

**EXCERPT MINUTES OF FEBRUARY 15, 2018, WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING COMMISSION MEETING**

Case No CON2018-00002 - County Conditional Use from Verizon for 150-foot communication tower on property zoned RR Rural Residential generally located on the east side of 12th Street East, north of 63rd Street South, approximately 700 feet east of 127th Street, 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: This is the second consideration of an application for a Conditional Use to construct a wireless communication facility (tower) in this general location. Case No. CON2017-00033 was heard by the MAPC on October 5, 2017, with a recommendation of approval with the waiver of Compatibility Height Standard restrictions. The proposed location for that case was 115 feet from the property to the north (zoned RR Rural Residential) and 145 feet from the property to the west (127th Street East).

That case was protested by all the surrounding landowners; was returned to the MAPC from the Board of County Commissioners; the MAPC resubmitted the original recommendation for approval; and the applicant has asked for the original case to be continued until May of 2018 in order to consider the new location presented in this application.

This application requests 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 63rd Street South and is to be located 700 feet east of South 127th Street East. The setback from the north property line is shown to be 152 feet.

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 127th Street East. The tower is proposed to be located in the center of the lease area. The equipment compound is proposed to be fenced with a 6-foot, wooden privacy fence 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 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, the minimum setback required for a tower of this height would be 395 feet from all adjacent properties. As noted above, the setback from the east property line is beyond the minimum required; however, the standard from the north property line is not proposed. As stated in the previous case,

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.), which would be required for the setback from the north property line. This will mandate the Conditional Use Permit must be considered by the Board of County Commissioners.

CREENING 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.

This proposal meets the minimum 150-foot setback; however the proposed privacy fence will comply with the 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. Other than the Conditional Use case heard last fall for a tower, no other past zoning cases are 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

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 127th 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.

As discussed at the previous hearing, Cook Airfield is located over a mile to the south and east of this location. The FAA as approved the proposed tower location and proposed height. The representatives from Cook Airfield have stated on the record plans are in the works to make modifications to that facility; however since nothing has been placed on the public record, nor has zoning approval been granted for any modifications, the ability to take actions to protect anything beyond what has been approved is not possible.

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 152 feet on the north.
- 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 be screened with the six-foot privacy fence as proposed.
- 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 the southeast, north of East 71st Street South and on the west side of South 143rd 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 63rd 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. The proposed screen 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 presented the staff report.

WARREN asked for clarification if the Commission approved the previous application at the old location.

YEAROUT replied yes, the previous case was approved by the Planning Commission; it went to the County Commission who sent it back for reconsideration by the Planning Commission. After reconsideration, it went in front of the County Commission with a submittal of the original recommendation that was to approve the original site and waive the compatibility height standard issues that were in play. Before the County Commission took final action on that request, the applicant requested that the request be held so this new location could be submitted further to the east. The second application was filed primarily because all the property owners on the west and north side of the application area that were notified about the request filed protest petitions. He said the intent of the new location was to move the site further to the east, in hopes that it would alleviate neighbors' concerns and the request would move without any protest.

RICHARDSON asked if the tower was moved another couple hundred feet to the south, this conversation would not be happening as it would meet all criteria. As it currently is it does not meet the setback to the north residence.

YEAROUT said it takes a conditional use permit for the tower to be approved. They would not be asking for the waiver of the compatibility standards regarding the setback from the property line to the north. The concerns about the setback from 127th Street are alleviated by moving the application area to the east. He added that the commission will hear from the applicant's representative that the change from the original location further west

took a long negotiation before the landowner agreed with that change. He said there have been other property owner issues to resolve to get to this point as well.

CURTIS HOLLAND, 6201 COLLEGE BOULEVARD, SUITE 500, OVERLAND, KANSAS AGENT FOR THE APPLICANT, VERIZON WIRELESS. He said the board has a familiarity with this proposal in terms of the facility and what they are trying to accomplish in terms of improving wireless service in the area for Verizon Wireless customers. He said this is a second application, a new application and separate from the first application. As indicated in the staff report the previous case was heard by MAPC and BOCC. During the December meeting a few residents to the west submitted information to the board indicating that the landowner would be willing to reconsider a new location on the property for the tower. Verizon indicated that they would be willing to work with the residents on the new location subject to meeting with their landlord and try to work on a proposed location that they would agree to. In good faith, they were willing to talk with the landowner and the residents in regards to what would be permitted. This application is the result of those discussions. He does not know if everybody is entirely happy with where they are. He said the other application was tabled and it is waiting to be heard by BOCC and the applicant's intention is to go and present both applications. He said assuming a recommendation is received on this case they would move to present it to BOCC, withdraw the original application or allow them the opportunity to decide which location they prefer. He submitted a letter as part of the record. The letter from Mr. Van Dyke, one of the neighbors, indicates that they had communication with the property owner regarding a possible location for the facility. The previous issues was to move it as far as possible from the road to the east. Originally, the property owner did not want to move the tower location. After the December MAPC meeting they agreed to reconsider the position and allowed the applicant to move the facility to the present location shown in the site plan. He showed a map of the approximate location proposed by neighbors and the airport at approximately 700 to 800 feet from the owner's west property line. The proposed location was moved 700 feet but not 800 feet resulting in an issue with the residents. He said 700 feet was all the distance allowed by the property owner. He compared the previous location to new location of the tower facility at 700 feet east of the road. Compatibility and height standards are met as well as the setback except from the north property line. The height of the tower is 150 feet, which historically has been approved and granted by the county. The new location is 700 feet east of the road and 152 feet south of the north property line. He showed distance from the neighbor's front door to the new location and compared both locations on a PowerPoint slide. He said they tried to meet the neighbors' concerns; however, the neighbors still feel like the applicant came up short since they still want the tower to be at the full 800 feet from the road. At 700 feet, Verizon felt like it is a considerable compromise and the distance allowed by property owner. He hoped their efforts can be recognized and he asked for a recommendation for approval. He addressed stipulation B that says the building permits and the building of the facility shall be built within one year from the approval of the conditional use permit. He would like that to be changed to two years, as one year is a short time to obtain all permits and build the facility. He referenced a similar case with similar language where a lawsuit was filed by the residents that appealed the decision of a board. He said that stipulation did not have an accommodation in the event that an appeal or lawsuit was filed. If there is to be a time limit they would like recognition that it would be tolled if there is an appeal filed. They would like two years from the day the building permit is issued.

WARREN said the original location was mainly favored by the owner of the land and opposed by the majority of the landowners around the property. He asked if the applicant prefers the location of the tower, aside from protest.

HOLLAND said the applicant's preference would be the one closer to the road, with the main issue being the cost increases the further the tower is moved from the road.

WARREN said the property owner is willing to compromise to help the neighbors but they prefer the closer site to the road.

HOLLAND said the property owner wants to put the tower in a location that is out of the way so they can develop the property in the future. They did not want the pole to be in the middle of the property. The compatibility standards force poles to be in the middle of properties making it hard to find sites.

HARTMAN asked if the owner objected to the 800 feet.

HOLLAND believed the farther they move the tower the farther it affects their development and 700 feet is the limit. He cannot speak for the property owner but that is what they have been told.

DAILEY asked if there is something in the regulations that allows staff to extend the one-year stipulation.

DIRECTOR MILLER said staff would be more comfortable if the Commission waived the one-year time period and the language stated within two years of the issuance of a final building permit. He said from an administrative standpoint they want to know it will actually be completed.

HOLLAND said if it is worded and recommended that way they would be okay if there is an acknowledgement if there is appeal filed that would toll the deadline. Litigation can have an impact on construction.

GREENE asked if stipulation B would be applied to the previous request.

HOLLAND does not think that is before the commission, he said he did not pick up on that in the previous application.

STAN McPHAIL, 6140 S. 127TH EAST, WICHITA, KANSAS, said he is the property owner north of the proposed site. He said there are a few concerns that he will not address at this time. He asked based on the 700-foot distance has the applicant looked into the internet tower located in Rose Hill. He said they are on Pixius internet service and discussed with the company whether the proposed tower would interfere with their internet reception. On both occasions, the company said they could not say one way or the other and it depends on where the tower is and, the frequencies used. Potentially it will not be determined until the tower goes up. The proposed tower could knockdown their ability to have internet in his home.

WAGGONER said K.S.A. 66-2019 prohibits governing bodies from considering reception, whether they are already frequencies in use or towers in place, as factors for denying or approving an application.

McPHAIL asked if that is information they could gather from Mr. Holland before this proceeds further.

WAGGONER relied Mr. McPhail could speak with Mr. Holland outside of the hearing. He said he was just citing a statute that applies to the governing body.

RICHARDSON asked if Pixius is a line-of-site service.

MCPHAIL replied that is correct.

RICHARDSON asked if he can tell if the tower would interfere with their service.

MCPHAIL said they have asked the company a few times and the only answer they get is they cannot tell them, and do not know at this time as it depends on the frequency and the precise location of the tower. The company said there is a potential that it could take out their internet completely, but they do not know for sure at this time. He said that is one of the reasons that the 800 feet was important as it would move it enough to the east that it would not be a concern.

WARREN said last time Mr. McPhail spoke before the commission he indicated that if it was going to be this close to his property line, his preference was for the tower to be closer to 127th.

MCPHAIL replied no. He said they had a discussion and thought they had an agreement with Verizon after the last meeting because they thought Verizon would move anywhere they wanted. He said they had an okay from the landowner for 800 feet. He was surprised when the location came back at 700 feet, as they knew 800 feet was far enough from the residents and it would clear the internet concern.

WARREN asked of the two locations, which location he would prefer.

MCPHAIL replied this one.

HOLLAND said he appreciates the comments. He does not have an answer to Mr. McPhail question but he would find out. His general knowledge is that they are licensed for a specific bandwidth and under FCC rules, they are prohibit from causing interference and it would have to be addressed if there is an issue. He said they would be in trouble if it was an issue and it was not addressed. He said he would find out if it will cause potential impact and if it makes a difference between the 700 or 800 feet. The landowner agreed to consider the tower being moved to 700-800 feet east. He said they worked with the landowner and for some reason 700 feet was the limit they would go to.

WARREN asked if the airfield has signed off on this. He was under the understanding that this would encroach on their flight pattern. They did not speak at this meeting and assumed they are okay with this.

HOLLAND said he it has been represented that they are okay with it. He has not spoken with them directly but he thinks the residents have talked to them or maybe they have talked to staff. He added that originally the airfield liked the original location closer to 127th street. The farther the tower is moved to the east it starts to affect their flight and landing approaches. He hoped they are okay, and would probably be present if they were not.

WARREN commented that there were protest filed for the proposed location at the old location.

WAGGONER replied correct.

WARREN asked if there is an intent to file a protest petition for this new location. He does not know if he can ask that question.

DIRECTOR MILLER said since this is a new application they have fourteen days from today to file a protest. The protest can be completely different from the previous case.

WAGGONER said that is correct.

MCKAY made a motion to approve as staff recommended with the addition of the two years from final approval for construction.

MILES seconded the motion.

WAGGONER said there was also a question brought up regarding litigation in terms of that potentially tolling the period and it would be up to the motion maker.

MCKAY said if litigation comes up there would not be a building permit issued in his opinion.

YEAROUT said his understand is that it would be two years and they would accommodate the issue that in the event a lawsuit was filed and it would be worded by the time it gets to the Board of County Commissioners.

MOTION: To approve subject to staff recommendation plus the two-year time limit from final approval for construction.

MCKAY Moved, **MILES** seconded the motion and it carried (10-1).

WARREN – nay
