

Marion County Planning Commission & Board of Zoning Appeals

Record of Proceedings

July 25th, 2019

Members

(Present)

Derek Belton
Dwight Flaming
Jim Schmidt
Kathy Inlow
William Kroupa
Glenn Thiessen
Duane Bair
Mel Flaming

Members

(Absent)

Brad Vannocker

Staff

(Present)

Sharon Omstead, Secretary
Brandon Meierhoff, Record Secretary
Russ Ewy, Planning Consultant

1. **Call to Order**~ Belton called the meeting to order at 7:08 p.m. with 8 members present, 3 staff present, and Vannocker absent.
2. **Case No. PC-19-02: Application for a Conditional Use Permit, filed by US Cellular, on behalf of Duane and Karen Unruh, to establish a wireless communications tower at 1181 Highway K-15, Newton, Kansas.** First published July 3, 2019, in the Marion County Record. Kole Talbott, agent for US Cellular, handed an information packet to the board members. The proposed communication tower will be 195 feet in height, and there will be a 12-foot access road. The tower and infrastructure will be enclosed in a 60-foot by 60-foot compound. D. Flaming asks if there will be any guyed wires. Talbott stated there would not be any; it will be a smaller tower so it can be stand-alone. Talbott referred to the existing coverage map in the packet. He stated that currently, there is a big gap in cellular coverage around the city of Goessel. This is detected by dropped calls. Talbott then referred to the map showing coverage with the proposed tower installed. The existing towers in the Goessel area are nearing their capacity. Putting in the new, smaller tower would help to offload some of the work on the other towers, and provide greater wireless coverage. The new tower will have all of the latest technology and allow for 5G (Fifth Generation Cellular Network Technology) when it rolls out. Talbott referred to the picture of the monopole they are proposing for the site. Most people in the area are struggling with in-building coverage. The signal isn't penetrating into buildings. The upgraded coverage will be specific to US Cellular customers. M. Flaming asks if different cellular companies share towers. Talbott stated, sometimes, but with 5G technology, it is getting harder to share the towers. This is another reasons companies are using the smaller towers. Bair asks why they are going to the smaller towers. What is the advantage of using 5G? For background, Talbott stated they had three different options to help their customers. One option was to access two sites for the possibility of installing new towers. The other option was to

use the existing Verizon tower, located nearby. Mr. Unruh had expressed his interest when we talked to him about placing a tower on his property. After researching the options, Mr. Unruh's property, was the best option. This location is the best because of the distance it will cover, the 2 to 3 miles of in-building coverage, and off-loading from the bigger towers in the area. Bair asked how much of the city of Goessel uses US Cellular. Mr. Talbott did not know the answer. A few of the board members stated that many people in the Goessel area use US Cellular. There are many people having issues, and this tower is needed. Thiessen asked if the schools would benefit from the new tower. Talbott stated that any customer of US Cellular would see an immediate impact. Members discussed the fiber optic line around Goessel. Belton opened the meeting to public comment. Jerry Toews, lives on the corner by the proposed site for the new cell tower, stated he would like the tower to be a little farther back from his place. Toews asked if it would just be used for cell service. Talbott stated it is targeted for telephone use, but can be used for repeaters as well. Any business that uses a wireless hotspot will benefit. If emergency services need to use the tower for communications, there will be room for their repeater on the tower. US Cellular usually waives the fee for tower use in those situations. It is popular for people to use streaming services like Netflix, and they will benefit as well. This will help any US Cellular customer. Bair states that he talked to the Mayor of Goessel. Goessel's Mayor stated he didn't know anything about it (the cellular tower being proposed). Omstead stated that the city office had been contacted and the mayor had been emailed and spoken to on the telephone. Omstead presented the staff report. Bair spoke of a debt that the property owner did not repay to the city and stated they should consider Mr. Unruh resubmit (the application) with relief to the City of Goessel to repay the debt he left them. Ewy stated that each application has to be reviewed like the applicant hasn't done anything before. You cannot obligate the applicant to repay the debt. Theoretically, you could deny the permit, but you have to look at the specifics of the case. Will the location affect anything? We have been dealing with cell towers for years. We go through waves in technology and right now it is the 5G phase. Goessel's Mayor would like for the city to have a 2 to 3 mile setback from the city limits. Omstead checked to see if Goessel had any extra territorial jurisdiction; they do not. After having conversations with the mayor, it seemed he was more upset about the land it is proposed upon, rather than how close it is to the city. Ewy states most setbacks for city expansion are the height of the facility. Some are less because of the way these structures are designed. They are designed to fall more on themselves than straight over. In Omstead's conversations with Goessel's Mayor, he stated the city was replacing their city sign and the new cell tower would impede the view of the sign. The concrete pad will be about 270 feet off of the highway. There will be a 60-foot by 60-foot fence. The entire structure will be 200 feet back from the highway. M. Flaming

asked Toews to elaborate on why he would like for the tower to be moved back. Toews states he would like it to be placed a little farther back because it seems close to the city. It is more of an esthetic issue than anything. It won't change their lives if it is placed at the proposed site. The area needs the tower. Toews stated they used to have US Cellular, but were having too many issues so they switched to Verizon wireless service. After being asked why they couldn't use the Verizon tower, Talbott stated it doesn't have enough RAD (height of the antennae/ center of radiation). Verizon had recently added more antennae onto the current tower. The Verizon tower is in the same section of land as the proposed tower. (no more public comments) Belton closed public comment. There was discussion from the board concerning the location of the tower. Omstead mentioned that the board has the option to table the hearing and request a new site be evaluated for the tower site. Omstead asked what the timeline would be like if a new location was requested. Talbott stated that they could move the tower about two feet from the proposed location. Moving it any more than two feet would require them to refile the project; that would push the project out another year. D. Flaming asked if there are any rules on towers being close in proximity to other communication towers. Ewy stated that it was not uncommon to have co-located antennae on towers. D. Flaming said from his understanding, there is a three mile radius (for tower sites), but it has to be for the same company. Ewy states that companies depend on the lay of the land. A tower is going to get better coverage on hill rather than a valley. They are also filling holes in their coverage and not making new markets. In this situation, they are trying to fix the gap in coverage. Inlow asked why it couldn't be moved to the south corner of the property. A board member mentioned that only so many entrances off of the highway are allowed. Inlow suggested they use the same entrance, they would just have to drive across the field. Omstead states there is a ravine that would not allow it. Inlow asked if the current entrance to the property was wide enough to get the trucks through. Talbott stated that they are making an access road to the tower, so all of the road improvements that are needed will be made. Inlow expressed her concern that it seems too close to the city limits. Bair stated if the City of Goessel was given notice and no one showed up to the meeting; their concerns are mute, it wasn't important enough for them to show up. Inlow agreed. Bair made a motion that case No. PC-19-02, the request for a Conditional Use Permit to establish a wireless communications tower, filed by US Cellular, on behalf of Duane and Karen Unruh, be recommended for approval with the following conditions: 1) If unused for a period of twelve months or more, the structure shall be declared abandoned and the applicant shall be required to remove the tower and appurtenances, and affected ground shall be restored to a use compatible with the surrounding use, 2) Strict adherence to the developmental plan of record is required, and

3) Adherence to all applicable federal, state, and local regulations is required. M. Flaming seconded the motion. Motion carried (8-0).

3. **Off-Agenda Items**~ Belton has been hearing talk of a (wind development) moratorium. With the information in the papers, he thought the Board of County Commissioners (BOCC) might call him in to a meeting. He wished to know the board's feelings on the matter of wind farms. Ewy stated that moratoriums typically last six months to a year. They could use the moratorium to rezone, change regulations, or stop wind farms from being put up in the county. The Planning Commission would serve as the workshop to address those issues D. Flaming states, most people think if we have a moratorium, it would just be over, wind farms would be done in Marion County; but that is not the case. D. Flaming's thoughts are to just change the setbacks. That is what most people want changed. If the setbacks are changed, it would solve most of the problems we have. Ewy states the county needs to decide if they want wind farms or not. A multitude of options can be done. The county needs to find the political stance of the community first, and go from there. We should be careful how we define the moratorium. In Wabaunsee County, a company had spent 12-18 months to get leases for a wind farm. The county said no, we don't want it, and shut the door on them. Kansas is very slow to acknowledge when vested rights start. You do not have vested rights until a project is built. In some states, applicants have vested rights when they turn in their application. Kroupa states a moratorium is like bankruptcy. Until you get your rules in place everything is ok. There are lots of moving parts. Ewy states our policy (Comprehensive Plan and county regulations) shows we will take all applicants in for wind development. D. Flaming states we had good planning when we started (forming the Comprehensive Plan and county regulations), but things changed in the meantime. If we change the setbacks, everything should take care of itself. Kroupa states he agrees, but the transmission lines need to have a specific path. We don't want companies to have eminent domain for the transmission lines. Can we change those things specifically in the regulations. Ewy states that we can address those things in the regulations. Kroupa states that we need to change the setbacks and specifications regarding transmission lines. Inlow agrees. Everyone knows I think the turbines are fine. I agree with Kroupa that we need to change the setbacks and I doesn't like the idea of eminent domain. A board member asked if we can just say we don't want wind farms. Ewy states that the County Commission can. The Commission can say we need to take a pause with a moratorium, to take a look at the regulations. Let's make the applications more definitive. This way the issues are already handled and we don't have to deal with them at the meetings. Belton suspects the County Commission will ask him to come speak. Ewy states send it (the recommendation to update the regulations) back to them, they need to initiate

the process. Omstead states that many times during the process with Expedition Wind, she expected the commissioners to ask the Planning Commission to update the regulations. Regulations have been on the BOCC agenda; I have been waiting for them to send it to the Planning Commission Board. Ewy states they need to ask us. They need to decide what they want to do. BOCC has to ask themselves, have we shouldered the load (of wind development within the county). Each county needs to have that conversation. Options are open for them: let's look at the setbacks, let's protect property owners and businesses. For the applicants, it takes a lot of money and time. Inlow states we need to be fair and ethical to the applicants as well. Ewy states that the county needs to either prohibit or allow windfarms. Is the county pro-wind, or do we need a change? Is the county saturated from wind? The BOCC needs to start the process. We could go through Article 27 regulations for the next three months researching and hashing things out. When we take it to the BOCC, they could say no, we don't want it. All of the work we put in would be gone. Belton states the most we could do is send a letter to the BOCC stating, "x, y, and z" to get some direction on how they would like to proceed.

Omstead reports that no new applications have been submitted. Today was the last day for new applications for the August meeting. Omstead states we also have a couple of lot splits issues. The issues are not black and white and may not fit into the regulations. Ewy states the current regulations are in place to preserve the agricultural land. Higher growth counties need to be more restrictive. They use the high costs of platting to stymie growth. Omstead states one of the lot splits she is referring to is on a twelve-acre lot. It has two houses on the lot. Both residences share the lagoon. Both structures have been used as a house before the county had adopted zoning regulations. They want to split the lot so both families can have equity in their home. If one owner wants to sell his house down the line, he can without making his son's family move. The family knows they could plat, but doesn't want to. Ewy states it may be time to go back and look at the regulations and make some changes. Harvey County won't allow tillable ground to be split. The intent at the time the regulation was formed was to protect the agricultural tracts. We all know the shape that the county is in, we need things that invite people in or keep them, not prevent them from moving in or push them out. Bair states they are grandfathered in. it shouldn't be an issue. Omstead states her issue with that is she can't issue a building permit currently because the use is non-conforming. The board would like to discuss this issue at a later time, possibly with some recommendations from Omstead or Ewy.

4. **Adjournment**~ Motion to adjourn made by Inlow, seconded by D. Flaming. Motion carried (8-0). Belton adjourned the meeting at 8:52 p.m.

Passed and Approved (Date) October 23, 2019

Derek Belton

Derek Belton, Chair

Attest:

Sharon Omstead

Sharon Omstead, Secretary