



City of Prescott

Planning & Zoning Commission

November 9, 2023 | 9:00 AM

201 N. Montezuma Street
Council Chambers, 3rd Floor
Prescott, AZ 86301

MINUTES

1. CALL TO ORDER

Chairman Don Michelman called the meeting to order at 9:00 A.M.

2. ROLL CALL

MEMBERS:

Don Michelman, Chairman
Ted Gambogi, Vice-Chairman
Susan Graham, Commissioner
Thomas Hutchison, Commissioner
James Kleczewski, Commissioner
Thomas Reilly, Commissioner
James Whiting, Commissioner

Staff:

Tammy DeWitt, Community Planner
George Worley, Planning Manager
Chelsea Walton, Community Development Director
Sarah Hilton, Recording Secretary
Matt Podracky, Deputy City Attorney
Mayor Phil Goode
Councilwoman Connie Cantelme
Councilwoman-Elect Lois Fruhwirth

3. DISCUSSION & ACTION ITEMS

- A. Approval of the October 26, 2023 Planning & Zoning Commission Meeting Minutes.

MOTION BY COMMISSIONER GAMBOGI TO APPROVE THE OCTOBER 26, 2023 MINUTES; SECONDED BY COMMISSIONER REILLY: (5 - 0) WITH COMMISSONER KLECZEWSKI AND COMMISSIONER HUTCHISON ABSTAINING.

- B. **SUP23-002** - A Special Use Permit to Allow for the Construction of an 80-foot Wireless Tower Next to an Existing Water Tank, Which is a Request to Exceed the Allowed Height Limitation for the Zoning District of 35-feet. Location: 3599 Williamson Valley Road, APN 800-20-034S. Zoning: Rural Estate 2-Acre (RE-2 Acre). Applicant: SmartLink Communications LLC.

Tammy DeWitt, Community Planner, presented an aerial view of the subject property and stated that the proposed location for the cell tower is north of an existing water tank on property owned by the Arizona State Land Department. Access will be off of Williamson Valley Road, which they will be improving in order to get their equipment to the proposed location as well as maintain the equipment.

Ms. DeWitt stated that the proposed location is outside of the Airport Influence Area, so the cell tower is not required to be lit. The proposed property is 204 acres with the water tank being 1,000 feet from the southern property line. She stated that there is also an open space tract that is 400 feet past the southern border of the property making the nearest residence 1,400 feet from the water tank and 1,800 feet from the proposed cell tower.

Ms. DeWitt stated that to the north of the property is another 255-acre parcel owned by the Arizona State Land Department, to the west is State trust land, and to the east is a 79-acre parcel owned by the Bureau of Land Management.

Ms. DeWitt presented a map showing where the opposition for the cell tower came from, stating that she received opposition from approximately 33 people.

Ms. DeWitt presented an aerial view of the property that showed the cell tower location, which will be approximately 400 feet to the north of the existing water tank on the downward side of the hill.

Ms. DeWitt presented a rendering of the proposed cell tower. She stated that it is 80 feet tall, which is 20 feet lower than what was previously proposed. The proposal is for a monopole, which can be painted a neutral color to be considered stealth and blend in with its surroundings.

Ms. DeWitt stated that the Special Use Permit (SUP) process allows for Council approval of tower heights in excess of the district allowance. In this instance, the RE-2 acre district has a height limit of 35 feet which is standard for all residential districts. The requested 80-foot wireless tower would require specific Council approval as a part of the SUP approval.

Matt Podracky, Deputy City Attorney, stated that the Federal Telecommunications Act of 1996 allows for local jurisdictions to consider land use in the siting of cell towers. He stated that there are five restrictions that the Federal Government places which are:

1. The regulation placement of cell towers cannot discriminate against providers; meaning that you cannot give one provider special treatment over another provider.
2. The Local Government can deny or approve an application upon objective criteria which can be found in the Land Development Code (LDC) 2.4.49. He stated that the LDC takes into account Federal as well as local regulations.
3. The City must act within a reasonable period of time on an application.
4. If the application is denied, it has to be written down and substantial

evidence needs to exist to justify the denial. The evidence needs to show that the Planning & Zoning Commission and City Council are applying the Land Development Code in their decision making.

5. The City cannot deny a cell tower application on the basis of environmental effects of radio frequency emissions.

Commissioner Ted Gambogi asked Mr. Podracky to give an overview of LDC 2.4.49.

Mr. Podracky stated that it contemplates the purpose of the Telecommunications Act of 1996 which, at one point, allowed for control over the placement and siting of cell towers. He stated that the Federal government does not want to prohibit and, in fact, encourages wireless telecommunications. The purpose of the act in section 2 of the LDC talks about:

- Protecting residential areas from adverse impacts of cell towers.
- Encouraging the placement of wireless facilities in non-residential areas.
- Minimizing the total number of wireless communications sites throughout the community.
- Encouraging the users of towers and antennas to locate, to the extent possible, in areas where the adverse impact on the community is minimal.
- Encouraging use of towers and antennas to configure them in a way that minimizes the adverse visual impacts of the towers and antennas through thoughtful design, siting, landscape screening and camouflaging techniques.
- Enhancing the ability of the service providers of telecommunications services that provide such services to the community quickly, effectively, and efficiently.
- To consider the public health and safety associated with wireless communications.

Mr. Podracky stated that the governing body cannot consider the environmental effects but that they would look for fall concerns in the design and engineering of the tower and minimizing potential damage to adjacent properties from tower failure through proper engineering and careful siting of towers.

Mr. Podracky stated that his recommendation to the Planning & Zoning Commission is that they make their determinations based on the Land Development Code.

Commissioner Tom Hutchison stated that in a previous meeting about a different cell tower, the previous City Attorney stated that the two reasons the City could deny a cell tower were; the absence of demonstrating a coverage gap or if the proposal was not the least intrusive solution. He asked if that is still accurate.

Mr. Podracky stated that there are many other factors in the LDC based on safety issues, aesthetics, and others that can be applied to decision making. He stated that one of the most litigated issues is whether or not the applicant can show that this is the least restrictive means of covering a significant gap in their coverage.

Chairman Don Michelman asked if when Mr. Podracky said "their" coverage did he mean versus all coverage available.

Mr. Podracky stated that the provider must be able to show that the proposed cell tower closes a significant gap in its own coverage, and that they are doing it in the least intrusive way possible.

Commissioner James Kleczewski read from the Federal Telecommunications Act that the purpose of FCC regulations is to prevent telecommunications site decisions from being based on unscientific or irrational fears that emissions from telecommunications sites may cause undesirable health effects. He asked if that is something they are prohibited from acting on.

Mr. Podracky stated that what Commissioner Kleczewski read is a good statement of the law.

Commissioner Gambogi asked if the cell tower would be 1,800 feet from the nearest home. He then asked how tall a previously approved nearby cell tower is.

Ms. DeWitt confirmed that the tower would be 1,800 feet from the nearest home and stated that it is approximately 85 feet and is on a hill.

Mr. Gambogi stated that when the Commission first heard this cell tower it was 100 feet, and it has now been reduced to 80 feet.

Ms. DeWitt stated that is correct and that an 80-foot tower will still allow for two additional carriers to be able to co-locate onto it.

Commissioner Susan Graham asked how tall the three towers that are within three miles of the proposed tower are, how long they have been there, and how many providers are on each tower.

Ms. DeWitt stated that she does not have that information readily available. She then showed a coverage map to show where all the towers in the area are located.

Commissioner Graham asked if the applicant is asking for an 80-foot cell tower to put two other providers on it and no other companies want to tie in, then do they need the tower to be 80 feet?

Ms. DeWitt stated that this cell tower is for AT&T and other providers are able to use the subject tower once they get the necessary building permits.

Commissioner Hutchison stated that it seems like a build it and they will come situation.

Ms. DeWitt stated that the City would rather see one tower with multiple carriers on it than multiple, shorter towers.

Commissioner Hutchison stated that they do not need an 80-foot tower.

Ms. DeWitt stated that the tower needs to be tall enough to read the other towers in order to fill the gap in coverage.

Commissioner Hutchison stated that the fact that they are preparing for two other carriers suggests that they do not need 80 feet.

Mark Sawyer with SmartLink stated that the reason they need 80 feet is because it needs to be a co-locatable tower in order to prevent a need for multiple smaller towers in the future. The other carrier that would use the tower would need the additional height to meet their coverage objectives.

Mr. Sawyer stated that, in order to meet recommendations from the Commission and the public, they reduced the tower from 100 feet to 80 feet. They are also willing to paint the tower any color the City feels would help it blend. Mr. Sawyer stated that the tower would be lit by fiber so there would be no microwave dish on top.

Mr. Sawyer stated that there are no other locations that they have found that will meet the coverage objectives for AT&T. The subject site was chosen because of the height of the hill and distance from residents. He stated that AT&T is in a coverage gap in the area as their next closest site is approximately 2-2.5 miles to the north and to the east and there is nothing to the west.

Mr. Sawyer stated that the coverage maps do show voice and data coverage. He stated that they reached out to City of Prescott Fire, Police, and Yavapai County Sheriff's Office. They heard back from Yavapai County Sheriff's Office, and they have no issues with the cell tower. He stated that he did not hear back from Prescott Fire or Police.

Mr. Sawyer stated that they went through City Code and made sure that they were meeting the criteria for a SUP. He stated that they are willing to do anything that is required under the code and zoning ordinance to make sure it is correct.

Commissioner Hutchison asked if they would have a viable business case without the other two co-located carriers.

Mr. Sawyer stated that they would like to make it co-locatable. They would like to make sure that there is one tower instead of multiple towers in the area.

Commissioner Gambogi asked if they looked at two properties.

Mr. Sawyer stated that they looked at multiple properties and none of them would work from an RF perspective as well as being able to lease the land. The State Land Department was willing to work with them to lease the proposed property.

Commissioner Gambogi stated that he had a friend that lived in the area who had to switch carriers from AT&T because they did not have enough coverage there.

Mr. Sawyer stated that is why they are before the Commission. They are trying to

fill the coverage gap in the area.

Commissioner James Whiting stated that the Middle-Class Tax Relief and Job Creation Act of 2012 allows the fact that the 80-foot tower could be increased in height and the City would be legally prohibited from stopping that from happening. He asked if that was taken into consideration when they dropped the height from 100 feet to 80 feet.

Mr. Sawyer stated that they did not take that into consideration, but a height increase is allowable. He stated that they lowered the height based on concerns from the residents and they felt that any providers that would use the tower would still have enough height to meet their coverage needs.

Commissioner Whiting stated that in the Land Development Code it says that no existing facility or wireless cell communications facility may be changed or modified except as follows and one of the stipulations states that the change does not increase the height to the tallest component of the height approved by the SUP or, in the case of an existing facility, the current height. He asked if that is in conflict with the Middle-Class Relief and Job Creation Act of 2012.

Mr. Podracky stated that yes, it is, and the Federal law would take precedence over City Code.

Commissioner Whiting stated that they would not be able to do anything about a height increase.

Mr. Podracky stated that is correct and is true with any cell tower in the city.

Mr. Sawyer stated that their main objective in lowering the height was to reduce the view shed from the surrounding properties and still meet their coverage objectives.

Commissioner Graham asked if there are any other providers on the three other towers that are in the three-mile radius of the proposed tower.

Mr. Sawyer stated that he was unsure, but he assumed there are.

Commissioner Graham asked what height they would need if they only construct the tower for AT&T.

Mr. Sawyer stated that they would still need 80 feet to meet their coverage objective.

Commissioner Graham asked if it would work for another carrier to be lower on the tower.

Mr. Sawyer stated that yes it would. They would be able to meet their coverage objective. He believes the next carrier would need approximately 65 feet. He stated that Verizon generally needs a lower height than AT&T.

Chairman Michelman asked if the height is related to existing towers to be able to transmit between the towers so another carrier could be lower if they have a tower that is closer.

Mr. Sawyer stated that yes, they need the height in order to see the existing towers that AT&T has.

17 members of the public spoke, all in opposition. Their main concerns were:

- Aesthetics
- Property values
- Health and safety

Mr. Sawyer stated that they are willing to put a light on the tower if it is required. He stated that there is an existing tower on the property that he believes is 60 feet and they will try to blend in with that.

Mr. Sawyer stated that they will meet all requirements including environmental, Native American, SHPO and Archaeological studies. He stated that those things are mandatory under the FCC and the City of Prescott.

Commissioner Whiting stated that he was under the impression that the existing tower is 35 feet.

Ms. DeWitt stated that staff looked through records and found that the existing tower is owned by the City, but the permit did not say the height.

Commissioner Whiting stated that he believes the height of the existing tower should be determined.

Commissioner Graham stated that at the last meeting the Commission requested additional information from the applicant, and it appears that it was not provided.

Commissioner Kleczewski stated that he asked what the additional sites were that the applicant looked at and he did not get an answer.

Mr. Sawyer stated that he does not have specific information on the alternate sites as they did not have many options based on their coverage objective need. He stated that he can provide what they have on additional sites.

Commissioner Graham stated that the Commission requested data showing the need for increased coverage.

Anil Cheruvu, RF Engineer for SmartLink, stated that the coverage maps that they provided show the gap in coverage and the coverage the new tower will provide.

Commissioner Kleczewski asked where the data is that shows that the tower needs to be 80 feet.

Mr. Cheruvu stated that the propagation maps show the coverage when the tower is at 80 feet. They show that the tower meets the coverage need at that height.

Commissioner Kleczewski asked if there is evidence showing that there would be similar coverage at 50 or 60 feet.

Mr. Cheruvu stated that they need the height to meet their coverage needs. As they get lower, there would be gaps in coverage.

Commissioner Gambogi asked what height the coverage maps showed coverage for in the last meeting.

Mr. Sawyer stated 100 feet.

Commissioner Gambogi stated that the Commission saw a map for 80 feet today. He then asked if the applicant had maps showing the coverage at 60 and 40 feet and if they could see all of the maps together to compare.

Mr. Cheruvu stated that they can prepare those maps if needed.

Chairman Michelman stated that there seems to be a difference in the distance from the tank. He asked if the tower will be located 100 or 400 feet from the tank.

Mr. Sawyer stated that he does not know the answer to that.

Chairman Michelman stated that he would like the answer to that question.

A member of the public brought up a map showing contour lines to show the Commission.

Chairman Michelman asked the difference between the bottom of the tank and the bottom of the proposed tower.

Mr. Sawyer stated that he does not have that information.

Commissioner Gambogi asked if the applicant heard back from the City of Prescott Fire or Police departments.

Mr. Sawyer stated that he only heard from the Yavapai County Sheriff's office.

Commissioner Gambogi asked what the applicant heard from them.

Mr. Sawyer stated that they only said that they have no objections to the project.

Commissioner Gambogi asked if camouflaging the tower as a tree is still a consideration.

Mr. Sawyer stated they decided on the monopole based on conversations with staff.

Mr. Cheruvu stated that the proposal for the tree is still an option.

Rich Johnson, Senior Public Safety Assurance Manager with FirstNet stated that, while City of Prescott Police and Fire Departments are not on FirstNet, there are jurisdictions throughout the state that are. Being on FirstNet would increase their coverage capabilities in the area.

Commissioner Kleczewski stated that the City of Prescott Police Department manages the 911 centers for most of the communities around the area including the ambulance service and asked if the applicant heard back from them on if it would be a problem not to have the tower for 911 capabilities.

Ms. DeWitt stated that first responders are on Verizon so the tower would not affect them but as AT&T increases their coverage, first responders may move to their service.

Chairman Michelman asked the Commission if they felt that they could make a decision or if they needed more information.

Commissioner Gambogi stated that, based on the input from residents, he would like to know coverage based on 40, 60, 80, and 100 foot towers. He stated that the lower the tower, the more towers they will need.

Commissioner Hutchison stated that most people want robust cell service, but nobody wants a cell tower near them. He stated that his belief is that this proposal is not the least intrusive solution.

Chairman Michelman asked each Commissioner if they are comfortable voting.

Commissioner Graham stated that she is not.

Commissioner Whiting stated that he would like to know the height of the existing tower, because it will make a difference if the new tower is much taller or only 20 feet taller.

Commissioner Reilly stated that he heard from the community that the real estate values will be affected by the tower but there is already a tower at that location, and he would like to know if there is additional detriment to home values by adding the new cell tower.

Commissioner Kleczewski stated that property values go down the closer a home is to a cell tower or power lines, but there is no study from an independent party that can verify that this happens in every case. He stated that he would like to know how property values are affected by a taller tower versus a shorter tower. He believes that a taller tower will affect values more than a shorter tower.

Chairman Michelman stated that he would like to know the height of the existing tower, the height of the tank and how that compares to the proposed 80-foot tower. He stated that he would like to know how many residents would be able to

see the cell tower from their home.

Commissioner Gambogi spoke about previous cell towers that he has seen proposed during his time on the Commission. He stated that there was a tower in Yavapai Hills that was proposed right behind someone's property. In this case, the tower would be approximately 1,400 feet from the nearest home. He stated that they also have to consider safety as far as residents being able to access 911.

Commissioner Kleczewski stated that his concern is coverage and 911 coverage. He would like to know how much more coverage they would get with an 80-foot tower versus a 35-foot tower. He would like to know to what degree that would impact 911.

Mr. Podracky stated that in 2009 the FCC created a shot clock rule which states for new towers it is deemed reasonable to act on it within 150 days from the final submission.

Commissioner Hutchison stated that the applicant brought a 100-foot and now an 80-foot proposal and he would like to know if they did not want to add additional carriers how many feet would they actually need.

Ms. DeWitt stated that the application was submitted in April and the City requested more information which was received in June.

Mr. Podracky stated that the time starts after final submission.

Ms. DeWitt stated that it was submitted April 9th, but staff was waiting for authorization from the State Land Department to move forward, which they received in May.

Mr. Podracky stated that the Commission could ask the applicant if they are willing to allow more time for additional review or if they would like to move it forward.

Chairman Michelman asked the applicant if they would be willing to come back to the Commission or if they would like a vote.

Mr. Sawyer stated that they are willing to come back in order to provide all of the information requested.

Ms. DeWitt stated that the three items the Commission would like more information on are:

1. Coverage for 100, 80, 60, and 40 foot tower heights.
2. Height of the existing tower and water tank.
3. How many homes can see the tower from Southview subdivision?

She stated that the other questions asked were addressed in the staff report. She stated that the search and rescue representative provided a map at the last

meeting and there was a disclaimer on it. She stated that the disclaimer was not on the maps provided by the applicant.

Commissioner Whiting stated that if they limited the tower to 35 feet, they do not have to bring it before the Commission.

Ms. DeWitt stated that was correct and they could put it anywhere on the property, including the top of the hill.

Mr. Sawyer asked if the preference would be the camouflaged tree.

Commissioner Reilly stated that the answer is no.

Commissioner Gambogi moved to defer to the December 14th meeting seconded by Kleczewski (6-1)

Chairman Michelman stated that this is Commissioner Gambogi's last meeting as he has been elected to the City Council.

4. STAFF UPDATES

Chelsea Walton has been appointed Community Development Director.

5. ADJOURNMENT

There being no further business to discuss, Chairman Michelman adjourned the meeting at 11:17 A.M.



DON MICHELMAN, Chairman

ATTEST:



SARAH HILTON, Recording Secretary