



City of Prescott

Planning & Zoning Commission

December 14, 2023 | 9:00 AM

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

AGENDA

The following Agenda will be considered by the **Planning & Zoning Commission** at their meeting to be held **December 14, 2023**. Notice of this meeting is given pursuant to Arizona Revised Statutes, Section 38-431.02.

Viewing & Participation

This meeting may be viewed on Channel 64, Facebook Live or on the City's website: [Live Prescott City Council Videos](#)

1. CALL TO ORDER

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

2. ROLL CALL

Don Michelman - Chair
Thomas Reilly - Vice Chair
Susan Graham - Member, absent
Thomas Hutchison - Member
James Kleczewski - Member
James Whiting - Member
Thomas Davis - Member

3. DISCUSSION & ACTION ITEMS

- A. Approval of the November 9, 2023 Planning & Zoning Commission Meeting Minutes.

**MOTION BY COMMISSIONER REILLY TO APPROVE NOVEMBER 9, 2023 MINUTES;
SECONDED BY COMMISSIONER KLECZEWSKI: (5 - 0) WITH COMMISSIONER DAVIS
ABSTAINING.**

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

Community Planner Tammy DeWitt presented a map of the subject property

which is a 204-acre parcel owned by the Arizona State Land Trust. She stated that there is Arizona State Land Trust property to the north and west and Bureau of Land Management property to the East.

Ms. DeWitt presented a map showing where the letters and petitions from the public came from with 61 people representing 48 parcels in the Southview subdivision.

Ms. DeWitt stated that the November 9th meeting was deferred to address three items:

- RF coverage maps for different heights: 100 feet, 80 feet, 60 feet, and 40' feet (Staff asked for 35' instead since that is the allowed height per the zoning code).
- Height of existing tower and tank. Ms. DeWitt stated that the existing tower is 60 feet to the top of the lattice with a whip on top extending the height approximately 15 feet. The water tank is 30 feet to the highest point.
- How many homes can see the tower in Southview? Ms. DeWitt stated that this is hard to accomplish as the applicant cannot go to every property and they cannot trespass. The applicant did submit renderings showing the view from different points in the area.

She presented an aerial photo and photo sims for a 100 foot monopole, 60 foot monopole, and 40 foot monopole. She then presented a map showing existing coverage and pointed out the areas that the applicant is trying to create coverage.

Ms. DeWitt stated that they would like to connect to a tower to the north. She then presented coverage maps for 100 feet, 60 feet, and 35 feet and stated that as the tower gets lower, there is less coverage in the north area which is the area they are trying to cover.

Ms. DeWitt stated that the Special Use Permit process allows for City Council to approve tower heights in excess of the district allowance. In this instance, the RE-2 district has a height limit of 35 feet.

Commissioner Tom Hutchison asked what the target coverage for the tower is. He also asked if there is any detail on the service road that will lead to the proposed tower.

Ms. DeWitt stated that there is an existing 20 foot easement off of Williamson Valley Road leading to the water tank. She stated that the applicant will improve the road in order to get equipment to the site.

Commissioner Hutchison asked Ms. DeWitt to show him where the road is on the map.

Ms. DeWitt presented an aerial view of the site and stated that the road runs north along the subdivision and goes along Williamson Valley Road to the north and along Pioneer Parkway to the north and then comes up to the site.

Commissioner Hutchison stated that he went to the site and could not locate the road.

Ms. DeWitt stated that there is an existing road but that it is not maintained at this time.

Deputy City Attorney Matt Podracky gave an overview of what the City can regulate in regards to cell towers. He stated that the Federal Telecommunications Act of 1996 (FTA) states that there are 2 specific purposes regarding the regulation of cell towers:

1. "[T]o promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies."
2. "[T]o preserve the authority of state and local governments over zoning and land use matters except in limited circumstances..."

Mr. Podracky stated that the limited circumstances referenced in the FTA are the five exceptions under the Telecommunications Act which is a federal law that preempts certain parts of local law. There are 5 federally imposed limitations on the City's ability to regulate cell towers:

1. The regulation, placement, construction and/or modification of telecom facilities may not unreasonably discriminate among providers of functionally equivalent services (cannot favor one provider over another).

Mr. Podracky stated that a significant gap in service, which can be, in effect, a prohibition of service, exists when a provider is prevented from filling a significant gap in its own service coverage. The provider's application should show how the proposed site would close the gaps, supported by data, showing coverage afforded by other sites. Under the least intrusive means standard, the provider has the burden of showing the lack of available and technologically feasible alternatives. The provider must make a meaningful comparison of alternative sites or designs and choose the least intrusive site or design. A provider must ultimately identify the best available and technologically feasible solution for the community.

2. The regulation of the placement, construction, and/or modification of telecom facilities shall not have the effect of prohibiting the provision of wireless services.

Mr. Podracky stated that a governmental decision that has the intent or effect of banning personal wireless services or facilities violates the act.

3. The local jurisdiction (City of Prescott) must act in a reasonable period of time in approving or denying a cell tower application.

Mr. Podracky stated that he received some inquiries regarding the shot clock

discussion from the previous meeting. He stated that there are federal rules that talk about a presumption of 150 days to act. Mr. Podracky stated that this is a legal presumption that can be overcome by the City. Should the applicant desire to file a case that argues that the City is not acting in a reasonable period of time, the City has the ability to come back and defend that. He stated that at a previous meeting, the applicant stated that they are willing to take this to City Council and get a substantive decision and they are not looking at any time frame.

Commissioner Hutchison asked who the timekeeper is.

Mr. Podracky stated that the applicant is the timekeeper. He stated that the shot clock provides 150 days as a reasonable period of time for processing of siting applications and if the applicant argues that the City has failed to act within a reasonable time they can file a lawsuit. Mr. Podracky stated that there was a 2014 report that clarified that the time within which the local government must begin to act runs upon the date the application was first submitted not when it is deemed complete. Local governments may toll the running of the shot clock if they notify the applicant within 30 days of the submission that the application is incomplete.

4. The local jurisdiction (City of Prescott) may not regulate the placement and/or modification of telecom facilities on the basis of environmental effects of radio frequency emissions to the extent such emissions comply with FCC regulations.

Mr. Podracky stated that at the previous meeting, there were members of the public who were worried about the effects of radiofrequencies on their health. He stated that to the extent that the applicant meets the FCC regulations, the government cannot consider the environmental or health effects.

5. Any decision to deny an application to place, construct, and/or modify telecom facilities must be in writing and justified by substantial evidence.

Mr. Podracky stated that substantial evidence in this case means more than a mere scintilla. Relevant evidence so that reasonable minds can accept that a legal conclusion was made.

Mr. Podracky stated that the Land Development Code (LDC) section 2.4.49 gives a list of what the commission can consider. He stated that the commission will use evidence presented in the meetings as well as the LDC guidelines to make their decision. If the determination is supported by the evidence and the law, then the decision will be upheld.

Commissioner James Whiting asked who would be responsible for writing a possible denial letter.

Mr. Podracky stated that it would be signed by the mayor. City legal will prepare a letter and attach all evidence and minutes to suggest that a reasonable decision was made.

Commissioner Whiting asked if the letter would be written based on the result of the City Council's decision not the Commission's decision.

Mr. Podracky stated that is correct, City Council makes the final decision. He stated that the Planning & Zoning Commission is a recommending body to the Council.

Commissioner Kleczewski asked if a denial can be made based on impact of real estate values.

Mr. Podracky stated that it would not be improper but should not be the whole reason for denial.

Marck Sawyer with SmartLink stated that they have provided everything that is required by the LDC 2.4.49 for a Special Use Permit.

Commissioner Hutchison asked who the target customer is.

Mr. Sawyer stated that their target customers are AT&T customers.

Commissioner Whiting asked if the applicant's only connection with AT&T is that they are building the pole for them.

Mr. Sawyer stated not exactly that they are a vendor to AT&T specifically to find a property, lease said property, come before the commission and council, and submit permits. He stated that after they will hand it off to a pole builder.

Commissioner Whiting asked if the FCC has to approve the tower.

Mr. Sawyer stated that it does not have to be approved but is registered with the FCC on the ASR registration FCC website where people can see a list of every tower that is registered with the FCC.

Commissioner Whiting stated that if the FCC has to approve the tower the applicant would have to provide them with hard data.

Mr. Sawyer responded that they do have to supply the data.

Commissioner Whiting stated that the Commission has never received hard data from the applicant. He stated that all the Commission has seen is the maps and that does not qualify under what he read is hard data.

Mr. Sawyer stated that they would not register it with the FCC until it has gone through the whole process.

Commissioner Hutchison asked if AT&T is targeting Deep Well Ranch.

Anil Cheruvu, RF engineer stated that they are targeting any AT&T customers as well as FirstNet customers.

Commissioner Hutchison stated that AT&T is targeting Deep Well Ranch and that is the customer base they are going after.

Mr. Cheruvu stated that Deep Well Ranch is one of them, but they are not the only ones.

Commissioner Whiting asked what the diameter of the pole is.

Mr. Cheruvu stated that once they get approval, they will engineer the pole.

Commissioner Whiting asked what a typical diameter would be. He stated that he found tables that show the average diameter of the pole depending on the height and what they are going to hold.

Mr. Cheruvu stated that the height is one of the criteria along with how much wind load and how deep they need to go in the ground based on the soil.

Commissioner Whiting stated that he feels it has been mis-represented how big the pole is. He stated that the photos show the tower being as big as the existing tower and the existing tower is approximately six to eight feet on the side. He stated that an 80' pole is typically 3 feet in diameter at the base and 2 feet in diameter at the top. He stated that he would like to know how the photos are representative of the pole size.

Mr. Cheruvu stated that the existing tower is a different type and is very wide at the bottom. He stated that is not the tower they are proposing. Their tower is going to be much slimmer, closer to three feet at the bottom.

Commissioner Thomas Davis asked if he could see the coverage area difference between what is existing and what is proposed.

Ms. DeWitt presented the coverage map without the proposed tower as well as the coverage maps for 100 foot, 80 foot, 60 foot, and 35 foot towers.

Commissioner Jim Kleczewski stated that they requested to see alternative sites and what the coverage from those sites would be.

Mr. Sawyer stated that they looked at alternative sites previously, but they do not have coverage maps because they cannot use those sites. He stated that they looked at several sites and none of them would work from a coverage standpoint. Mr. Sawyer stated that this site works so well because it is on a hill and is surrounded by nonresidential land except to the south.

Chair Michelman asked how many alternate sites they looked at.

Mr. Sawyer said they looked at approximately eight. They gave three of those sites to their RF engineer to run propagation and none of them would work as they were too far from the coverage objective.

Chair Michelman asked if they are building more road or widening the road.

Mr. Sawyer stated that they are just smoothing out the road.

Commissioner Hutchison asked what kind of traffic will be on the road.

Mr. Sawyer stated that they will use it maybe once a month to service the site. He stated it may even be every two months.

Commissioner Hutchison stated that there is a diesel generator and asked how often they need to refill the gas tank.

Mr. Cheruvu stated that it is only for backup, but they will check it every 6 months to a year.

Commissioner Kleczewski stated that the alternate sites were all to the southeast of the proposed property but the coverage they are trying to achieve is to the north. He asked if there were no options to the north.

Mr. Cheruvu stated that there were not.

Commissioner Kleczewski asked if when they look at a site if it is owned by another carrier or if there is a possibility for land lease somewhere else.

Mr. Cheruvu stated that they look at all possible sites. They look at existing towers first then move to other alternatives. He stated that building a new tower is their last resort as it is less cost effective.

Commissioner Kleczewski stated that the community just north of Outer Loop Road has several towers in the area. He stated he assumes that some of them are cell towers.

Ms. DeWitt stated that the tower that looks like a pine tree is an AT&T tower and that is what they are trying to connect the new tower to.

Commissioner Hutchison asked to see the 60 foot coverage map again. He asked if 35 feet is actually 55 feet because the applicant can choose to change the height of the tower by 20 feet at any time.

Ms. DeWitt stated that they can increase the height by 20 feet.

Commissioner Hutchison stated that a 35 foot tower is actually 55 feet.

Ms. DeWitt stated that 35 feet is allowed by right but right now they are asking for an 80 foot tower. She stated that in her years of working with cell towers in the area she has never seen anyone increase the height because the engineering required would be significant.

Mr. Cheruvu stated that the height that is approved is the height they will build. He stated that if a different carrier wanted to use the tower and could not go below AT&T it is possible that they would add height.

Commissioner Reilly stated that if the tower were to be located at the top of the hill but 35 feet, that would be the type of coverage they are looking for. He asked if they would have brought it before the Commission if that was the case. He asked if a 35 foot tower on the hilltop is allowed by right.

Ms. DeWitt stated no they would not have brought it before the Commission and that it would be allowed by right.

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

- Not enough data from the applicant
- Photos not accurate
- Not harmonious with area
- Possible artifacts on property
- Effect on property values

Commissioner Whiting stated that while he respects the residents in the area, there is a two million gallon water tank and existing tower on the property and he doesn't believe that the tower will make much more of an imprint. He stated that he used the contour map to find the elevations of the towers. The proposed tower would be twelve feet taller than the existing tower and the existing tower is wider than the new tower would be. He stated that the road that has been referenced is a twenty foot right of way. It is there to provide access to the existing tower and water tank. He stated that the concerns from the community are not things the Commission is allowed to consider.

Commissioner Davis stated that he agrees with Commissioner Whiting. The land is state land and is zoned residential. He stated that the potential for development is still there.

Commissioner Reilly stated that he is viewing this through the lens of explaining to a judge why he voted against a tower when there is already a tower and water tank on the same property. He stated that the goal of building a tower is to co-locate to other towers. He stated that he cannot vote no on the tower.

Commissioner Hutchison stated that the special use permit is not about whether there is a tower already. He stated that it is about the incremental height that is required to improve AT&Ts business. He stated that they are looking to get height for better coverage. Commissioner Hutchison stated that there is a lack of objective directly observable data. He also stated that AT&T wants more than what they need. He stated that he is inclined to go with the existing zoning for the area.

Commissioner Kleczewski asked if when they update the road they would add asphalt or concrete and would it blend in.

Mr. Sawyer stated that he is unsure, but they do not typically add asphalt or concrete. They just improve the existing dirt road.

Commissioner Kleczewski stated that the Commission was not provided with coverage maps for the alternative sites so they are unable to compare the alternative sites with the proposed site. He stated that he does not see a significant difference in coverage between a sixty foot and eighty foot tower. Commissioner Kleczewski also stated that he is worried if the Commission gives them 80 feet that they will change it to 100 feet. He stated that he has concerns about impacts to the community and the potential impact on property values. He stated that at this time he is not in favor.

Chair Michelman stated that the Commission is limited on what they can consider. He stated that this is something he would approve because of what they are allowed to look at.

MOTION BY COMMISSIONER REILLY TO APPROVE SUP23-002; SECONDED BY COMMISSIONER WHITING: (4 - 2)

4. STAFF UPDATES

No staff updates at this time.

5. ADJOURNMENT

There being no further business to discuss, Chair Michelman adjourned the meeting at 10:32 A.M.


DON MICHELMAN, Chair

ATTEST:


SARAH HILTON, Recording Secretary