

# MINUTES OF THE SHAWNEE COUNTY PLANNING COMMISSION

Monday, April 14, 2014  
Shawnee County Annex  
6:00 PM

**Roll Call and Announcement of Hearing Procedure:** Brian Jacques, Chair, called the meeting to order, reviewed the hearing procedure, and asked for roll call to be taken.

**Members Present:** Brian Jacques, Dave Macfee, Pat Tryon, Christi McKenzie, Lynn Marolf and Matt Appelhanz. With six members present a quorum was established and the meeting was called to order.

**Members Absent:** Nancy Johnson.

**Staff Present:** Barry T. Beagle, Planning Director; Joelee Charles, Administrative Assistant and Ashley Heidrick, Assistant County Counselor.

**Approval of March 10, 2014, Public Hearing Minutes:** Mr. Marolf moved for approval of the March 10, 2014, public hearing minutes, seconded by Mr. Macfee and, with a unanimous voice vote, the minutes were approved.

**Communications:** There were no communications by staff.

**Ex Parte Communication by Members of the Commission:** There were no Ex Parte communications expressed by members of the Commission.

**Declaration of Conflict of Interest by Members of the Commission or Staff:** There were no declarations of conflict of interest by commission members or staff.

## **Zoning and Subdivision Items:**

1. **CU13/03 by Howard & Carol Steanson on behalf of Verizon Wireless** seeking a Conditional Use Permit to establish a communication tower on property zoned "RR-1" Residential Reserve District and located at 3839 SE 61<sup>st</sup> Street in Monmouth Township.

Mr. Jacques asked for the presentation from staff.

Mr. Beagle stated the Conditional Use Permit proposal included construction of a 150 foot monopole tower on a 100 foot square lease area which is accessible by a 20 foot wide access easement connected to 61<sup>st</sup> Street.

Mr. Beagle said it was important to understand why Verizon Wireless was proposing to establish a new wireless facility within the southeast portion of Shawnee County as there are currently five towers in this area. He said they needed to establish a new wireless facility in order to provide improved coverage service reliability in the area extending east of the Topeka Regional Airport and encompassing the unincorporated village of Berryton and Heartland Park.

Mr. Beagle displayed a propagation map provided by Verizon's RF engineers that reflected the existing coverage conditions within the area. He pointed out the various features including the locations of the five towers presently used and the coverage areas. Verizon wanted to provide for enhanced coverage capability within this area surrounding the proposed tower and also the existing network did not have the capacity to adequately handle high speed data service. A new facility would help offload the capacity of the five existing towers and allow the system to operate at a higher capacity. The new tower would offer

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adequate coverage, sufficient capacity and the proper system performance. Because of its location within the network, Verizon has indicated the proposed tower would provide an additional six square miles of coverage area.

Mr. Beagle said with the growth of the wireless communication industry and the demand for service, communication towers have become a regular part of the urban and rural landscape. He stated in order to balance the growth of wireless communication systems while protecting community aesthetics and public welfare, the County's communication tower regulations established minimum standards for construction and facility siting to minimize adverse visual impacts through careful design, siting, lighting and screening. The primary objective of the communication tower regulations was to encourage carriers to locate on existing and established towers as opposed to siting new towers. Mr. Beagle said that with the spread of residential development into formerly rural areas, it cannot always be accomplished.

A requirement of the communication tower regulations was a study of potential host sites where sites were examined within a one mile radius of the subject property. A potential host site included two things: existing structures or towers in excess of 100 feet and would have the greatest capability to accommodate co-location and also properties where towers were permitted or by a conditional use permit. The applicant must demonstrate that collocation opportunities are not available within the one mile radius or other potential host sites were not available or as suitable as the proposed property.

Mr. Beagle stated Verizon, in response to the study of potential host sites, indicated it was their practice, consistent with the regulations, to first target potential collocation opportunities as opposed to building a new tower because it cost less. The applicant indicated that no towers or structures in excess of 100 foot in height fell within their search range or within the one mile radius of the subject property in accordance with the communication tower regulations. They indicated the nearest tower in proximity to the subject property was a 110 foot monopole tower located at 4910 SE Berryton Road which was a little over two miles to the northwest. They said they looked at this tower but due to its proximity to the Lake Shawnee tower and its distance from the coverage area, it was not suitable for meeting their immediate needs.

Mr. Beagle stated since no collocation opportunities existed within their desired coverage area, they then examined six potential host sites including the subject property to accommodate construction of a new tower. These sites were also located within a one mile radius of the subject property. The applicant indicated the other five potential host sites either had not responded to inquiries within a reasonable time period or were not as suitable and did not meet the coverage objectives as sufficiently as the proposed tower location. As a result, the subject property was chosen to establish a new tower as the best available to meet their coverage objectives.

Mr. Beagle said by looking at it in the context of the area, the subject property was located approximately 2½ miles southeast of the City of Topeka in an area that was undergoing a gradual transition from large agricultural tracts of land to rural residential home sites along township and County roadways. He said much of the frontage on 61<sup>st</sup> Street between Croco and Paulen Roads was already subdivided into three acre or larger rural residential home sites. He said this area in general was anticipated to continue to experience a conversion of agricultural land to rural residential home sites over an extended period of time.

Mr. Beagle said after reviewing how the tower site was selected and why it was needed, attention would now be focused on the proposed tower and its location. He said the subject property consisted of a 100 foot square lease area located approximately in the southeast corner of the applicant's 38½ acre parcel and accessible by a 20 foot wide access easement extending between the lease area and 61<sup>st</sup> Street.

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He said the proposed 150 foot monopole tower and accompanying 11'x6"x30' radio equipment shelter building would be confined to a 50 foot square fence enclosed area located about the west half of the 100 foot square lease area. The tower compound, accessible by a 20 foot wide access easement, would remain gated and locked except during initial construction and also to accommodate occasional site visits. The tower would be set back approximately 85 foot from the Steanson's south and east property lines in compliance with the communication tower regulations.

Mr. Beagle said that even though the tower was yet to be ordered by the applicant, they had stipulated the tower, when it was built, would be designed to fall within a 50 foot radius of the tower base in the event of a tower failure. Engineering drawings would be required to be submitted at the time of application documenting the design and construction of the tower and also to confirm that it would be in compliance with the 50 foot tower fall zone radius.

Mr. Beagle said the proposed tower was an unmanned facility and would require only occasional visits to monitor and inspect the tower and equipment. The applicant indicated the tower would be designed to accommodate two additional carriers that would potentially minimize the need for additional towers within the area. Since the tower was less than 200 foot in height, air hazard obstruction lighting was not required or be installed on the tower. The radio equipment building would be equipped with 60 watt security lights mounted on the building which would be cast downward to prevent direct lighting from extending beyond the tower compound.

Mr. Beagle stated that staff, in considering this proposal, indicated that communication towers had become a regular part of the urban and rural landscape; however, tower sighting remains a local issue. He said the principal land use factor associated with tower sighting was the height and resulting visual impact. Locations obviously which were detached from residential population centers offered the least conflict but could not always be achieved as evidenced by the numerous cell towers within urbanized areas where wireless service was great. He said wireless service was consumer driven and wireless carriers were responsible for providing the most effective coverage within the markets they were licensed to serve. The object was not to eliminate from view all towers which would be quite literally impossible but to establish tower locations that minimized, to the greatest extent possible, visual and land use conflicts.

Mr. Beagle stated Verizon selected this property because it would best achieve their coverage objectives and located at the extreme southeast corner of the Steanson's 38½ acre parcel and over 1,200 foot from the nearest residential property on 61<sup>st</sup> Street. Even though it was not readily visible due to terrain and the setback from 61<sup>st</sup> Street, Verizon proposed to install a six foot tall wooden fence around the tower compound's perimeter. Although a 150 foot tower cannot be concealed, the monopole design represented the most slender profile in contrast to other tower designs. As required by the regulations, the applicant had submitted a photo simulation which showed the relative tower appearance within the context of the location. Since the tower is less than 200 feet in height, it would not be equipped with air hazard obstruction lighting. He said the tower appearance would be minimized since it would be separated from residential property on 61<sup>st</sup> Street along with the absence of tower lighting. He concluded by saying cell towers were a reflection of our culture and the growing dependence on wireless communication technology. Although no one wanted a tower in their backyard, reasonable accommodation must be made for tower sighting. The applicant had documented that no other potential host sites existed within a one mile radius for possible collocation and no other property site was suitable to establish a new tower location. It appeared the applicant had acted in good faith in documenting potential host sites and identifying the best available subject property and finding a location that attempted to minimize to the greatest extent possible the impact of the tower with respect to area residential property. Mr. Beagle stated staff was recommending the proposed Conditional Use Permit be approved subject to the 11 conditions that was outlined in the staff report.

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Mr. Jacques asked if anyone had any questions for staff. There being no questions, Mr. Jacques called for a presentation from the applicant.

Mr. Justin Anderson from Selective Site Consultants, on behalf of the Steansons and Verizon Wireless, stated he concurred with the staff's detailed report. He said it was a coverage and capacity site for Verizon. He said they had reviewed the existing site locations and the closest one was approximately 2.5 miles away. He said they felt they had chosen a good location given its separation from a major thoroughfare in the area as well as the separation from residential areas. He said the closest one was over 1,200 feet away. They also completed a Ken Patterson study and received a FAA determination. One aspect was the western half of the area was in a flight hazard zone which put them in one-half of a one mile search area. He said they felt the other candidates' locations were on denser, smaller lots or they were closer to other residences. He concluded by asking if anyone had any questions.

Mr. Jacques asked if anyone had any questions for the applicant.

Mr. Tryon asked if the tower would have the availability to accept any additional carriers. Mr. Anderson said it would. Per Shawnee County's code, they were required to have collocation ability for no less than two. He said this tower would have no less than two. He said with the ever changing landscape of the antennas, tower mounted amplifiers and other litany of equipment, some carriers used outdoor equipment which use a much smaller footprint on the ground. Then given the antennas and changing of equipment, no less than two additional carriers. He said he would be cutting the tower short if he didn't say it couldn't potentially hold more as well. Quite frequently he could think of two towers right outside his office in Overland Park where one tower had six carriers and the other had five on it. He said it was a good one-stop shop for mitigating towers.

With no further questions for the applicant, Mr. Jacques asked if anyone wanted to speak in favor or in opposition of the item. Since there were none, Mr. Jacques closed the public hearing.

Mr. Jacques asked if there was any discussion from the Board.

Mr. Marolf said he thought it was a good location and that area was probably one of the best as far as the amount of homes it would be close to. He said it made sense to him.

Mr. Tryon said, based on his personal thoughts, a tower was always probably one of the more touchier subjects. They had to weigh the good with the bad and whether or not it was the best fit for the appropriate use. He said, in this particular case, he thought it was certainly one of the best locations they had seen. He said he would be voting in favor.

Mr. Macfee moved to recommend Approval of the proposed Conditional Use Permit subject to staff conditions; seconded by Ms. McKenzie. With a vote of **6-0-0**, the item was recommended for **Approval**.

Mr. Beagle mentioned the item would go before the County Commission for consideration on May 5, 2014.

**Public Comment on Non-Agenda Planning and Zoning Items**

There were no comments on Non-Agenda Planning and Zoning items.

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**Discussion of Planning Related Issues**

Mr. Beagle stated he was continuing to work with Commission Cook and the County Commission on Planning's work objectives including a comprehensive plan and prior to that, a citizen engagement exercise so they could talk to Shawnee County residents and establish what they would like to see for the future of the unincorporated area. He said he was still hopeful and optimistic that something would come from that.

He said he had sent them an email awhile back stating the City of Topeka was in the process of updating their comprehensive plan. He said the City's Planning Director indicated they had identified the Planning Commission as a potential stakeholder to have conversation with. Mr. Beagle said they could have a conversation with the City but would be at a loss as to how to best express the viewpoints in the absence of a land use policy for the unincorporated area. He said if they met with the City, it would be offering comments from a collection of seven individuals more than it was a Planning Commission that had adopted policy documentation. He said he had not received anything from the City with regard to their planning efforts as they were still in the early stages of their review. He said he would welcome the members' comments or suggestions with regard to a potential strategy of response to the City. In order to provide a potential response to objectives, policies and goals of the City of Topeka and the extension of their land use concepts in the unincorporated area, at this time they would not be able to provide a qualified response in the absence of a County adopted policy in the unincorporated area.

Mr. Macfee asked if they were considering the whole County into their comprehensive plan or were they just concerned about the 3-mile area. Mr. Beagle stated he thought they would do something similar to the current 2025 land use and growth management plan which had a County-wide scope. Even though it was never adopted by the County Commission in with the 2010 Comprehensive Plan that preceded it, both of those documents established policy favorable to the City of Topeka within the unincorporated area and it was County wide in scope. It was never adopted or embraced by the County Commission. Mr. Macfee commented that it had no teeth. Mr. Beagle agreed. He said it affected their considerations of their control of the subdivision platting process within the 3-mile limit and they had requirements to attach to city water and sewer service in the unincorporated area. He said there were implications that way. Beyond that, no. None of the recommendations that the plan relative to the unincorporated area have any affect without it being adopted or somehow tacitly given approval by the County Commission.

Mr. Macfee asked if there was money in the budget to conduct the survey with the public. Mr. Beagle stated there was. He said the 2014 budget was supplemented by \$50,000 specifically for planning-related projects. He said he responded to that by approached the County Commission with the work program which included preparing a comprehensive plan, a community survey and facilitated public workshops.

He addressed the issue of the cost associated with hiring a professional consultant to help with the comprehensive plan by approaching Kansas State University through their graduate regional community planning program and talked to them about utilizing a graduate student planning team such as what they have done in communities throughout the years in assisting them to develop comprehensive plans. They were ready and willing to help us at this point in time but he would need to get a letter of commitment issued by the County Commission stating that we wanted K-State to help us develop a comprehensive plan. Thus far, it has not been put on the County Commission agenda for approval. Ms. Heidrick asked Mr. Beagle if there was a possibility that program might be going away in May. Mr. Beagle stated there was a possibility. He said the K-State professor indicated they were still willing to help Shawnee County at the moment. The bad news was that potentially in May they would have a curriculum meeting where they would look at all the coursework and the community involvement may be sacrificed. The meeting won't take place until May. We won't know until next month whether it would be a viable option or not. Mr. Beagle said the professor would notify him as soon as that determination was made.

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Mr. Macfee asked if they would need County Commission approval to proceed with the survey. Mr. Beagle stated they would. He said he was requesting with the analytical expertise that was required to craft the survey that had statistical significance he wanted to hire a consultant to help with that. From what he has seen, those surveys could be completed for \$10,000-\$15,000. With the \$50,000 allocated, it would more than cover the cost for it. He said there would be a RFP would need to be submitted to the County Commission seeking their permission to hire a consultant to do that. He said he would be requesting a two step process beginning with a community survey asking specific targeted questions to the population of unincorporated Shawnee County and then extract out the priority issues to be further addressed. That information would be rolled into a facilitated public workshop where the public would sit down with a facilitator and go through some scenario building to develop a vision for the unincorporated area 10 to 15 years down the road. That vision would then become the platform for the development of the comprehensive plan. The RFP would cover both of those steps and what he would like to accomplish. He said he would need to have the County Commission votes to complete that. He had one vote and was working to satisfy the questions for at least one other member who has been willing and eager to listen and discuss the options. He hoped to get some formal indication soon so he would know whether they were proceeding or not. He said if they were absent a second vote, the money would be returned to the County General Fund at the end of 2014. Mr. Jacques asked what date that would be. Mr. Beagle stated it would be December 31, 2014. He said the problem with getting later in the year, the later it would be to get out the RFP, try to retain someone and then accomplish everything within this calendar year. If it wasn't possible, he might have to encumber some of the money to pay the consultant into 2015. He said the obvious objective was to try to complete as much in the first part of the year. He said he realized it was something that people had to be comfortable with the idea and what needed to be accomplished.

Mr. Macfee said it was a good starting point to identify the issues the public was concerned about. He asked if enough funds were available to accomplish everything. Mr. Beagle said there was. It was recognized, based upon what was presented to the County Commission in 2013 as far as the projected work program which included the development of the comprehensive plan, the establishment of a County building code as well as the establishment of the Code Court, there was going to be a price tag associated with those. When the \$50,000 was added to supplement our budget, he considered it more tweener money. It really doesn't accomplish any of the major goals and objectives so he had to be creative in coming up with ideas that still advance the work to be completed. So he said he would lay off the consultant and see if they could use the university to assist us and then use the consultant to help us in those specific specialized areas of community surveys and the analytical work, the statistical competence associated with that. He thought the money allocated would accomplish both of those.

Mr. Macfee asked if there was any value in completing the survey and public meetings if the ultimate decision was not to take on the comprehensive plan. Mr. Beagle said there was. He said when they dealt with the South Topeka Economic Growth Corridor (STEGC), they heard people say after they heard the proposal dealing with over 4,000 acres to industrial zoning that if they knew that they wouldn't have built a home, not bought property there and built a residence, etc. He said he thought people wanted to be part of a process and part of the discussion about the future of their community. He said he didn't know what kind of response they would get by engaging the residents of Shawnee County but suspected they had an interest. He said they were interested in the economic preservation of their homes and their property. They wanted to know what would be next door to them and there was some sense of order associated with what happened in the County. He said whether that translated into a comprehensive plan or not, it was important to complete the survey and the facilitated public workshops. He said also from a political standpoint, it gave the elected officials tremendous ammunition and information based upon those public responses and their thinking. Outside of election cycles, there was not a whole lot of concerted effort to engage the public to ascertain where they were today and then having a discussion about 10-15-20 years from now and what Shawnee County could look like. He said that was where the difference of opinions came in. By completing the consensus building exercises through the workshops would help define what that future would be. It

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would give them all a common goal of what to achieve. He could see the value from the information that would be received.

Mr. Beagle said back in 2004, the year after the County's Planning Commission was formed, they held four meetings in Shawnee County in which public officials, townships, fire districts, school districts, water districts, etc. were invited to meet. They were divided into four quadrants and met within those respective quadrants. They opened up a dialogue and asked them what they liked about Shawnee County today; what the issues were; what were some of the deficiencies; and what strengths and weaknesses needed to be worked on. He said at the conclusion of all four meetings, there were comments about how it had been forever since anyone from the County wanted to speak to them. He said he thought there was a hunger for completing this especially if they knew it was going to yield something and used as a basis for trying to accomplish something within the unincorporated area.

Mr. Macfee said it would be a lot of work and they would take some arrows. But at the end of the day, in using the STEGC plan as an example, a lot of the members went through that and found there were very strong opinions. He said after it was done, he thought there was a general feeling on the Commission and from the public that they had completed some good work. It was an opportunity for the public to express their feelings and identify the issues they felt were important in that specific area. He said he had thought on one hand why open the door and just go on with the status quo. But then when issues like that come along and we wonder why we haven't done the work to at least survey the public to know what they wanted.

Mr. Macfee said that Mr. Beagle had mentioned the issue of home businesses in the County. He said it was an issue that could be part of the survey and ask if people saw that as a problem. He said he would like to learn from what people were really looking for. He said he thought people who lived out in the County were very independent. They don't want a lot of meddling but at the same time when issues affected them then that was when things changed and they asked why things were allowed.

Mr. Macfee said he remembered an individual whose property was affected in the STEGC. They had commented that if there was a comprehensive plan in place that they might not have bought the property. He said he didn't know there wasn't a comprehensive plan. Mr. Jacques said they had talked about this issue many times.

Ms. Heidrick said to keep in mind even if there was a comprehensive plan in place that it wasn't the law of the land. We still would have to consider all of the golden factors that would have to go into it. For someone to say, if a comprehensive plan had shown this, I wouldn't have moved there. She said she could understand that but at the same time that was not the only analysis that had to be done.

Mr. Macfee said that was his fear. He said he could almost see the importance of the survey. At least to him it was potentially more important than having the plan. He said if the plan was just something they completed to say it was done. We did it. He said he didn't think that was where they wanted to end up. He said he was told numerous times it needed to be something that was continually looked at and updated.

Mr. Beagle said, in accordance with state law, it had to be reviewed annually. So they would have to review the document once a year. But more importantly by the language of most comprehensive plans, it said it was a guide for daily decision making and that was how it was supposed to be used once it was implemented. He said he would enlist the help of the Planning Commission to advocate with the County Commission about these items they wanted to accomplish. It was not foreign to them and they were familiar with it. He said if they would call them, the County Commission would know what they were talking

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about. Certainly they needed to hear from the membership just to know how important working on these things were to the Planning Commission and that you still saw it as something that was yet to be accomplished.

**Adjournment:**

Mr. Marolf moved to adjourn, seconded by Ms. McKenzie. A unanimous voice vote declared the public hearing be adjourned, which was at 6:44 p.m.