

**EXCERPT MINUTES OF OCTOBER 5, 2017, WICHITA-SEDGWICK COUNTY  
METROPOLITAN AREA PLANNING COMMISSION MEETING**

**Case No. CON2017-00033** - County Conditional Use for a 145-foot tall wireless communication facility on property zoned RR Rural Residential, generally located on the east side of S. 127th St. E., approximately 1200 feet north of E. 63rd St. S. on property described as:

A tract of land in the Southwest Quarter of the Southwest Quarter of Section 26, Township 28 South, Range 2 East, in Sedgwick County, Kansas, more particularly described as follows:

COMMENCING at the Northwest Corner of said Quarter Quarter Section (Found 2" Pipe); thence along the West line of said Quarter Quarter Section, South 01°18'04" East, a distance of 115.20 feet; thence leaving said West line, North 90°00'00" East, a distance of 145.61 feet to the POINT OF BEGINNING; thence continuing North 90°00'00" East, a distance of 50.00 feet; thence South 00°00'00" West, a distance of 50.00 feet; thence North 90°00'00" West, a distance of 50.00 feet; thence North 00°00'00" East, a distance of 50.00 feet to the POINT OF BEGINNING.

TOGETHER WITH

A tract of land in the Southwest Quarter of the Southwest Quarter of Section 26, Township 28 South, Range 2 East, in Sedgwick County, Kansas, more particularly described as follows:

COMMENCING at the Northwest Corner of said Quarter Quarter Section (Found 2" Pipe); thence along the West line of said Quarter Quarter Section, South 01°18'04" East, a distance of 115.20 feet; thence leaving said West line, North 90°00'00" East, a distance of 145.61 feet to the POINT OF BEGINNING; thence North 00°00'00" East, a distance of 81.59 feet; thence North 90°00'00" West, a distance of 122.46 feet to the East Right of Way of S 127TH ST E (Public Right of Way) as now established; thence along said East Right of Way, North 01°18'04" West, a distance of 20.01 feet; thence leaving said East Right of Way line, North 90°00'00" East, a distance of 167.41 feet; thence South 00°00'00" East, a distance of 80.59 feet; thence North 90°00'00" East, a distance of 15.50 feet; thence South 00°00'00" East, a distance of 24.00 feet; thence North 90°00'00" West, a distance of 10.00 feet; thence North 00°00'00" East, a distance of 3.00 feet; thence North 90°00'00" West, a distance of 50.00 feet to the POINT OF BEGINNING.

**BACKGROUND:** The applicant is requesting a Conditional Use to permit the construction of a wireless communication facility for Verizon Wireless. The proposed monopole would have an overall height of 150 feet, which includes a 10-foot lightning rod. The subject property is zoned RR Rural Residential District (RR) and is located 1,200 feet north of East 63<sup>rd</sup> Street South on the east side of South 127<sup>th</sup> Street East. The Unified Zoning Code (UZC) requires a Conditional Use for Wireless Communication Facilities over 120 feet in height in a RR district.

The tower is proposed to be located within a 0.05 acre lease area as shown on the attached site plan. Access to the site is to be from a new 12-foot gravel drive from South 127<sup>th</sup> Street East. The tower is proposed to be located in the center of the lease area. The equipment compound is proposed to be fenced for security purposes and to have building and/or equipment pads for two telecommunication providers.

**COMPATIBILITY HEIGHT STANDARDS.**

Article IV, Section IV-C.5., of the Unified Zoning Code is applicable to this request and reads as follows:

**5. Compatibility Height standards.** (In the unincorporated area of the County). The following Height standards shall apply to Development that is subject to compatibility standards, unless reduced or waived through the provisions of Sec. V-I.2. No Structure shall exceed 35 feet in height within 50 feet of the lot line of property zoned TF-3 or more restrictive. Structures located more than 50 feet from the Lot Line of property zoned TF-3 or more restrictive may increase Height (if permitted by the base District regulations) at

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a ratio of one foot in Height for each three feet of Setback beyond 50 feet. For example, a Structure limited to 35 feet in Height at 50 feet from the Lot Line of property zoned TF-3 or more restrictive could be increased to a Height of 85 feet at a distance of 200 feet from the Lot Line of property zoned TF-3 or more restrictive.

Using the above standards, this proposal shows the location of the 150-foot tower to be 145 feet from the property to the north (zoned RR Rural Residential) and 205 feet from the property to the west (zoned RR Rural Residential). The minimum setback required for a tower of this height would be 395 feet from all adjacent properties.

However, as noted above, the Compatibility Height Standards in the unincorporated area can be waived by the Board of County Commissioners as part of this Conditional Use Permit process, (Article VI, Section VI-B.2.). This will mandate the Conditional Use Permit must be considered by the Board of County Commissioners.

**SCREENING AND LIGHTING.**

Article IV, Section IV-B.4.e.1., of the Unified Zoning Code is applicable to this request and reads as follows:

**e. Screening of mechanical equipment and outdoor work and storage areas.**

**(1) Nonresidential Screening from ground level view.** Except along local or collector Streets bounded on both sides by the LI or GI district, screening shall be provided on all nonresidential Development sufficient to reasonably hide from ground level view all loading docks, trash receptacles, ground level heating, air conditioning and mechanical equipment, freestanding coolers or refrigeration units, Outdoor Storage including Portable Storage Containers, outdoor work areas or similar uses from any residential zoning District or public Street Right-of-Way located within 150 feet of such Uses.

Using the above standards, this proposal shows the location of the cell tower compound to be 115 feet from the property to the north (zoned RR Rural Residential) and 145 feet from the property to the west (127<sup>th</sup> Street East). Because of the failure to meet the minimum 150-foot setback, full screening must be provided. The proposed chain-link fence is not acceptable and must be replaced with a screening design standard established by the Unified Zoning Code.

The character of the surrounding area is primarily large lot residential and agricultural. Properties in all directions are zoned RR Rural Residential and are developed with single family homes on large rural parcels. The subject property is zoned RR Rural Residential and is used agriculturally.

**CASE HISTORY:** The subject property is unplatted. There are no past zoning cases associated with this property. This property is NOT within any designated flood plain.

**ADJACENT ZONING AND LAND USE:**

|        |    |  |
|--------|----|--|
| NORTH: | RR | large lot residential/single family home |
| SOUTH: | RR | large lot residential/single family home |
| EAST:  | RR | large lot residential/single family home |
| WEST:  | RR | large lot residential/single family home |

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**PUBLIC SERVICES:** No municipal services are required for the installation. The applicant will extend electrical service and telephone system connections to the site. Access to the site will be from an existing drive entrance from South 127<sup>th</sup> Street East.

**CONFORMANCE TO PLANS/POLICIES:** The Wireless Communication Master Plan outlines the guidelines for locating Wireless Communication Facilities. Except as noted above, the proposed tower conforms with the following Design Guidelines of the Wireless Communication Master Plan: 1) is generally compatible with the existing character of the area; 2) minimizes the silhouette by its monopole design; and, 3) uses colors and materials that blend in with the existing environment. Application of the screening requirements will resolve all other issues; provided the Compatibility Height Standards are waived by the Board of County Commissioners.

The property is identified in Area D on the Airport Hazard Zone Map. Area D applies special requirements only when improvements are proposed that are over 300 feet in height above ground elevation. This tower will only be 150 feet in height.

**RECOMMENDATION:** Based upon the information available prior to the public hearings, planning staff recommends that the request be **APPROVED** subject to the following conditions:

- A. Reducing the Compatibility Height Standards setbacks to 145 feet on the north and 205 feet on the west.
- B. The applicant shall obtain all permits necessary to construct the Wireless Communication Facility, and the Wireless Communication Facility shall be erected within one year of approval of the Conditional Use.
- C. The support structure shall be a galvanized “monopole” design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
- D. The support structure shall be no taller than 150 feet in height, including the ten (10) feet needed for lightning suppression equipment.
- E. The equipment compound shall comply with the screening requirements of Article IV, Section IV-B.4.e.1., of the Unified Zoning Code, as noted above.
- F. A site plan and elevation drawing indicating the approved design of the Wireless Communication Facility shall be submitted for approval by the Planning Director within 60 days of approval of the Conditional Use by the Governing Body and prior to the issuance of the Conditional Use Resolution.
- G. The site shall be developed in general conformance with the approved site plans. All improvements shall be completed before the facility becomes operational.
- H. The applicant shall obtain FAA approval regarding “objects affecting navigable airspace” and “impacts to terminal instrument procedures” for the proposed wireless communication facility and shall comply with all conditions of FAA approval. The applicant shall submit a copy of FAA approval to the Metropolitan Area Building and Construction Department prior to the issuance of a building permit.
- I. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
- J. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the surrounding area is primarily rural residential and agricultural. The existing Cook Airfield is located about 1 mile to

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the southeast, north of East 71<sup>st</sup> Street South and on the west side of South 143<sup>rd</sup> Street East. In addition, the other significant land use in the vicinity is the Hidden Lakes Golf Course on the East side of Greenwich Road and north of East 63<sup>rd</sup> Street South.

2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned RR.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The approval to construct a wireless communication tower on this property should have no detrimental effect on nearby property. The enhancement of coverage by Verizon in this portion of Sedgwick County will benefit landowners in the area significantly more than the introduction of the monopole tower could potentially harm them. This will also serve the larger public that live and visit other areas within the enhanced coverage area of this tower location.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: As noted above, The Wireless Communication Master Plan outlines the guidelines for locating Wireless Communication Facilities. Except as noted above, the proposed tower conforms with the following Design Guidelines of the Wireless Communication Master Plan: 1) is generally compatible with the existing character of the area; 2) minimizes the silhouette by its monopole design; and, 3) uses colors and materials that blend in with the existing environment. Application of the screening requirements will resolve all other issues; provided the Compatibility Height Standards are waived by the Board of County Commissioners.
5. Impact of the proposed development on community facilities: FAA approval documentation is required; however, the proposed height of the tower will not mandate any lighting of the structure because it is below 200-feet above ground elevation.

**DAVE YEAROUT**, Planning Staff presents the Staff Report.

**RICHARDSON** asks if it is possible to locate it on the property without an approval that would meet the regulations and wants to know if the applicant had complied with setbacks would have been presented to the commission.

**YEAROUT** comments that there are neighbors present to express concerns and interest in the case.

**RICHARDSON** asks if there is a location on the property where it could be placed that would have automatic approval.

**YEAROUT** replied, no and adds that it would have to go through the Planning Commission for approval. He adds that there is no administrative authority because of the height of the structure. He said if it were relocated within the ownership of the landowner, it would not trigger any of the other issues with the compatibility standards on the height or the full screening requirements.

**WARREN** asks if there is another situation in the County where a 150-foot tower is that close to an airstrip. He is concerned since the tower is not lighted.

**YEAROUT** replies that he is not aware of any other towers with in Sedgwick County being that close to any airport. He said there are towers of similar height as close or closer to Benton airport and there are other structures of that nature that exist around other private airports or landing fields in the region.

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**WARREN** asks if in those situations they are located along the axis of the runway or off the site.

**YEAROUT** said the one he is aware of is off site but not high enough to trigger a light requirement under FAA regulations, which is two hundred feet above ground elevation.

**KNEBEL** comments that there are towers of this height or higher that are similarly situated in closer proximity closer to McConnell, Jabara and Eisenhower airport.

**WARREN** asks if they are along the axis of the runway.

**KNEBEL** replied yes.

**CURTIS HOLLAND, APPLICANT'S LEGAL COUNSEL 6201 COLLEGE BOULEVARD, SUITE 500, OVERLAND PARK, KS 66211**, said there are tower like structures near airports and on airport properties all over the place. He said there are areas where the facility should not to be located such as flight takeoff, and landing approach paths and the FAA studies it very seriously. He said any tower structure is studied and evaluated to determine compliance with FAA rules and would not be able to build one if it were in violation of FAA rules. He mentioned if the tower is a certain height it automatically requires light and it would be 200 feet and over. He adds if the tower is under 200 feet and depending on the location, the tower might still require light in relationship to where it is to a nearby airport. He said in this particular case the FAA studied and their original proposal for the height was 180 feet, however due to the proximity to an airfield the FAA limited the height to 150 feet. He clarifies that the tower is not 150 feet but 140 feet with the top being a lighting arrester at ten feet. He said the FAA studied and approved the height at the location with no light requirement. He said the applicant wants to improve and provide wireless service in the area. He said the cell tower facilities handle multiple calls at a time and transmit wireless data; he emphasizes the need for a facility in the area. He explained that several properties were looked at until they found the proposed site. He said it is hard not to sight a tower anywhere where it cannot be seen and mentions that it is not in a dense subdivision area but instead a rural open area with a couple of large lot residences that have expressed concern about the location. He comments that the neighbors did not have the usual concern heard from cell towers and their concern was the view of the facility. He said relative to the waiver request for the compatibility standards this is one of the most restrictive setback rules that he has seen. He said it is so restrictive it is nearly impossible to locate a facility in Sedgwick County without getting a waiver. He said the height of the tower is not very tall and are usually 200 to 250 feet in a rural area. With the setback formula to a short tower like the one proposed, it stills requires it to be 400 feet away from each property line. He said the reason it is so difficult to meet to setback standards without a wavier is that the property owners do not want to put a structure in the middle of their property, and want to move them to the corner and out of the way to develop the rest of their properties. He said in this particular case is because that is where the property owner wants it. He said the applicant is asking for a reduction in setback with staff's recommending approval. He said prior to December of 2016 this would have met the rule and with the change there is a very difficult setback to meet, because it is required to have facilities move to the interior of properties with property owners not wanting this. He shows that the distance from the facility to the houses that adjoin and not property lines but the houses where people hang out. He said the set back is meet if looked at from a compatibility height standard from a setback with an estimate of 800, 600 and 310 feet from different residences. He shows how the houses are oriented and how they may not have a direct view of the tower and explains that they may be able to see the tower, with one property with a more direct view of the facility.

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**MOTION:** To give the speaker two additional minutes  
**DOOL** moved, **GREENE** seconded the motion, and it carried

**HOLLAND** said it is a good location and believes it is appropriate to issue a waiver and adds that there will be a screening fence. He said there are other facilities like the proposed one near airports and other kinds of facilities closer to houses than this one. He displays picture of a water tower closer to houses not even a mile away. He comments that these type of facilities are required in the area to have water and wireless services. He shows another tower approved and build two years ago not even a mile northwest before the setback standards changed. He said the applicant agrees with staff reports and would appreciate recommendation for approval.

**FOSTER** asks how often maintenance vehicles would need access to the tower site.

**HOLLAND** replied very infrequently and explains they are not man service facilities with visits about four times a year.

**FOSTER** asked if the applicant is willing to consider off site landscape improvement for the neighbors.

**HOLLAND** asks if it would be landscaping on the side of the neighbors or the facility.

**FOSTER** said the quick way to deal with it would-be at the viewers' location i.e. planting trees to cut the line of site at the viewer's location.

**HOLLAND** does not think they would have an impact or effect because the neighbors are far away and the trees would not do any screening and traditionally do not do any off site screen. He adds that frequently landscaping is plant around the base but does not think it would do much good in this particular case.

**DANIELLE WILDEMAN 6121 S. 127<sup>TH</sup> ST EAST; DERBY, KS.** Said she is speaking on behalf do the neighbors and thanks the Commission for allowing her to speak on behalf of her neighbors. She said they understand the need for the cell phone tower and the better coverage to the community and the growth around their area. She said what they are protesting is referencing the perimeters of the wireless communication plan put forth by the Wichita-Sedgwick County Metropolitan Planning Department, specifically article six the location and the design guidelines, section two letter D and section three. She said their concern is with the height and the guidelines state 120 feet. She said the definitions of Sedgwick County zoning districts are defined in article six, section two letter E; 150-foot towers being normally approved in industrial park districts, central business districts, limited industrial districts, general industrial districts and air force bases and normally not in rural residential areas. She said they would like to suggest a compromise for the cell tower proposal with the height of 120 feet and the ratio from the road to be 1000 feet east of 127<sup>th</sup> Street at the end of the tree line. She said asking for the structure to be screening by evergreens instated of a wood fence so that it blends in with the rural nature of the surrounding land use. They believe the location would be a better overall fit to the rural nature of the surrounding land use. She said the landowner on record does not live or reside on the property, therefore they do not have the view. She said locating the tower further east towards the end of the tree line would also allow the county in the future to have more valuable frontage on 127<sup>th</sup> a dirt road vs. 63<sup>rd</sup> Street being four lanes of pavement. She thanks the Commission for their time and consideration in this matter.

**RICHARDSON** asked where she would suggest the tower would go and for her to point it out on the map.

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**WILDEMAN** replied it would be on 63<sup>rd</sup> street where the entrance and driveway are.

**RICHARDSON** asked if the landowner to the north is in agreement with it.

**WILDEMAN** said yes and added that he is present.

**B. JOHNSON** is curious to know the difference between a 150-foot tower and 120-foot tower.

**WILDEMAN** said it is a 30 feet difference when looking out the front porch and feel like its great compromise.

**FOSTER** asked if the 120-foot includes the 10-foot lighting arrester.

**WILDEMAN** believes the neighbors would compromise on that piece.

**GREGORY THOMAS 6821 S. 143<sup>RD</sup> STREET EAST, DERBY, KS** said he is representing Crosswinds Aviation that owns Cook Airfield. He said about seven years ago he was before the commission and discussing Derby's future needs for medical evacuation flights and the time has come with all the new medical facilities in Derby. He said he is not present to speak against the tower but to educate and provoke thought. He explained that three years ago they put a long-term development plan for the airfield developed by the Kansas Department Transportation with the Planning department. He said that it was mention that the tower is one mile from the airfield however they are about half a mile from the tower. He said the plan is on file with the Planning Department and ahead of time of making that happen. He said an airspace study was done and the tower does lie in the airspace and explained that the FAA did not review it pertaining to their airfield. He spoke with the FAA who said that it would be up to the Planning and County Commission to protect that airspace. He said in the future there needs to be a way of notifying airfields of structures like the proposed one, as he found out by riding his bike on the street and seeing the development sign. He said with suggesting moving it to the east; however, it would make it worst for the airfield. He said they just applied for an instrument approach to the airfield to make thing better for pilots and future aviation. He does not recommend of moving it to the east and if it stays, he would like a red coalition light and does not know if it could be required.

**RICHARDSON** asks the speaker to point out on the map where the air filed is located.

**THOMAS** said it is about a mile.

**RICHARDSON** asks if the airfield will extend to the north.

**THOMAS** said the plan that the Commission has on file shows the airport moving to the west.

**RICHARDSON** said he remembers relocating 71<sup>st</sup> street south of the airport. He comments that if the airport extends it would be closer to the tower and if the tower is moved to the east it would make it worst.

**THOMAS** agrees.

**WARREN** said assuming that the tower stays and the airport is expended he asked if the tower would cause problems of the expansion itself.

**THOMAS** said with instrument approaches, instead of flying within 200 feet of the ground an airplane would only be able to fly within 400 feet of the ground. It would raise the minimums.

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**HOLLAND** said he appreciates the comments and concerns from the airfield representative and neighbors. He was aware that moving the tower east would cause the airfield an issue because they did an airspace study. He said the applicant wanted a 180 feet tower and moving it to 140feet was a significant compromise for the coverage and capacity for the area. He is not sure how people will be able to tell the difference between a 120 and a 140-foot tower. He said they would like to keep the tower at the location at the requested height and mentioned that there is enough distance between the facility and the adjoining properties.

**FOSTER** explained how for years he looked at a tower from his back window and was fortunate that his neighbors planted trees and now he does not see the tower. He said whether it is considered for this case or future jobs because the issue will not go away.

**RICHARDSON** ask if the action can be protested.

**DIRECTOR MILER** replies that like any other conditional use anybody my file an appeal, whether they are in the protested area, if they are inside the 1000-foot protest area it would count as a protest if they are not within hat distance it is just an appeal.

**RICHARDSON** asks if it changes the majority vote at the County Commission if it is protested.

**DIRECTOR MILLER** responded if it meets the twenty percent rule, yes.

**GREENE** makes a motion to approve subject to staff recommendations.

**B. JOHNSON** comments that everybody carries cellphones and he was glad the representative from the airfield was present. He adds that if somebody had an accident or emergency in the area with only a cell phone that did not work because there is no coverage would be an issue therefore he will second the motion.

**MCKAY** asked if there could be a condition for the tower to have a light at the top.

**WAGGONER** comments that there is statute codified, as KSA.662019 subsection F, which states local Governments when dealing with cell towers cannot impose additional restrictions upon them. He said it is wordy broadly and the extra light could be considered an additional restriction. He said with that legislation there is a risk of the applicant saying that they are violating the statute. He adds that one of the key points is that the statute says if something is added that is essentially more restrictive than the FAA regulations and that would be more restrictive.

**MOTION:** To approve subject to staff recommendation

**GREENE** moved, **B. JOHNSON** seconded the motion, and it carried (8-3).

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