



STAFF REPORT

February 12, 2007

TO: Northwest Consolidated Township Zoning Board

FR: Karen Miller, Planner

RE: Application No. NW-CU-2754(LE)

APPLICATION INFORMATION:

Applicant/Agent: Selective Site Consultants representing Verizon Wireless

Property Owner: Loren and Noelle Moll

Requested Action: Conditional Use Permit

Purpose: To allow a 178-foot tall monopole communication tower with associated antennas and accessory structures.

Legal Description: Lot 1, Moll Acres

Site Address/Location: 29200 W. 127th Street

Existing Land Use and Zoning: The tower is proposed to be located on a 100' x 100' leased parcel served by a 20-foot wide access/utility easement within the RUR, Rural District.

The parent parcel, which contains the lease parcel, is a vacant platted lot that is currently in agricultural use.

Existing Improvements: None.

Site Size: A 100' x 100' leased parcel within an approximate 17.5-acre parent parcel.



Figure 1: Vicinity Map

Proposal: The applicant is requesting a Conditional Use Permit to construct a 170-foot tall monopole communication tower with an 8-foot lightning rod for a total height of 178 feet as follows:

- The monopole is designed to accommodate at least three cellular antennae arrays and associated ground mounted equipment pads.
- The applicant will lease a 100' x 100' portion of the approximately 17.5-acre parent parcel. The proposed location is near the southeast corner of the 17.5-acre parent parcel. The proposed tower will be set back approximately 180 feet from the east and south property lines.
- The applicant proposes to construct a 6-foot high chain link fence with three strands of barbed wire around the tower and equipment pads. Landscaping is not proposed but is required as part of the communication tower performance standards.
- A 12-foot driveway will be constructed within a 20-foot wide access/utility easement that will provide access from 127th Street to the site.

Zoning History:

The 17.5-acre subject parcel is Lot 1 of Moll Acres. Moll Acres was a 5-lot subdivision with lots zoned RUR, Rural District and with lots taking access off of 127th Street and Gardner Road. The lots ranged in area from 10 to 25 acres. Moll Acres was recorded on June 7, 2004. (A

related plat, Moll Acres Second Plat, was recorded in 2005. Its purpose was to reconfigure Lots 3 and 4 of the original Moll Acres.)

Existing Infrastructure and Minimum Infrastructure Requirements:

- Water:** Water is not a requirement for this project.
- Sewers:** Wastewater facilities are not a requirement for this project.
- Public Safety:** Police Protection is provided by the Johnson County Sheriff's Department.

This area is served by Rural Fire District 3. The nearest fire station is located at 127th Street and Gardner Road approximately one-quarter mile to the west of the site.
- Roads:** Road access to the parent parcel is provided by 127th Street. Access to the lease parcel would be provided by a 12-foot driveway within a 20-foot wide access easement across the parent tract.

Planning staff is of the opinion that infrastructure is not an issue with this application.

STAFF ANALYSIS

Planning Department Staff

The Regulations indicate that a 178-foot tall communication tower may be permitted in the RUR zoning district, provided a Conditional Use Permit (CUP) is first approved and provided that the performance standards of Article 23, Section 6 (B)(4) pertaining to communication towers are met. Specifically, the goals of the communication tower performance standards are to:

- encourage their location in non-residential areas and minimize the total number throughout the community,
- encourage locations that do not negatively impact the general health, safety and welfare of the community,
- encourage the joint use of new and existing structures,
- encourage users to locate such structures, to the extent possible, in areas where the adverse impact on the community is minimal,
- encourage users to design and configure them in a way that minimizes the adverse visual impact, and
- enhance the ability of service providers to offer such services to the community quickly, effectively, and efficiently (Article 23, Section 6 (B)(4) of the Zoning Regulations).

Golden Analysis:

The Regulations, the *Rural Comprehensive Plan*, and Kansas case law indicate that consideration should be given to whether issuing the CUP is in the interest of the public health, safety, morals, and general welfare of the community. The CUP application should be considered with regard to:

1. Whether the use would be consistent with the zoning and uses of nearby properties.

Uses of Nearby Properties:

The proposed tower location is within a cluster of existing homes, some of which are very close to the tower:

- The closest house is approximately 300 feet from the proposed tower site, and 4 houses are within approximately 1,000 feet of the site.
- The proposed lease parcel is located within Lot 1, Moll Acres. “Moll Acres” and “Moll Acres Second Plat” jointly contain 5 lots ranging from 15 to 25 acres. Two of the lots contain homes. The remaining 3 lots are allowed residential or agricultural uses. (Note: Most, if not all, of the other parcels within “Moll Acres” and “Moll Acres Second Plat” are owned by relatives of the landowners, Loren and Noelle Moll.)
- There are approximately 8 homes along 127th Street between Waverly and Moonlight Roads.
- There is a cluster of approximately 11 homes on approximately 40 acres about ¼ to ½-mile north of the proposed tower site.

The 178-foot tower will have significant visual impacts on all of these homes.

In addition to residential uses, other uses within the area of the proposed tower site include a fire station approximately ¼-mile west at 127th Street and Gardner Road and agricultural uses.

Zoning of Nearby Properties:

The surrounding area is zoned RUR, Rural district with the exception of approximately one acre containing the fire station, which has RN-1, Residential Neighborhood One District zoning. Rural District zoning allows agricultural uses and homes on at least 10 acres.

The proposed tower location is not consistent with the surrounding existing residential uses (the closest of which would be approximately 300 feet from the base of tower) and is not appropriate within a platted residential subdivision. This does not meet the non-residential performance standard of the Regulations. The proposed tower is consistent with the fire station and agricultural uses within the area.



Figure 2: Approximate Distances of Houses from Tower

2. Whether the use is compatible with the character of the neighborhood.

The character of the neighborhood is created by agricultural uses and large lot, low-density residential uses. The paved portions of Gardner Road, 127th Street, Waverly Road, 115th Street, and Kill Creek Road form a major route from the City of Gardner to K-10 Highway and have generated many residential areas in the vicinity of the route. The area surrounding the intersection of 127th Street and Gardner Road is one such residential area. Interspersed with residential uses within the area are areas of vacant or agricultural land with and without farmsteads.

The tower, at its proposed location and height (178 feet), is not compatible with the low-density residential character of the neighborhood in its immediate vicinity and with those areas generally to the north and west of the site. This tower is not in a location that minimizes the adverse impacts on the community. Further to the south of the proposed tower site is less populated with large areas of farmland (i.e., multiple 80-acre parcels in agricultural use). Such an area is more appropriate for the placement of a communication tower because the large parcels (i.e., 80 to 160 acres) reduce impacts on surrounding residential uses. The closest house is approximately 300 feet east of the tower location.



Figure 3: Neighborhood Surrounding Tower Site

3. Suitability of the property for uses to which it has been restricted.

The 17-acre property is zoned RUR, Rural, and is suitable for the allowed limited agricultural uses and one home.

4. Extent of detrimental effects to nearby parcels should the CUP be approved.

The setback requirements of the Zoning Regulations protect nearby parcels from the dangers of falling ice and tower failure. Visual impacts caused by the communication tower's height would be the main detrimental effect to nearby parcels should the request for a CUP for a 178-foot communication tower be approved.

5. Length of time the property has remained vacant as zoned.

The property is zoned RUR, Rural District. The district allows agricultural and residential (10-acre minimum) uses. The property is presently being used for agricultural use. A house was built in approximately 1870 on Lot 2, Moll Acres and in 2005 on Lot 6, Moll Acres Second Plat.

6. Relative gain to the public health, safety and welfare as opposed to the hardship imposed upon the landowner by denying the request.

It is the goal of the Zoning Regulations (via the performance standards for communication tower CUPs) to reduce the unnecessary proliferation of towers and to encourage placement of towers in a manner having as little impact as possible. (See goals, Page 3.) If the tower is approved at the proposed height and location, the public will likely be unnecessarily affected by the visual impacts of a structure that is so much taller than any other structures in the area. In short, a 178-foot tall communication tower is not to human scale and should not be placed near areas of human habitation whenever possible. This tower negatively impacts the general health, safety and welfare of the community. Since the goals of the communication tower performance standards have not been met, there is a gain to the public by denying the request.

If the tower is denied the landowner can continue the agricultural use of the property or construct one house as allowed the platted lot. If the tower is denied the applicant would need to seek a more appropriate site that is consistent and compatible with surrounding zoning and uses.

7. Whether the use is in keeping with the Comprehensive Plan.

The *Rural Comprehensive Plan: A Plan for the Unincorporated Area of Johnson County* (Plan) indicates that this development is within the Rural Policy Area, which identifies the standard density as 10 acres per dwelling. The Plan does not specifically address telecommunication facilities.

8. Article 23 Section 6 (C), Standards for Issuance of a CUP.

The Zoning Board shall not recommend that a Conditional Use Permit be granted unless it shall first make a finding, based upon the evidence presented to it that adequate consideration has been given to the following:

a. *Is in harmony with the general purpose and intent of the regulations*

As discussed in Golden Analysis Nos. 1, 2, 4, and 6, above, the proposal is not in harmony with the general purpose and intent of the Zoning Regulations regarding communication towers as set forth in the communication tower performance standards of Article 23, Section 6 (B)(4) as follows:

- (i) The proposal places a communication tower in a residential subdivision and unnecessarily proliferates towers throughout the community,
- (ii) The proposal negatively impacts the general health, safety and welfare of the community,
- (iii) The proposal does not utilize the joint use of existing structures, and

- (iv) The proposal does not locate the communication tower, to the extent possible, in an area where the adverse impact on the community is minimal.
 - b. *Will not impair the adequate supply of light and air to adjacent property*
The tower will not impair the adequate supply of light and air to adjacent properties.
 - c. *Will not increase hazards from fire or other dangers*
If the tower is constructed it should be operated according to FAA and FCC regulations. Falling ice and the slight risk of tower failure are potential hazards.
 - d. *Will not increase traffic on streets beyond their capacity*
It is not likely that this use will increase traffic to a noticeable degree.
 - e. *Will not increase potential for flood damages to adjacent property or lead to additional public expense for flood protection, rescue or relief*
A “Zone A” floodplain (no base flood elevation determined) is located across a portion of the northeast corner of the parent parcel due to Captain Creek. This floodplain does not affect the proposed tower site location.
 - f. *Will not otherwise unduly impair the public health, safety, comfort, morals, or general welfare of the inhabitants of the County, or otherwise create a nuisance or nuisance-like situation*
See Golden Analysis Nos. 1, 2, 4 and 6, above.
 - g. *Will not pollute the air, land, or water*
It is not likely that this use will pollute air, land or water.
9. Article 23, Section 6 (B)(4), Performance Standards for Communication Towers
Communication towers and antennas obtaining a CUP are required to conform to the performance standards of Article 23, Section 6 (B)(4). See “Attachment A” for a review of these standards.

Public Works comments: No comments.

Environmental Department: The proposal will not generate domestic waste or affect any on-site wastewater system.

RECOMMENDATION

County Planning staff recommends **denial** of a Conditional Use Permit to allow the construction and use of a 178-foot communication tower and associated equipment structures for the reasons stated below.

REASONS FOR RECOMMENDATION

1. The proposed tower location is not consistent with the surrounding existing residential uses within the neighborhood (the closest of which would be approximately 300 feet from the base of tower) and is not appropriate within a platted residential subdivision.
2. The tower, at its present location and height (178 feet), is not compatible with the low-density residential character of the neighborhood in its immediate vicinity and with those areas generally to the north and west of the site.
3. Visual impacts generated by the communication tower's height would create detrimental effects to nearby parcels should the request for a CUP for a 178-foot communication tower be approved.
4. The gain to the public welfare outweighs the hardship imposed on the applicant or landowner should the request be denied. Options having lesser impacts on the surrounding area and the public in general exist and have not been pursued.
5. The proposal does not meet Article 23 Section 6 (C), Standards for Issuance of a CUP because it a) is not in harmony with the general purpose and intent of the regulations regarding communication towers and b) creates a nuisance or nuisance-like situation.
6. The proposal does not meet the goals of the communication tower performance standards of Article 23, Section 6 (B)(4) as follows:
 - a. The proposal places a communication tower in a residential subdivision,
 - b. The proposal negatively impacts the general health, safety and welfare of the community, and
 - c. The proposal does not locate the communication tower, to the extent possible, in an area where the adverse impact on the community is minimal.

Attachments: Attachment A
Attachment B
Vicinity Map
Site Plans
Submittal by Selective Sites with Attached Memo from Planning staff

ATTACHMENT A

Communication Tower Performance Standards

Communication towers and antennas obtaining a CUP are required to conform to the performance standards of Article 23, Section 6 (B)(4). Some of the relevant requirements are as follows:

Meeting with Staff: The applicant is required to present the following information during the applicant's meeting with Planning Staff:

- Propagation Map (the service area of the proposed tower)
- Search Ring (the area considered for the communication tower location)
- Map of applicant's existing communication towers and antennas
- **Note: The applicant has submitted all of the above information.**

Setbacks: The applicant has acquired a permanent easement as required for the setback area. Communication towers are required to have a minimum setback area from all dwellings equal to 50% of the height of the tower.

Co-location: Each communication tower is required to provide positions for at least 3 carriers.

Term: The initial term is required to be limited to 5 years.

Design: A monopole is required with fencing and landscaping around the perimeter.

Application Requirements: The applicant is required to submit the following information:

- **Tower Capacity:** The applicant has indicated that the tower can accommodate at least three users. *However, the applicant has not indicated the ultimate number of antennas for which the tower is designed as required.*
- **Minimum Height Required:** The applicant is required to submit the minimum height required to serve the desired service area of the communication tower. *The applicant has not indicated the minimum height required.*
- **Explanation of Need for System:** An explanation of the need for the facility to maintain the integrity of the system is required. The applicant discusses the need in "RF Site Justification" by Rick Viermann, Verizon Wireless RF Design Engineer as follows:
The main objective of the Clare site is to provide coverage south of Highway K-10, Cedar Creek subdivision and other new development in western Johnson County. In order to provide seamless and continuous coverage in this area, the Clare site must connect to existing sites of "Cedar Creek, Edgerton Road, and Desoto to north, existing site "Little Cedar" to the east, the existing site "Gardner" to the south, and existing cellular sites "119th & Renner Road and Olathe Great Mall" to the southeast.
- **Photo Simulation:** A photo simulation of the proposed facility from the affected residential properties and public rights-of-way may be requested by Planning Staff. The applicant has submitted photo simulations.
- **Comparison of Potential Sites:** A study comparing potential sites within an approximate one-mile radius of the proposed site is required to be submitted.

Potential sites shall include, *but may not be limited to*, existing structures in excess of 100 feet in height and parcels with Planned Employment Center or Planned Retail Business District Zoning. The study shall include a description of the sites, a discussion of the ability or inability of the site/communication tower to accommodate a communications facility and the reasons why the site/communication tower was excluded from consideration. The applicant shall demonstrate that the alternative sites or communication towers are not available due to one or more of the following reasons:

- a). Unwillingness of the owner to entertain a communications facility proposal.
- b). Topographic limitations of the site.
- c). Adjacent impediments that would obstruct adequate communication tower transmission.
- d). Physical site constraints that would preclude the construction of a communication tower.
- e). Technical limitation of the system.
- f). The planned equipment would exceed the structural capacity of existing and approved communication towers and facilities, based on existing and planned use for those facilities. An explanation of why the tower and facilities cannot be modified shall be submitted.
- ~~g). The planned equipment would cause radio frequency interference with other existing or planned equipment which cannot be reasonably prevented.~~ (Since the Southwestern Bell case, this criterion is no longer in active use.)
- h). Existing or approved communication towers or facilities do not have space on which proposed equipment structures can be placed so it can function effectively and reasonably.
- i). The applicant demonstrates that there are other limiting factors that render existing communication towers and structures unsuitable.

Note: See “Attachment B” for a discussion of “Potential Sites.”

ATTACHMENT B

Potential Sites

The Applicant's Consideration of Alternative Sites

It is the opinion of Planning staff that options having lesser impacts on the surrounding area and the public in general exist and have not been pursued. As a result, Planning staff encouraged the applicant to consider other sites that have less impact on the area such as sites utilizing existing structures or large acreages. (Sites with commercial and industrial zoning cannot be considered since such zoning does not exist within the area.) In response to Planning staff's request, the applicant considered two alternative sites as follows:

- *Antenna on Water Tank:* There is an existing 90-foot water tank located on a church property approximately 1.3 miles southeast from the proposed location. Staff asked the applicant to determine if an antenna on top of the water tank would provide adequate coverage within the network. The applicant has indicated that such an arrangement would not provide the desired coverage because the location is too far south to provide the desired coverage within the Cedar Creek area.
- *Tower on Large Acreage:* In response to Planning staff's request to consider a site on a large parcel, the applicant examined a landscape nursery covering 160 acres located less than one mile southwest of the proposed location. The applicant has indicated that this location would not work because electrical service would have to be extended to the site. It is the opinion of Planning staff that it is reasonable to expect the telecommunication provider to incur the costs of providing electrical service to the site. As a result, Planning staff is of the opinion that the site within the landscape nursery covering 160 acres should not yet be ruled out as a possible alternative.

Planning Staff Conclusions on the Availability of Potential Sites

If co-location options are exhausted and a communication tower must be built, much larger parcels in agricultural use exist (particularly to the south) with significantly higher elevations and fewer surrounding residential uses. If necessary to reduce impacts on surrounding parcels, it is the opinion of Planning staff that it is reasonable to expect the telecommunication provider to locate the tower in the interior of the parcel even though costs to provide access (i.e., gravel driveway) and electrical service are greater. Additionally, high tension wires exist in the area. If sited correctly, the high tension wires could possibly mask some of the visual impacts of a tower.