

PLANNING COMMISSION MINUTES

DATE: MARCH 6TH, 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, March 6th, 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 January 2nd, 2019, Planning Commission Meeting

Chairman Bergsten asked Commission for any comments, questions or a vote.
Commissioner Matthews made a motion to approve, seconded by Commissioner Rowell.

Motion passed:

AYE: Deem, Matthews, Bergsten, Cowen, Rowell

NAY:

ABSTAIN: Walker, Kienzle

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 – Consideration of approval of a conditional use permit for a cell tower for 125 West 45th Street, Shawnee, OK

Applicant: Troy Williams

Assistant City Planner Joseph Barker presented staff report and reviewed the requirements for a cell tower with the Commission. He stated that the tower height is permissible. Mr. Barker noted that the staff report contains a typo where the natural ground of the proposed cell tower is 180 but is actually around 1,000 feet, and he noted that the setback requirements for the east lot line were not being met on the submitted site plan. He stated that the proposed unmanned equipment shelter is around 100 square feet more or less and its height is 9' 4 ½". He stated that the tower is an antenna. He stated that the site plan's proposed fence does not meet code standards because it is only 6 feet instead of 7 feet. He stated that no excess equipment or parts shall be stored on site. He stated that lights for illumination shall be determined by the Federal Aviation Administration and the City on all tower locations, and that the only set of lighting is lighting just above the door of the maintenance shelter, just above the door. He stated none of the submitted signs are of a commercial nature. He stated that the tower shall meet the minimum construction and structural load standards as per the adopted building code, a requirement that would be met as a condition upon approval. He stated that all towers must setback its height distance from any occupied structures. He stated that the only structure within this radius is an unoccupied storage building for

the nearby middle school. He stated that the requirements of Section 175.20(B)(11) do not apply to this application. He stated that the tower shall be removed if abandoned for 12 months. He stated that a site plan that shows parking spaces is required. He stated the applicant is required to look into co-locating on an existing tower. He stated that the applicant submitted documents shortly before the meeting explaining why this is not feasible and that the Commission should dismiss the comment in the staff report stating that the Planning Department has received no documents pertaining to this. He stated that the Planning Department has received written approval from the property owner. He stated as-built plans shall be kept on file with the city. He stated that the first page of the site plan contains the required certified engineer stamp. He stated that the applicant must submit annually to the City Inspection Department an inspection report on the tower as to compliance with FCC and FAA standards. Finally, Mr. Barker stated that an appeal to any interpretation of this ordinance must be appealed to the Board of Adjustment.

Mr. Barker stated that there are other supplemental regulations the application must abide by. He stated that all uses must have a parking lot and that this use is not given an exception; therefore the applicant must submit this. He stated it must abide by Subsections 7 and 9 of the parking code. He noted that this application abides by the Americans with Disabilities Act (Subsection 9). He noted that Subsection 10 of the parking code states the Director can make a determination of the parking demand to be created by the proposed use and the amount of parking thus determined shall be the off-street parking requirements for the permitted use if not explained in the code. He stated that this application abides by the 2005 Comprehensive Plan. Mr. Barker stated that this area's use pattern would appear to allow for a cell tower. Mr. Barker stated that the item has been recommended for approval upon the following conditions with the exception of the sixth condition, which was met after the staff report was submitted to the Commission:

1. The tower shall abide by the setback restrictions of Chapter 22, Section 175, Subsection 20 (B)(2) and the applicant shall submit a site plan that indicates thereof;
2. Sight-proof fence not less than seven feet in height from finished grade shall be installed;
3. No excess equipment or parts shall be stored within the site;
4. There shall never be any commercial advertising or signage on the site;
5. Upon a final inspection, the tower shall meet the minimum construction and structural load standards specified in the adopted building code;
6. A letter indicating why co-location on an existing tower is not feasible shall be submitted;
7. Upon installation of the tower, as-built plans to be kept on file with the City of Shawnee shall be submitted;
8. An annual inspection report on the tower as to compliance with FCC and FAA standards shall be submitted to the City of Shawnee;
9. Written assurance is submitted stating that the land upon which the off-street parking for the facility is located will be controlled by the same entity which controls the land on which the tower is located; and
10. A parking plan to verify that the gravel compound for parking shall meet the standards of Chapter 22, Section 185 of the City of Shawnee Zoning Code.

Mr. Barker stated there have been multiple letters of protest and a petition that includes six of the owners on the bonded abstractor's list.

Mr. Barker asked if the Commission had any questions. Commissioner Cowen asked if the tower was 84 feet from the lot line. Mr. Barker confirmed this. Mr. Cowen asked if it could fall fifty or sixty feet into the lot abutting east. Mr. Barker confirmed this. He asked if Mr. Barker was okay this. Mr. Barker answered that he does not find this acceptable and that is why the first condition states the applicant must submit a site plan that abides by those setbacks. Commissioner Matthews asked if that is possible. Mr. Barker stated it is not because of the lot's dimensions and the proposed tower's height. Mr. Matthews asked if the condition is possible to meet. Mr. Barker stated there are three options they have to meet this condition:

1. Reduce the height of the tower. Mr. Barker stated, as an example, that the applicant could reduce the height of the proposed tower to 135 feet and place it in the center of the lot;
2. The applicant could pursue a variance; and
3. The Commission could recommend to defer the item to next month to give the applicant time to improve the site plan.

Chairman Bergsten asked that if were to be built in the location it is proposed to be, would the construction of another building in that radius affect the tower's legality. Mr. Barker stated that the tower would be grandfathered in in this case. Commissioner Matthews asked if the reason for the first condition is to avoid this situation. Mr. Barker confirmed this. Chairman Bergsten stated he asked this question because one of the options is a variance. Mr. Barker stated that the variance is his least preferred option for the application because he does not believe the applicant would be able to obtain a variance due to how difficult it would be to prove unnecessary hardship and that the situation is peculiar to this property, which are two of the four requirements for a variance. Planning Director Rebecca Blaine added that another option to meet the first condition is to construct a tower that has a zero-fall radius. Mr. Barker stated that there is a space between the middle school and the applicant's properties. Mrs. Blaine stated a zero-fall radius tower would have to be added as a condition to achieve this.

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. Andrew Dyke of 128 Meadows Lane argued the proposed cell tower would significantly reduce property values, citing studies he submitted to staff, and expressed concern for the school. Reuben Peltier of 2412 Wingedfoot Lane, who owns property on the abstractor's list, expressed concern for the school and argued the cell tower should be closer to the commercial corridor and not on the proposed property. James Nickels of 134 Meadows Lane, who is not part of the abstractor's list but has a relative who is, stated that the tower would be 50 yards from their house. Mr. Nickels argued that it would reduce property values, that there are health concerns, and that the tower would interfere with other signals. Brent Houston, Assistant Superintendent of Shawnee Public Schools, came forward to ask questions about the proposed cell tower. He also clarified that the school building within the radius is actually occupied at times. He also stated they would like the ability to build on all of their land in the future and that a zero-fall radius is more palatable. Director Blaine asked if classrooms are held in that building. Mr. Houston said no, but there are after-school programs held in it. Commissioner Kienzle asked if students get picked up by their parents near that building. Mr. Houston responded that they do. He requested that the Commission take that into consideration. Dustin Dalton of 130 Meadows Lane expressed the concern that the cell tower could negatively impact the health of children and pets. He stated that there are studies that show cell towers affect animals. He also expressed his concern about the effect on property values. Edwin Bhatti of 125 Meadows Lane argued that the cell tower would affect the health of his children and unborn child.

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, who represents AT&T, came forward to present his case to the Commission. He stated that he has been working on this project with staff for over a year. He stated the tower is 900 feet from East 45th Street, 200 feet from the fence line of the Sac & Fox housing development, 370 feet from the Meadows Lane properties, 86-90 feet depending on whether or not you measure to the fence line or property line to the east of the middle school, and about 143 feet from the maintenance facility. He stated that the reason they selected the rear of the property is because code enforcement allegedly preferred for the tower to be towards the rear of the property where it is less visible from East 45th Street. He argued that the tower is actually sectional, because monopoles are sectional in nature [this would reduce the setback requirements from 120% of the tower height to 80% of the tower height]. He further argued that while he could move the tower towards the center of the property, this tower is important to FirstNet sites for first responders, as well as cellular and wi-fi. This will also be the first of five proposed cell towers. He introduced Kellen Butler, engineer from AT&T, and Kyle Culter, external affairs of AT&T, who would be addressing the claims of Mr. Dyke. He stated that the reason he didn't move it closer to the front is because they wanted a natural railroad of trees to obscure the tower. He stated that, in regard to allegations of health risks, the Telecommunications Act of 1996 strictly prohibits health and safety as a reason for denying a cell tower application. He claimed that the proposal is well beneath the threshold allowed for power. In regards to claims of negative effects on property values, he cited a study done in Dallas, Texas, which includes many markets in the state of Texas, which supposedly contradicts the claims of negative impacts on property values from the construction of cell towers; in addition, according to this study, the areas that have cell towers have higher growth and a higher potential for growth. He stated that if necessary, he can have a local appraiser, Bob Grace, attest to this. In regards to a zero-fall radius, he stated that it has been their intention to include a zero-fall radius, which he claims is done at the time of processing building permits.

Commissioner Kienzle asked what are some of the other criteria they use for selecting sites. She was

wondering why they do not simply go to the other side of East 45th Street. Mr. Williams clarified that they do not select a site because it is the cheapest, and claimed the property is very expensive. He claimed that there were no properties in that area they could have used for a cell tower. He selected this site because he claims it is the best lot in this vicinity for a cell tower. He argued that monopole cell towers can withstand natural disasters such as tornadoes.

Commissioner Kienzle asked what the radius of the other cell towers would be. Mr. Williams explained that it is calculated based upon height; that they are on a digital system. He stated that they try to get a mile of coverage from cell towers, but the more intensive the area, the more the signal shrinks. He stated the federal government requires that they cover residential areas and schools.

Commissioner Cowen asked if the current proposal was not for a zero-fall radius. Mr. Williams responded by saying that is typically done during the building permit phase. He claimed the circle drawn on the plan as a radius was drawn solely for the purpose of depicting distance and is not a fall radius.

Commissioner Kienzle clarified the use of the maintenance building at the rear end of the school lot and the fact that is the Field House.

Commissioner Deem asked Mr. Williams to clarify the difference in aesthetic value between collapsible cell towers and zero-fall radius cell towers. Mr. Williams stated that it is a sectional monopole. Mr. Williams stated that tower is structurally designed to fall into itself in the event that it would collapse. Commissioner Deem stated that her research on the Internet matches what those that have spoke against the application have said. Mr. Williams cited the study based in Dallas, Texas to refute this claim. He stated the facility is a \$400,000 investment just for the construction of the tower.

Chairman Bergsten asked that if the application was deferred, could the applicant provide documentation that the cell tower does not negatively impact health. Mr. Williams responded that health/safety does not allow health/safety to be a reason for denial of a cell tower. He also stated that the Third, Fifth, and Eighth U.S. Circuit Courts have ruled that the need for wireless communication overrules aesthetic value. Chairman Bergsten stated the Commission had other concerns in addition to legal issues and that he is asking if Mr. Williams could provide research on the alleged relationship between health and cell towers. Mr. Williams stated that he can, but warned that discussion of health/safety issues and aesthetic value issues create many legal issues.

Commissioner Deem asked how many cell towers exist in Shawnee. Mr. Williams did not know the exact number, but believes it is less than other areas. Mr. Williams stated he can retrieve that information in time for the City Commission meeting.

Commissioner Kienzle asked what the rationale is for not using an existing site. Mr. Williams stated there are no towers within a mile of this area.

Kyle Culler, AT&T External Affairs, came forward to defend the case of the applicant. He stated that there are no known adverse effects of cell towers as per the American Cancer Society and the World Health Organization. In regards to property values, he stated that 67% of people look at broadband support as one of the first things they examine when looking to buy a home. He stated that if an emergency occurs, the cell tower would be part of the FirstNet Network. He quoted Captain Todd Lester of the Shawnee Fire Department as saying cellular services are a great tool during a disaster.

Commissioner Rowell asked if there will be lighting on the tower itself. Mr. Williams stated that the FAA dictates if the tower is required to have lights. He stated that the tower is currently proposed to be unlit. He stated that towers under 200 feet are not typically required to be lit.

Commissioner Deem asked for clarification on the fencing. Mr. Williams stated there was a mistake. He stated the fence will be seven feet, and there will be slats.

Commissioner Walker asked if the tower on Kickapoo and I-40 would be suitable for co-location. Mr. Williams stated the proposed tower is designed for a minimum of three carriers.

Kellen Butler, professional engineer at AT&T, came forward to defend the case of the applicant. Mr. Butler stated that every cell phone company has different needs, and that the tower on Kickapoo and I-40 would not meet the needs that the proposed tower would satisfy.

Commissioner Walker clarified that going that far north would drastically change the ability of the tower to meet those needs. Mr. Butler confirmed this.

Commissioner Kienzle asked that in this series of towers, taking those other towers into account, changing to that site would not work. Mr. Butler stated that this site would harm the ability of all the towers to cover Shawnee.

Chairman Bergsten asked if using two shorter towers would not meet the same needs as one taller tower. Mr. Butler stated that reducing tower height reduces range and that AT&T wishes to minimize the number of towers to be constructed.

Commissioner Walker asked what kind of precedent the Commission would be setting by granting this conditional use permit. Director Blaine stated that in past communities, conditional use permits are evaluated on a case by case basis, using the guidelines provided by the code. She stated that the Planning Department has not received conditional use permits for the other cell towers.

Commissioner Kienzle asked if the applicant could submit a more comprehensive plan on all the towers to be constructed. Kellen Butler states plans for the other towers have not been completed, but they are far enough along on the process to be able to present some ideas. Commissioner Kienzle stated her reasoning for asking for this information was to get an idea of the aesthetical effect these towers would have.

Kellen Butler stated that the tower would not negatively affect other wireless communications. He stated that it should actually help some people's wireless communications.

Chairman Bergsten closed the public portion of the meeting.

Chairman Bergsten asked if there were any other comments or questions. Commissioner Cowen stated that, in his experience as a real estate appraiser in Shawnee, this community cannot be compared to metro areas such as Dallas, Texas and Oklahoma City. He stated that, right now, this cell tower would negatively impact property values. He also expressed concern about the tower falling on an adjacent property, especially on a residential or school property. There were no more comments or questions and Chairman Bergsten asked for a motion. Commissioner Cowen made a motion to deny the conditional use permit for a cell tower, seconded by Kienzle.

Motion passed:

AYE: Deem, Walker, Bergsten, Cowen, Kienzle

NAY: Matthews

ABSTAIN: Rowell

AGENDA ITEM NO.5:

Planning Director's Report

Planning Director Rebecca Blaine introduced herself to the Planning Commission as the new Planning Director. She briefly summarized her career. She stated she is impressed by the economic momentum of Shawnee. She stated her family and her will be moving to Shawnee after the end of the school year. She stated she went to the University of Oklahoma Urban Design Program at the Tulsa campus. She told the Commission that if they have any questions or concerns or projects, she is happy to assist them.

Commissioner Kienzle asked Director Blaine what are the opportunities she is looking forward to the most. Director Blaine stated there is a lot of potential with the comprehensive plan. She sees future potential in downtown and restoring historic buildings and reviving downtown in downtown. She expressed her enthusiasm for public art projects, and anything multi-modal related. Director Blaine stated it is a pleasure to meet the Commission.

AGENDA ITEM NO.6:

Commissioners Comments and/or New Business

There were no comments or new business.

AGENDA ITEM NO. 7:

Adjournment

Meeting was adjourned.



Chairman/Vice-Chairman

Joseph Barker
Planning Commission Secretary