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525 North Main Street 3rd
Floor
Wichita, KS 67203

Legislation Text

File #: 18-239, **Version:** 1

CON2018-00002 - A COUNTY CONDITIONAL USE FOR A 150-FOOT TELECOMMUNICATION TOWER 1,200 FEET NORTH OF EAST 63RD STREET AND 700 FEET EAST OF THE EAST SIDE OF SOUTH 127TH STREET. (NO ADDRESS YET ASSIGNED).

Presented by: Dale Miller, Director of Planning.

RECOMMENDED ACTION: Approve the Conditional Use, subject to the conditions recommended by the Metropolitan Area Planning Commission (MAPC), adopt the findings of the MAPC, and authorize the Chairman to sign the prepared resolution.

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. This is still short of the setback required by the Compatibility Setback standards for a tower of this height, which is 395 feet. The applicant requests the Compatibility Setback be waived and reduced to the proposed 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.

Analysis: 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.

As noted in the Staff Report, the proposed tower violates the Compatibility Height Standards and the Screening requirements because of the proposed height of the tower and the setback from adjoining properties. The recommendations for APPROVAL include the Board of County Commissioners approving the Conditional Use Permit and waiving the Compatibility Setback requirements.

The request was heard by the Metropolitan Area Planning Commission (MAPC) on February 15, 2018. MAPC recommended approval of the request by a 10-1 vote. The MAPC recommendation is subject to the following conditions:

1. Reducing the Compatibility Height Standards setbacks to 152 feet on the north.
2. The applicant shall obtain all permits necessary to construct the Wireless Communication Facility, and the Wireless Communication Facility shall be erected within two years of approval of the Conditional Use.
3. 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.
4. The support structure shall be no taller than 150 feet in height, including the ten (10) feet needed for lightning suppression equipment.
5. The equipment compound shall be screened with the six-foot privacy fence as proposed.
6. 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.
7. The site shall be developed in general conformance with the approved site plans. All improvements shall be completed before the facility becomes operational.
8. 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.
9. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
10. 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

There was opposition presented at the MAPC hearing from some neighbors. The opposition centered on claims the neighborhood agreement was for the tower to be 800 feet east of East 127th Street, and a claim by the neighbor to the north the new location was in direct line from a tower in

Rose Hill that provides him internet connection and the new location would interfere with that signal.

Three protest petitions were submitted in opposition to the request. The protest petition totals 37.34 percent of the net protest area. This percent meets the minimum 20 percent required by Statute for a valid protest requiring a larger majority vote of the Board of County Commissioners. As a result, this must be approved by the three-fourths majority, or at least 4 of the 5 Commissioners. Please see the attached protest area map.

Alternatives:

1. Approve the Conditional Use, subject to the conditions recommended by the Metropolitan Area Planning Commission (MAPC), adopt the findings of the MAPC and authorize the Chairman to sign the prepared resolution. (Requires a minimum three-fourths majority vote, or 4 of the 5 County Commissioners); or
2. Deny the application, by making alternative findings, and override the MAPC recommendation. (Requires a two-thirds majority, or 4 of the 5 County Commissioners); or
3. Return the case to the MAPC for further consideration with a statement specifying the basis for the BoCC's failure to approve or deny the application. (Requires a simple majority vote).

Financial Considerations: There are no additional financial considerations to the County associated with this application.

Legal Considerations: The Board of County Commissioners is authorized to consider this conditional use pursuant to K.S.A. 12-741 et seq. and Sec. V-C of the Wichita-Sedgwick County Unified Zoning Code. The options and vote requirements are included within the "Alternatives" section above. Because the application involves the consideration of wireless telecommunications infrastructure, the provisions of K.S.A. 66-2019 are applicable.

Policy Considerations: The MAPC recommendations are based upon the findings of fact stated in the MAPC minutes.

Outside Attendees: Curtis Holland (agent for the applicant).

Multimedia Presentation: Powerpoint.