State mandates that will need to be addressed through an amendment of the Wireless Communication Master Plan and the Wichita-Sedgwick County Unified Zoning Code (UZY). The bill prohibits the following established practices:

- 1) Requiring applicants to document that no collocation opportunity is available prior to permitting construction of a new wireless communication facility.
- 2) Requiring applicants to demonstrate that a wireless communication facility addresses a wireless service provider need rather than being constructed as a speculative facility.
- 3) Evaluating the merits of an application based on collocation opportunities.
- 4) Requiring small cell facilities in lieu of macro facilities in visually/ environmentally sensitive locations.
- 5) Requiring applicants to agree to permit collocation on their facility by other service providers as a condition of approval.

Additionally, the bill deems an application for a wireless communication facility approved if the application is not acted upon within 150 days for a new facility or 60-90 days (depending on type) for a collocation application. Finally, the bill requires equal treatment of wireless communication facilities with utility installations when applying to locate in right-of-way but establishes a right-of-way fee cap on local governments that is significantly lower than the fee charged utilities.

Staff in consultation with the Advanced Plans Committee has developed the attached drafts of the Wireless Communication Master Plan, September 2016 and the Amendments to the Wichita-Sedgwick County of the Unified Zoning Code. Combined, these documents contain the amendments to the Wichita-Sedgwick County Comprehensive Plan and Unified Zoning Code needed to comply with changes to State law.

The Metropolitan Area Planning Commission (MAPC) set a public hearing for August 18, 2016, to consider adopting the Wireless Communication Master Plan, September 2016 as an element of the Wichita-Sedgwick County Comprehensive Plan and to consider adopting implementing amendments of the Wichita-Sedgwick County Unified Zoning Code (UZY).

At the August 18, 2016, hearing, the MAPC tabled the item until September 29, 2016, to allow time for revisions to be prepared to the design guidelines for wireless communication facilities located in the right-of-way. The revisions are contained in the attached Draft Wireless Communication Master Plan, September 2016, which was recommended for approval by the Advanced Plans Committee at their September 22, 2016, meeting.

Additionally, on September 12, 2016, the Delano Advisory Committee reviewed the provisions of the D-O Delano Neighborhood Overlay District and recommended that wireless communication facilities be permitted in the D-O District with Conditional Use approval rather than prohibited. The recommended changes are contained in the attached Draft Amendments to the Wichita-Sedgwick County of the Unified Zoning Code.

Recommended Action: Approve the resolution adopting attached Draft Wireless Communication Master Plan, September 2016 as an element of the Wichita-Sedgwick County Comprehensive Plan and recommend that the governing bodies adopt the attached Draft Amendments to the Wichita-Sedgwick County of the Unified Zoning Code.

This recommendation is based on the following findings.

1. **The extent to which removal of the restrictions will detrimentally affect nearby property:** While the proposed amendments provide regulations and development standards that are less restrictive than existing regulations, the proposed amendments comply with state law and help mitigate detrimental impacts on nearby properties from the development of wireless communication facilities.
2. **Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon property owners:** The proposed amendments will further the health, safety, and welfare of the community by providing regulations that increase the compatibility of wireless communication facilities with surrounding properties and give those property owners more notice of potential facilities than would otherwise be provided under the provisions of state law alone. The proposed amendments comply with state law and provide sufficient development opportunities for wireless communication facilities as to not create an undue hardship for developers of facilities.
3. **Conformance of the requested change to the adopted or recognized Comprehensive Plan:** The adopted 2035 Wichita-Sedgwick County Comprehensive Plan, the *Community Investments Plan*, inadvertently does not have an element addressing wireless communication plan. Adopting the Wireless Communication Master Plan, September 2016 will provide the needed guidance in the Comprehensive Plan regarding wireless communication facilities.
4. **Impact of the Proposed Development on Community Facilities:** The Wireless Communication Master Plan, September 2016, provides guidance for wireless communication facilities located within the public right-of-way to help mitigate detrimental impacts on traffic or pedestrian safety and existing or planned locations of utilities, drainage, street lights, sidewalks, driveways, turn lanes, etc.

SCOTT KNEBEL, Planning Staff presented the Staff Report.

RICHARDSON asked what was the background on this issue and if this was an attempt to make the regulations consistent statewide.

KNEBEL responded that this is model legislation from a group called ALEC that is being pushed nationwide.

WARREN commented that issues such as “Not In My Back Yard” (NIMBY) have made it difficult to put in towers. He asked if this new legislation allowed towers to go anywhere even in a front yard.

KNEBEL said he didn’t agree with that statement. He said staff believes that the State Legislation allows municipalities to continue to designate permitted tower locations on properties.

ELLISON mentioned seeing “environmentally friendly” towers in Colorado that resembled Pine trees.

KNEBEL said the legislation does not restrict design aesthetics of a tower and the City’s plan does reference a “disguised” tower.

TODD clarified that approval of this proposal would bring the City into compliance with State Law.

KNEBEL replied that was correct.

CHAIR FOSTER commented that he believes this proposal ignores aesthetics and is industry driven. He asked staff about any “Home Rule” issues.

KNEBEL commented that discussion has occurred with the Law Department. He said there are provisions within the Statute that allow exercise of Home Rule that are limited to right of way and franchise agreements as opposed to the zoning code.

CHAIR FOSTER commented that the Commission does have much choice.

MOTION: To approve subject to staff recommendation.

WARREN moved, **TODD** seconded the motion, and it carried (10-1). **MILLER STEVENS** – No.
