

PLANNING COMMISSION MINUTES

DATE: APRIL 3RD, 2019

The Planning Commission of the City of Shawnee, County of Pottawatomie, State of Oklahoma, met in the Commission Chambers, at City Hall, 9th and Broadway, on Wednesday, April 3rd, 2019, at 1:30 p.m., pursuant to notice duly posted as prescribed by law.

AGENDA ITEM NO.1:

Roll Call

Upon roll call the following members were present:

Present: Deem, Matthews, Walker, Bergsten, Cowen, Kienzle, Rowell

Absent:

Meeting was called to Order.

AGENDA ITEM NO.2:

Consideration of approval of the minutes from the March 6th, 2019, Planning Commission Meeting

Chairman Bergsten asked Commission for any comments, questions, or a vote.

Commissioner Matthews requested a correction to the vote tallies of Case P01-19. Commissioner Walker's name was listed instead of Matthews as the nay vote.

Commissioner Kienzle requested that more details in the Director's Report about Rebecca Blaine's statements on historic preservation and public art.

Chairman Bergsten requested that his statements on his response to Troy Williams's stating that federal law prohibits health/safety and aesthetic values as reasons for denying the construction of a cell tower from him stating he does not care about the legal reasons to legal reasons not being the Commission's only concern and that the Commission was examining issues aside from legality.

Commissioner Walker made a motion to approve the minutes as amended, seconded by Commissioner Deem.

Motion passed:

AYE: Deem, Matthews, Walker, Bergsten, Cowen, Kienzle, Rowell

NAY:

ABSTAIN:

AGENDA ITEM NO.3:

Citizens' Participation

Chairman Bergsten opened the public portion of the meeting and announced that this is an open time for discussion for those with questions on topics not on the Agenda and asked if anyone would like to come forward.

No one came forward and Chairman Bergsten closed the public portion of the meeting.

AGENDA ITEM NO.4:

Case #P01-19 – Reconsideration of approval of a conditional use permit for a cell tower for 125 West 45th Street, Shawnee, OK

Applicant: Troy Williams

Planning Director Rebecca Blaine presented staff report. She stated the original application has had revisions: the tower has been reduced from 140 feet to 120 feet, and the tower has been changed to a sectional from a monopole. She stated it has been extended further back on the property. She stated that because the tower's height has been reduced and changed to a sectional tower, it meets the setback standards where it did not in the previous site plan.

Director Blaine presented photos of what the area surrounding the tower looks like. She stated that the way the geography is, the tower would be obscured. She stated that staff has discovered that under Chapter 22, Subsection 412.2(R), each tower must comply with FCC and FAA standards. Assistant City Planner Joseph Barker submitted a Fall, 2018 FCC document that explains the limited authority of state and local governments on cell towers. She stated 332.C7 of the Communications Act states that state or local governments cannot unreasonably discriminate among providers of functionally equivalent services, may not regulate in a manner that prohibits or has the effect of prohibiting personal wireless services, must act on applications in a reasonable period of time, and must make any denial supported in writing supported by substantial evidence in a written record. In addition, she stated that the statute also preempts local decisions premised on the environmental effects of radio frequencies emissions, assuming the provider is in compliance with FCC rules. She emphasized a portion of the regulations that states the regulation of the placement, construction, and modification of personal wireless service facilities by any state or local government, instrumentally thereof, shall not unreasonably discriminate among providers of functionally equivalent services and shall not prohibit or have the effect of prohibiting personal wireless services. Elaborating on the construction portion of the text, she stated that aesthetics is not a legally valid reason for prohibiting a cell tower because it has the effect of prohibiting them. She stated that they are meeting the City's code. She said that while a major concern regarding the cell tower is the devaluation of property values, the abutting neighborhood already has multiple code violations that would devalue properties. She stated that property values start with what is on the parcel. Furthermore, the cell tower is downhill and the facility is 60 feet by 60 feet. The tower is 48 inches by 48 inches in the compound.

She stated that staff recommends approval and she is happy to answer any questions the Commission may have.

Commissioner Kienzle asked if Director Blaine saw any federal regulations on erecting cell towers on lots adjacent to schools. Commissioner Kienzle expressed her concern that the cell tower does not meet the standards of the Comprehensive Plan, and that the cell tower would prevent the nearby middle school from expanding. She asked if the city attorney has given input on this issue. Director Blaine stated she has not received any input from the city attorney. Commissioner Kienzle requested the city attorney to review this issue. Director Blaine stated the property's zoning district allows for a cell tower. She asked Commissioner Kienzle to clarify her concern about the school. Commissioner Kienzle stated the school could possibly purchase the property for a future expansion. She stated that "super schools" are the trend in education in Oklahoma, and that this middle school will likely need to use this property at some point. Director Blaine stated she is not sure the cell tower would affect the school's ability to expand on their own property. In regards to expanding the school on the property the cell tower is to be located at, she stated she would have the city attorney investigate that.

Chairman Bergsten stated that discriminating between carriers is the not an issue relevant to this application. He asked Director Blaine if federal regulations prevent municipalities from preventing the construction of a cell tower based upon perceived negative effects on property values or on aesthetic value. Director Blaine stated general engineering designs cannot be discriminated again. She stated that what the City has in the code is for the application to comply with federal regulations, and that the city looks at zoning, fall radius, and parking at the facility. Director Blaine stated that having 5G is vital to Shawnee's growth. She stated that having adequate cell service coverage is important to a property's value. She stated that this application will have a major impact on future cell tower applications. She stated that having the infrastructure is vital to Shawnee's growth. Chairman Bergsten asked if the tower falls in one exact location. Director Blaine deferred that question to the application.

Commissioner Matthews asked if Director Blaine believes the revised application meets all the requirements of Chapter 22, Section 175, Subsection 20, Communication Towers/Cell Phone Towers. She stated the revised application does meet the requirements of that section of the code.

Chairman Bergsten asked if the Commission had any more questions for staff. There were no more questions.

Chairman Bergsten opened the public portion of the meeting and asked if anyone speaking against the item would like to come forward. Jimmy Nickles requested to see the new location of the tower. He asked if the application has been changed at all other than the applicant reducing the height of the tower from 140 feet to 120 feet. Director Blaine stated that the location has been slightly adjusted. He expressed his opposition to the application. He stated

him and his neighbors were led to believe the tower's location would be moved further north and be made more aesthetically pleasing. He argued that the applicant does not have the right to put a cell tower near their neighborhood. He stated that he takes offense to the mentioning of the code violations in the neighborhood and that they try their best to maintain their properties. He argued the cell tower would negatively affect the property values of their neighborhood. He stated that they do want the infrastructure, but that the cell tower should not be this close to the neighborhood and the school. He stated that the tower would negatively affect property values, aesthetic values, that there are safety concerns with the tower falling, and that cell towers negatively impact health due to radiation. He argued that just because the federal government states that cell towers do not negatively impact health, does not make it true, and stated asbestos was considered safe by the federal government and met regulations.

Andrew Dyke argued the application is essentially the same as it was in the previous meeting. He stated he submitted documents to the City Clerk's office that are evidence that cell towers cause cancer. Director Blaine stated it is not in the packet because these documents were not submitted before the packet was published. Mr. Dyke stated that a study in Israel claimed that people within a quarter of a mile of a cell tower have higher cancer risks. He reminded the Planning Commission that a majority of the property owners on the bonded abstractor's list are against this application. Commissioner Cowen clarified what Mr. Dyke meant by majority of property owners and that this means the application has to pass by a super majority [3/5's vote].

No one else came forward and Chairman Bergsten asked if anyone speaking in favor of the item would like to come forward. Troy Williams, the applicant, came forward to defend the application. He stated they have made concessions, such as reducing the height and moving the tower to the northwest corner of the proposed compound. He stated that the law requires AT&T cover the schools in its network. He stated that they have proposed a monopine tower in order to improve the aesthetic value. He stated that Bob Grace has come to the meeting to present an appraisal. In regards to future development by the school, he stated that what the school may or may not do is not a valid reason to deny the application. He stated that all the changes necessary to make the application meet City code have been made. He stated they chose this property because the other properties under consideration were either impractical due to code or the property owners were not interested in leasing out their property. Chairman Bergsten asked about the conversion from a monopole tower to a sectional tower. Mr. Williams stated the sectional tower would bend over in the case of a collapse. Commissioner Deem asked Mr. Williams about the monopine tower. Assistant City Planner Joseph Barker told Commissioner Deem where she could find photos of the monopine tower. Mr. Williams said those photos are located on Marshall Square in Oklahoma City. Mr. Williams stated they also performed a photo simulation of what the proposed tower would look like from various perspectives. Commissioner Kienzle complimented Mr. Williams on providing all this new information. She asked if the FirstNet site is done in correspondence with first responders. Mr. Williams stated the tower has 700 megahertz and 1.2 gigabytes. He stated it is a designated bandwidth for first responders. She then asked if it was about the equipment rather than the site itself. Mr. Williams stated it is both the equipment and location. He stated this site was selected because of how it fits relative to other sites in the city. Her next question was why the growth projections in Shawnee exceed state averages. Mr. Williams deferred to Mike Altz to answer that question. She stated the Comprehensive Plan designates this property as a residential use. Mr. Williams stated that this area lacks cell coverage currently. He stated using the area north of Interstate 40 would fail to meet the needs of this area. She stated her concern with the federal regulations preventing the cell tower from being in an area she feels the cell tower would better fit.

Michael Altz, radio frequency engineer of AT&T, came forward to defend the application. He stated that this site falls between two sites that have spectrum exhaust, which he defined as when all the licensed spectrum has been applied. Therefore, the construction of a new cell tower is necessary to expand coverage. He stated consumers will experience delays without it, according to their growth projections. He stated the proposed site has very weak cell coverage. He stated AT&T wants their customers to be covered. He stated they want residential communities to have this coverage. He told Commissioner Kienzle that first responders are sold special phones that gives them first priority to First Net. He stated this is a nationwide project.

Bob Grace, a real estate appraiser, came forward to defend the application. He stated his firm has developed a study to determine the impact of cell phone towers on property values. The location they chose the corner of East Independence Street and Bryan Avenue, where there is a 150 foot tall monopole cell phone tower that has been there since 2003. He stated homes near the cell tower were sold for a standard price, the amount of

days they were on the market was normal, and the price per square foot was standard. Commissioner Cowen asked for clarification about whether or not the cell tower impacted the value of the homes in the area. Mr. Grace said there was no impact.

Kyle Coulter, representative of AT&T, came forward to defend the application. He stated AT&T wants to be part of Shawnee's continued growth. He stated the application meets the criteria of the code. He stated they wanted to make the tower a monopine to make nearby residents happy. He asked the Commission to approve of the application.

Chairman Bergsten asked if there were any other comments or questions. Commissioners Kienzle asked Mr. Williams if he had any meetings with staff. Mr. Williams stated that he went to Planning and Zoning, and to Code Enforcement. He stated that he spoke with Jared Cooper [then the Interim Planning Director]. Commissioner Kienzle clarified that the recommendation from city staff was based on existing zoning and not the Comprehensive Plan. Mr. Williams stated he was not aware of a Comprehensive Plan. Commissioner Cowen stated both sides presented their arguments well. He stated his main concern is for the nearby middle school. He stated he still has safety and expansion related concerns for the middle school. Chairman Bergsten stated that these were his concerns too. Commissioner Matthews asked if the nearby building for the middle school was still in the fall radius. Chairman Bergsten stated that question was what he was intending to ask. Commissioner Cowen claimed it would still fall on the property potentially. Commissioner Walker asked if the property line is still within the fall radius and that the nearby building and parking lot are not within it. Mr. Williams confirmed this. He stated the cell tower is 99 feet from the property line. Director Blaine clarified that the required radius for sectional towers is 80% of the tower height, which would put the radius one foot away from the property line. Commissioner Matthews stated that Northside Veterinary Holdings, LLC wants to enter into a lease agreement with AT&T for a cell tower that abides by the code. He stated that the other issues should be discussed by the City Commission instead of the Planning Commission, who he states is primarily concerned with the code. He asked what legal right the Planning Commission has to say no. Chairman Bergsten stated that the Commission is also considering the big picture and the nearby citizens. He stated his main concern was the tower potentially falling on the school building one day, and the fact that it now cannot makes him feel better about the application. Commissioner Cowen stated that children could also go outside. Commissioner Walker stated the fall radius does not cross the property. Commissioner Cowen responded that is true in regards to the 80% rule of the code, but if the tower were to fall a distance equivalent to its height, it would fall on the school property. Chairman Bergsten stated there is little activity that goes on behind the building. Commissioner Walker asked if the school has had any further comments on this application. Director Blaine stated they have not received further comments from the middle school. Chairman Bergsten wanted to clarify Commissioner's Cowen earlier comments about a super majority. Director Blaine claimed that that rule applies only to City Commission. Commissioner Cowen claimed it applied to Planning Commission too. Director Blaine stated the law applies to the governing body. Chairman Bergsten stated they are not a governing body; they are a recommendation board. Director Blaine stated she would discuss this issue with the city attorney. There were no more comments or questions and Chairman Bergsten asked for a motion. Commissioner Walker made a motion to approve the conditional use permit for a cell tower upon the conditions. Seconded by Commissioner Matthews.

Motion passed:

AYE: Deem, Matthews, Walker, Bergsten

NAY: Cowen, Kienzle

ABSTAIN: Rowell

AGENDA ITEM NO.5:

Planning Director's Report

Planning Director Rebecca Blaine expressed her appreciation to the Planning Commission in regards to this item. She asked for the Commission's opinion on converting to iPads in the future, or making the packets shorter by providing the other documents as supplemental items. Commissioner Walker stated it was a good use of city resources to not mail the documents. Chairman Bergsten expressed his preference for physical packets. Commissioner Cowen agreed, but added there are times when there are exceptions, such as Case P01-19.

Commissioner Kienzle stated that she likes having a physical packet. Commissioner Rowell stated he prefers paper. Director Blaine stated the next packet may also be large due to many items being on the agenda for the May, 2019 Meeting. Director Blaine discussed the Placemaking Conference at the University of Oklahoma.

AGENDA ITEM NO.6:

Commissioners Comments and/or New Business

Commissioner Kienzle commented on the Comprehensive Plan. She stated the Comprehensive Plan is a guide for cities to use. She noted that City of Tulsa is getting ready to prepare a new Comprehensive Plan. She stated that reviewing the Comprehensive Plan and considering the opinions of citizens regarding a new Comprehensive Plan is important to the City of Shawnee. Director Blaine stated the Traffic Commission has requested to look at the Comprehensive Plan. Director Blaine stated having too many people having dialogue in the same room can be productive. She stated their next step is getting the Traffic Commission's feedback on the Comprehensive Plan. Commissioner Kienzle asked if the Commission will have access before the meeting it would be reviewed at. Director Blaine stated they would be available for the Commission's review. Commissioner Kienzle asked if there would be a presentation. Director Blaine stated Amy Haase, the consultant for the Comprehensive Plan, would present. She would also be available for questions. Director Blaine stated that when they have a final draft of the new Comprehensive Plan, the Planning Commission will be able to make an official recommendation to the City Commission on the Comprehensive Plan.

Commissioner Cowen stated that he appreciates that the Planning Commission can have civil disagreements.

AGENDA ITEM NO. 7:

Adjournment

Meeting was adjourned.



Chairman/Vice-Chairman

Joseph Barker
Planning Commission Secretary