



MARION COUNTY COURTHOUSE

MARION COUNTY, KANSAS

PLANNING COMMISSION/BOARD OF ZONING APPEALS

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STAFF REPORT

October 23, 2019

TO: Marion County Planning Commission/Board of Zoning Appeals

FROM: Sharon Omstead, Director of Planning and Zoning

SUBJECT: PC-19-06 – Request for a Conditional Use Permit to establish a communications tower on land zoned “A” Agricultural in the East Half of the Southeast Quarter of S2-T21S-R3E, Marion County, Kansas.

This is the request of Rise Broadband, on behalf of David Tharp, to establish a communications tower on property zoned “A” Agricultural, and located at 1219 Quail Creek, Peabody, in Section 2, Township 21 South, Range 3 East, in Marion County, Kansas.

The property in question contains 79.24 acres. The proposed tower will be an 80-foot monopole, secured to a concrete base. The tower will be installed on a 12-foot by 12-foot area located within the subject property. The proposed location adequately allows for property line setback requirements.

If approved, a tower will be constructed on the property for the purpose of enhancing wireless data and radio communications to the area surrounding the site. This project is part of the American Broadband Initiative, a Federal Communications Commission funded initiative to expand broadband internet service to rural communities. As part of this initiative, in order to receive federal funding, the towers in conjunction with this project must be installed and available for use by January 1, 2020.

The Marion County Zoning Regulations has two specific sections that deal with submittal requirements for a Conditional Use Permit request. The first section requires that a Development Plan be included with the application. The standards for submittal of a Development Plan are outlined in Article 12 and listed below.

The Development Plan shall include and/or display the following information:

1. *When deemed necessary, a topographic survey indicating the legal description, property boundary, existing contours, existing utilities and easements, and natural and manmade features of the property.*

2. *A Development Plan, drawn to the same scale as the topographic survey, indicating:*

- A. existing contours (shown as dashed lines);*
- B. proposed contours (shown as solid lines);*
- C. location and orientation of all existing and proposed buildings;*
- D. areas to be used for parking, including the number and arrangement of stalls;*
- E. areas to be developed for screening, including the location of plant materials, and screening structures and features;*
- F. pedestrian and vehicular circulation and their relationship to existing streets, alleys and public right-of-way;*
- G. points of ingress and egress;*
- H. location of all existing and proposed utilities (sanitary sewage systems, water systems, storm drainage systems, gas lines, telephone lines and electrical power lines);*
- I. drainage controls (retention or detention ponds);*
- J. location, size and characteristics of identification and business signs;*
- K. lighting layout, appurtenances, and intensity of illumination;*
- L. proposed finished floor elevations of all buildings and structures.*

3. *A statement of intent shall accompany the Development Plan to explain the measures used to achieve compatibility of the proposed development with surrounding properties through the planning of the site and the location and design of structures.*

In Article 24 of the Marion County Zoning Regulations, the factors to be considered for a Conditional Use Permit are listed. The Marion County Planning Commission may recommend approval of a Conditional Use, and the Governing Body may approve such Conditional Use, using the following factors as guidelines. Those factors, and staff comments where appropriate, are as follows:

A. *Whether approval of the Conditional Use would be consistent with the intent and purpose of these Regulations;*

Per Article 19 of the Marion County Zoning Regulations, commercial communication towers greater than 50 feet in height are permitted in the agricultural district with a conditional use permit.

B. *Whether the location of the proposed use is compatible to other land uses in the surrounding neighborhood;*

The primary land use in the area is agricultural.

C. *Whether the proposed use places an undue burden on the existing transportation and service facilities in the area affected and, if so, whether such additional transportation and service facilities can be provided;*

Staff believes there will be little or no impact to public roads as a result of the proposed use. Any installation impacts are expected to be minimal. Staff does not anticipate any increase in traffic due to the proposed use.

- D. Whether the proposed use is made necessary or desirable because of changed or changing conditions in the area affected;*

[Www.thewhitehouse.gov](http://www.thewhitehouse.gov) explains this initiative as a multi-agency effort to remove barriers to broadband deployment to aid a free market economy. This project is under the leadership of the White House, the Department of Agriculture, and the Department of Commerce, the American Broadband Initiative.

Availability of advanced broadband communication is desirable in rural areas.

- E. The length of time the subject property has remained vacant or undeveloped as zoned; provided, the use of land for agricultural purposes shall be considered as viable use of the land and not be considered as allowing the land to be vacant or undeveloped;*

Staff does not believe this is applicable. To the extent it is applicable, the vast majority of the property is currently in productive use as agricultural property, and will not jeopardize the future use of the subject property.

- F. Whether the applicant's property is suitable for the proposed use;*

Staff believes the tract in question is suitable for the proposed use.

- G. The recommendations of permanent or professional staff;*

See below.

- H. Whether the proposed Conditional Use would be in conformance to and further enhance the implementation of the Comprehensive Plan;*

It is the opinion of staff that the proposed use would adhere to the intent of the Comprehensive Plan.

- I. Whether the relative gain to the public health, safety, and general welfare outweighs the hardship imposed on the applicant by not upgrading the value of the property by approving the proposed Conditional Use;*

Adequate space exists on the parcel to allow safe and appropriate siting for a communication tower. It is the opinion of staff that any hardships imposed do not outweigh the benefit of development at this location.

- J. *Whether the proposed Conditional Use, if it complies with all the conditions upon which the approval is made contingent (as authorized in Article 12 and 24 of these Regulations), will not adversely affect the property in the area affected.*

The area surrounding the property is primarily agricultural in nature. It is the opinion of staff that the properties in the immediate area will not experience adverse impacts.

- K. *Such other factors as may be relevant from the facts and evidence presented in the application.*

At the time of this staff report, the applicant has not provided final construction plans, however, agrees to comply fully with the factors for consideration, outlined in Article 12, 19 and 24 of the Marion County Zoning Regulations. Any questions regarding the development plan will be deferred to the Applicant.

Staff Recommendation:

Based on the evaluation of the above criteria, staff recommends the requested Conditional Use Permit be APPROVED subject to the following condition:

1. If unused for a period of twelve (12) months or more, the structure shall be declared abandoned and the applicant shall be required to remove the tower and appurtenances. Effected ground shall be restored to a use compatible with surrounding use.
2. Prior to development of the project, all required local, state and federal permits shall be obtained and copies submitted to the County.

Suggested Motions:

Item PC-19-06, the application for the establishment of a communications tower Conditional Use Permit by Rise Broadband, on behalf of David Tharp, at 1219 Quail Creek, Peabody, Kansas, I move to:

1. Recommend approval of the proposed Conditional Use Permit with conditions as presented.
2. Recommend approval of the proposed Conditional Use Permit with conditions as revised.
3. Recommend denial of the proposed Conditional Use Permit.