

# MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

## RECORD OF PROCEEDINGS

August 23, 2012

Chairman David Mueller called the meeting to order at 7:30 p.m.

Roll Call was answered by Mueller, Marquetta Eilerts, Jim Schmidt, Lloyd Funk, Nick Kraus, and Brad Vannocker. Dan Mount, Mary Avery, and Jeff Bina were absent. Zoning Administrator Tonya Richards and Consultant David Yearout were both present.

Mueller asked for corrections, or additions, to the Record of Proceedings for the July 26, 2012, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Vannocker had a correction on page two where Kevin Jost should have read Tracy Jost. Vannocker moved to approve the Record of Proceedings with one correction and Kraus seconded. In favor: 6; Opposed: 0; Motion carried.

Item 4: An application for XCell Towers, LLC, requesting a Conditional Use Permit (CUP) to allow a proposed cell tower at 3246 Highway K-15, Tampa, Kansas. This property is located in Blaine Township, in an "AG" Agricultural District. Mueller reminded members they are acting as the planning commission to make a recommendation to the county commission. Mueller noted this application was published in the July 4, 2012 issue of the *Marion County Record*. Mueller asked members if anyone had a conflict of interest with this application, or if anyone had any outside communication concerning this application. No one did. Wendy Florian, of XCell Towers, LLC, was present to speak about the application. Florian explained her company was contacted by AT&T and was given directions to construct a tower at this location, within a half mile, as this area was determined to be the best place to connect with other towers. Florian explained the State Historic Preservation Officer (SHPO) objected to the original location because of the nearby Santa Fe Trail. Florian said her company made changes to move the tower about 1,800 to 2,000 feet from the original location. Florian said the SHPO approved the new location. Florian said this will be a 300 foot self-supporting tower, and they have moved it farther off the road due to a drainage creek. Mueller asked if the location meets setback requirements off the highway, and Richards said yes. Richards reminded members this is in an AG District. Richards talked about the first location compared to the second location, saying there is almost a half mile difference. Richards said Ken Kroupa owns the property at 17-28-2. Richards said they may change the location of the access road at 3286 Highway K-15. Richards said the company made changes to the plans to allow a 48 antenna capacity. Richards said this location is not in a flood zone. Mueller showed members an aerial photo of the property. Steve Schmidt was present to speak about the Santa Fe Trail. Richards asked Steve Schmidt how far the new location is from the trail, and he said about 2/3 of a mile. Richards said the request was to move the tower 500 feet from the original location, and they moved it even further away than requested. Mueller noted that location-wise the

new site meets all requirements. Richards noted the tower will be .65 miles from the trail. Mueller also noted the antenna standard has been met. Mueller asked members if there were other questions. Funk asked if this is in a pasture, and Florian said it is cultivated land. Kraus asked what the SHPO required, and Florian said the request was to move 500 feet to the north. Mueller asked if there were other questions. Richards showed members another map of the Santa Fe Trail. Mueller opened the floor for public comments. Steve Schmidt explained that he owns land by Lehigh and lives in McPherson. He is the President of the Cottonwood Crossing Chapter of the Santa Fe Trail Association, and he is also active with the Santa Fe Trail Preservation group. He said the Santa Fe Trail Chapter formed in 1986, and in 1987 the trail was designated a National Historic Trail. He said the Santa Fe Trail was a unique trail. He said it was a trade road from the Missouri River to New Mexico. He said Marion County has extensive remnants of the trail and from the air you can almost trace the trail through the county. He said it is a resource worth protecting and it does bring tourists to the county. He talked about the visual concerns with the tower. He said he would like to see it constructed 3/4 of a mile away, but there is significant improvement from the original proposed location. He said another 1/10 of a mile would provide some improvement, but not a significant amount. We concur with the SHPO and find there is not significant impact for this location, Steve Schmidt told members. We want to thank the project sponsors and landowner for respecting the trail, and going to all the trouble to relocate it, he said. We did not want to push it on to another landowner, he said. We want to be passionate about the trail, but also be a good neighbor, Steve Schmidt said. Mueller thanked Steve Schmidt for working with the county and finding a solution. He said the trail has been nominated for the National Register of Historic Places. At this time, 12 sites along the trail were identified, including one in Marion, County. Our company did not want to do something to disrupt a historic site, Florian said. It did cost to move the location, but we want to do things right, she added. Mueller said it is an interesting contrast between the Santa Fe Trail and modern communication, but we found a compromise, and I appreciate that. Florian thanked Richards for her great help, and Richards said this has been the easiest cell tower company to work with. Mueller asked Richards to give her staff recommendation. Mueller closed the public hearing and open the floor for discussion.

Mueller asked members to think about the factors to be considered for a CUP. Kraus moved to recommend approving a CUP for application #PC-12-01 for XCell Towers, LLC, as presented in the site plans with the following conditions:

- 1) The location of the tower must be such that it is at least an equal distance from all property lines as it is in height;
- 2) The tower must be designed to provide co-location with a minimum of forty-eight (48) antennas and their attendant cables;
- 3) All lighting must comply with Federal Aviation Administration (FAA) lighting requirements and shall consist of dual lighting structures with daytime strobe lights on medium intensity and nighttime red lights only. No high intensity strobes or nighttime strobes shall be permitted. Further, tower lighting shall provide battery backup, or other alternative power source, to assure lighting operations during times of power outages;
- 4) If the tower is unused for a period of twelve (12) months, or more, it shall be declared


abandoned and the company shall be notified of the necessity of removing the tower and appurtenances, and reclaiming the lands;

5) It is recommended that all state and federal permits be obtained and maintained. It is recommended that all antennae and support structures meet or exceed current standards and regulations of the FAA and the Federal Communications Commission (FCC), and should such standards or regulations be amended, then devices and structures shall be brought into compliance as mandated by the controlling agency. Vannocker seconded the motion. In favor: 6; Opposed: 0; Motion carried.

Off agenda items were next. Richards told members there will be an application at next month's meeting for property located at 74 Lakeshore Drive, Marion County Park and Lake. Richards explained this property involves a large lot, and the owner wishes to plat it into two lots and build two homes. Richards said another item for next month involves a church in a home at Eastshore, Marion Reservoir. Richards said the property is zoned for residential and the owner wishes to apply to continue operating the church out of the home. Richards reported that she and Jim Schmidt attended a recent zoning workshop. Eilerts asked Richards to make her a copy of the information from the workshop. Yearout reviewed proposed regulation amendments. Richards gave members copies of the proposed changes. Yearout explained some of the language, saying he is still working on some parts of the wording. Under 21-104, Yearout explained this would not allow someone to bring in a non-compliant manufactured home from outside the county, and they would still have to meet the rules involved. Under 3-106, Yearout said he is still working on the language, and he is not sure he wants to use the term "non-compliant." He said this would not be handled as an administrative decision, like the regulations allow for lot splits, this would require the applicant to go through the process. Mueller asked Yearout if he wants to work more on the language, but Yearout said he is comfortable enough to go ahead. Mueller asked members if this is something they want to pursue. Richards said she would like to see this in place. Yearout asked if this can be published for the next meeting. Mueller asked the board if they wish to schedule a public hearing for this. Schmidt moved to set a public hearing for September 27, 2012, and Vannocker seconded. Kraus asked about the frontage requirement on a previous application. They platted that, Richards said. This is to avoid the platting process, Yearout said. This is like next month's application?, Kraus asked. That property has never been platted, Yearout said. This is a much cleaner way, and it preserves farmsteads, Yearout said. If it had required frontage it would have been located way back, Richards said. Mueller asked if there were other questions. Members voted. In favor: 6; Opposed: 0; Motion carried. Members reviewed a proposed fee schedule. Mueller asked about other off agenda items. Funk moved to adjourn and Kraus seconded. In favor: 6; Opposed: 0; Motion carried. The meeting adjourned at 8:33 p.m.

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David Mueller, Chairman

  
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Margo Yates, Secretary