

**Minutes**

The City Council of the City of Leawood, Kansas, met for a Special Call Meeting at City Hall, 4800 Town Center Drive, at 6:00 P.M., on Monday, November 7, 2011. Mayor Peggy Dunn presided.

**Councilmembers present:** Debra Filla, Gary Bussing, Lou Rasmussen, Andrew Osman, Jim Rawlings, Julie Cain, and Carrie Rezac

**Councilmembers absent:** James Azeltine

<b>Staff present:</b> Scott Lambers, City Administrator	Patty Bennett, City Attorney
Chief John Meier, Police Department	Joe Johnson, Public Works Director
Mark Andrasik, Info. Systems Director	Deb Harper, City Clerk
Richard Coleman, Comm. Dev. Director	Pam Gregory, Assistant City Clerk

**Others Present:** Chris Carroll, AT&T  
Chris Coolidge, AT&T  
Robert Bruce, Crown Castle International  
Curtis Holland, Esq., Polsinelli Shughart  
Garth Adcock, T-Mobile  
Russell Pope, T-Mobile  
Andrew Hart, Verizon Wireless  
Douglas Machamer, Clearwire Corporation

**Review City's Current Cell Tower Ordinance(s)**

Mayor Dunn called the meeting to order at 6:05 P.M. Introductions were made by those present.

**Opening Remarks – City Administrator Scott Lambers**

This meeting is intended to not only review the City's existing Cell Tower Ordinance, but to also discuss how the ordinance relates to the existing cell tower structure, located on 135<sup>th</sup> Street. This tower is not consistent with the ordinance and has been issued a Special Use Permit [SUP], which is due to expire in the spring, 2012. In anticipation that the ordinance would remain as is, staff is in the process of amending the Leawood Development Ordinance [LDO] to provide the tower owner and tenants a 1-year opportunity to relocate the antennas and then remove the tower. Currently, there is no provision after the SUP expires. He suggested they wait to address any legal questions to the City Attorney in an Executive Session toward the end of the meeting.

Councilmember Debra Filla joined the meeting.

Ms. Bennett confirmed that the SUP for this tower was granted in 1996. The actual tower height is 170 feet with an 8 foot lightening arrestor for a total height of 178 feet. There are no other towers in the City this tall. In 2002, the ordinance was amended limiting cell towers to a maximum of 150 feet.

Mayor Dunn noted the monopine towers are 75 feet tall. A stealth/monopine tower would not have to comply with the 500-foot residential property setback; however, all towers must abide by the building setbacks for the zoning district in which they are located. In this case, the tower is located in a Mixed Use Development District [MXD], which requires a 75-foot residential property setback.

Mr. Lambers confirmed they have not received any complaints regarding this tower. If it is removed, they would more than likely need multiple shorter towers in order to get the coverage. Aesthetics is one of the main reasons the ordinance was amended. When the ordinance was adopted, it was never anticipated a tower of this height would be required to provide service. Planning Commissioners have requested that applicants prepare a Master Plan showing the height, location, type, and how many towers would be necessary rather than approving 1 tower at a time. It is up to the Council to decide if the ordinance should remain as is.

Councilmember Bussing stated there were other issues to consider if the tower is removed; this could disadvantage citizens from a public safety perspective and from access to the most relevant and accessible technology moving forward today. Police Chief John Meier confirmed they triangulate the towers when conducting missing people searches. Mr. Lambers responded if they request the applicant to come up with an alternative option; the City would need to do an independent analysis to ensure it is a legitimate evaluation. He reiterated if the ordinance stays as is, they would need to relocate the antennas and the tower would be removed.

Ms. Bennett confirmed for Councilmember Rasmussen there was a different tower in place before 1996. He felt the main issue is that tower owners are irresponsible in maintaining them.

Community Development Director Richard Coleman commented that some neighboring cities define their stealth towers different than Leawood. For example, Overland Park's definition of a stealth tower would be Leawood's definition of a mono pole with a flush mounted slim-line antenna. Leawood's definition of a stealth tower would be an alternative tower structure, such as a monopine.

Mayor Dunn preferred they not do away with their Cell Tower Ordinance and have this become a forever-more grandfathered non-conforming use without considering all kinds of alternatives. They continually strive to improve the aesthetics throughout the City. Mr. Lambers stated if the Council would like the analysis done, the applicant would need to be willing to spend the money for it. City staff would then need to hire an independent entity to verify their study results. This would not be completed by the time the SUP expires in March, 2012; therefore, they would need to issue a 1-year extension of the SUP.

Curtis Holland, Esq., Polsinelli Shughart, stated there is no alternative to this existing tower. Mr. Lambers responded if there is no alternative then to state that in writing. They can have the analysis done and then compare the conclusion.

Mr. Holland replied there are 6 wireless carriers providing multiple services. Different center lines would be required for all of their services. They cannot replicate the services they are providing.

Robert Bruce, Crown Castle International, stated if it is mandated that the tower be removed they will do so; however, he wanted to ensure everyone understood the details of everything involved. Several of these 6 wireless carriers are in the process of upgrading technology in order to keep up with band width, etc. This particular location is a hot spot for the carriers. If the tower is removed, it could possibly be replaced; however, it would take several monopines, flagpoles, etc. There are a limited number of carriers that can go on these stealth types of towers, plus they do not get the height coverage and are much more expensive. The towers are generally built as tall as possible for needed coverage; however, they keep them less than 200 feet because of Federal Aviation Administration [FAA] regulations. They did an initial analysis, which determined within a ¼ to ½ mile radius there is no land available; it is already set for development. They would need to extend the radius to ¾ or 1 mile to give them the coverage needed, which makes it very complicated. Because of the customer base this would affect, each carrier would need to install several monopine or flagpole towers at multiple sites. There are a lot of logistics in removing and relocating 6 carriers, which would include setting up temporary service until relocation is completed. Costs to remove and relocate a site similar to this could cost as much as \$500,000.

Councilmember Rezac asked the process for adding antennas. Mr. Bruce responded that each carrier has to continually upgrade their antennas as technology progresses, which could mean a few times per year.

Mr. Bruce stated much of the cost to relocate the tenants and remove the tower would be passed down to the carriers. For them to consider moving to multiple sites, if they can find real estate to do so, would include additional substantial costs. If they choose not to do this, it would affect 911 service and cell coverage.

Chris Carroll, AT&T, stated although the tower is a non-conforming structure, it has been upgraded over the years by the carriers to meet the needs of the community and surrounding communities. It is in a strategic location and on their network alone, there are 25,000 calls, 70,000 minutes of use, and 27,000 data connections per day on that particular tower. If the tower is removed, it would create major disruptions in service. 30% of the households in Kansas are wireless only households and this percentage is growing. He asked that the Council consider the fact that they have not received any complaints regarding the tower. Collectively, the carriers need to address all maintenance issues. Mr. Bruce stated their project managers are expected to maintain the towers; however, if this is a problem he assured the Council any maintenance issues would be taken care of.

Mr. Carroll stated all of the carriers worked with law enforcement on the 9-1-1 Bill in the legislature. It was testified that 72% of all calls to the Public Safety Answering Points [PSAP] come from wireless phones. That tower is needed to complete those calls. Public safety is a concern.

A motion to recess into Executive Session at 6:55 P.M. for a period of 15 minutes to discuss matters related to attorney-client privilege was made by Councilmember Bussing; seconded by Councilmember Rezac. The motion carried following a unanimous vote of 7-0. (Councilmember Azeltine absent).

The Governing Body reconvened into the Work Session at 7:10 P.M.

Councilmember Filla suggested they have the analysis done and then decide if there is interest in pursuing this in greater detail. Mr. Lambers reiterated they could evaluate what the applicant submits and then contract out their own evaluation. Mayor Dunn wanted to see options that could make the tower more aesthetically pleasing if indeed they decide to do some type of allowance for a non-conforming use.

Mr. Lambers noted typically, if an entity loses more than 50% of its structure then the grandfathering goes away. He recommended that the applicant submit an extension for the current SUP for a 2-year period. This 2-year extension will be contingent upon all studies being completed.

Mr. Bruce commented that many of the maintenance issues that were prevalent a few months ago have been addressed. Moving forward they will pay particular attention to the cosmetics of this site.

Councilmember Rasmussen thought an alternative could be to bring the tower to 150 feet and flush mount all of the antennas. Mr. Lambers replied this could be considered in their discussion; however, there are other issues of compliance they would need to provide an exception for. Mr. Rasmussen stated if they revise the LDO to allow the non-conforming tower to remain under certain conditions he wanted those conditions to have time limits.

There being no further business, the work session was adjourned at 7:20 P.M.

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Pam Gregory, Recording Assistant City Clerk