

City of Lee's Summit

Development Services Department

June 30, 2017

TO: City Council
FROM: Robert G. McKay, AICP, Director of Planning and Special Projects *Pym*
RE: **CONTINUED PUBLIC HEARING – Appl. #PL2016-190 – SPECIAL USE PERMIT renewal for telecommunication towers – 2140 NW Lowenstein Dr.; American Tower Asset Sub II, LLC, applicant**

This application was continued from the April 6th and May 18th City Council public hearing dates at the applicant's request because Staff had requested the applicant provide geotechnical studies of the towers due to concerns raised over their stability because of their proximity to an undermined area. The reports were provided to Staff on May 22, 2017; however, staff requested the application be continued from the June 1, 2017, City Council public hearing date to allow for adequate time to review the reports. Staff's review of the reports has confirmed that the towers located at 2140 NW Lowenstein Drive are stable due to the thickness of the Winterset Limestone that overlies the mine in this area.

Commentary

This application is for a special use permit renewal for both a 200-foot tall self-supporting telecommunication tower and a 500-foot tall guyed telecommunication tower at 2140 NW Lowenstein Drive, respectively. The telecommunication towers have existed on this site for approximately 25 and 31 years, respectively. The subject application for special use permit renewal does not propose any increase in height to the existing tower.

The Uniform Wireless Communications Infrastructure Deployment Act was signed into law in the state of Missouri in 2013. The law placed limitations on the ability of cities and other political subdivisions to place certain requirements or restrictions on wireless infrastructure applications. Whereas special use permits are normally granted for a specific period of time, the subject application will not have a time period limitation placed on it. Missouri Revised Statutes (RSMo) §67.5094, Subpart 14 lists "Prohibited Acts of Authority" which states: *In order to ensure uniformity across the state of Missouri with respect to the consideration of every application, an authority shall not: Limit the duration of the approval of an application.*

Recommendation

Staff recommends **APPROVAL** of the special use permit, subject to the following:

- 1. The special use permit shall be granted for a period of twenty (20) years. (Added at the Planning Commission meeting, at the applicant's request.)**

Project Information

Proposed Use: 200-foot self-supporting and 500-foot guyed telecommunication towers

Location: 2140 NW Lowenstein Drive

Zoning: AG (Agricultural)

Surrounding zoning and use:

North: I-470

South: R-1 (Single-Family Residential) – large tract with single-family home (proposed future Pryor Lakes multi-family)

East: CP-2 (Planned Community Commercial) – vacant City owned property

West: R-1 (Single-Family Residential) – large tract with single-family home (proposed future Pryor Lakes multi-family)

Background

- May 6, 1986 – The City Council approved a special use permit (Appl. #1986-013) for a 600-foot guyed tower located at 2100 NW Lowenstein Drive (now 2140 NW Lowenstein Drive) for a period of 20 years by Ord. #2783.
- July 2, 1986 – Occupancy was issued for building permit #86-518 for the 600-foot telecommunication tower. Occupancy was issued on July 30, 1986, for building permit #86-427 for a 24' x 40' storage building associated with the tower.
- February 18, 1992 – The City Council approved a rezoning (Appl. #1991-033) from District R-1 (Single-Family Residential) to District A (now AG, Agricultural) to allow construction of an additional (200-foot) tower on the subject property by Ord. #3616.
- March 3, 1992 – The City Council approved a special use permit (Appl. #1991-034) for a 200-foot tower located at 2140 NW Lowenstein Drive for a period to run concurrently with the special use permit granted by Ord. #2783, for the existing 600-foot tower, both to expire May 6, 2006, by Ord. #3620.
- May 5, 1992 – The City Council approved a final plat (Appl. #1992-157) entitled "Gerber Heights" by Ord. #3652.
- October 17, 1994 – Occupancy was issued for building permit #94-1004 for a 220 sq.ft. communication equipment building associated with final development plan #1994-099.
- September 24, 2000 – A final development plan (Appl. #2000-296) was approved to replace (demo building permit #B0100415) the existing 600-foot telecommunication tower with a new 480-foot telecommunication tower (building permit #B0001534). The tower was constructed to 480 feet; however, there is appurtenance near the top of the tower that extends an additional 13 feet making the overall height 493 feet.
- October 19, 2006 – The City Council approved a special use permit renewal (Appl. #2006-165) for the 200-foot and 600-foot telecommunication towers on the subject property for a period of 10 years, expiring on May 6, 2016, by Ord. #6291.

Analysis of Special Use Permit

Setbacks from Residential. Existing lawful non-conforming condition.

- Required – a distance equal to four times the tower height.
- Existing Condition – The closest resident is located approximately 900 feet to the west.
- Recommendation – The zoning ordinance in effect at the time when the original special use permit was granted did not provide for any setback requirements from residential. The two towers have existed in the same location without adversely affecting the existing residential use. Under Section 10.050.E of the UDO, the City Council may grant a renewal containing modifications for existing conditions without the submission of a preliminary development plan. This is considered a lawful non-conforming condition for which no additional action is needed.

Setback from Property Lines. Existing lawful non-conforming condition.

- Required – a distance equal to the tower height as measured from the base.
- Existing Condition – The 480-foot tower is set back approximately 34 feet from the property line to the north, and approximately 232 feet from the property line to the west.
- Recommendation – At the time the original special use permits were granted, the zoning ordinance in effect required a minimum setback of 100 feet from the property lines. At the time of its approval, a modification was granted to allow the 200-foot tower to maintain a 60-foot setback. Additional right-of-way has since been obtained from this property and the 200-foot tower now sets back approximately 34 feet from the northern property line. This is considered a lawful non-conforming condition for which no additional action is needed.

Separation from Other Towers. Existing lawful non-conforming condition.

- Required – one (1) mile between communication towers over 90 feet in height.
- Existing Condition – approximately 135 feet of separation.
- Recommendation – The zoning ordinance in effect at the time the original special use permits were approved did not require a separation distance between towers. This is considered a lawful non-conforming condition for which no additional action is needed.

Landscaping.

- Request – A telecommunication tower facility shall be landscaped in accordance with Article 14 of the UDO to provide a buffer of plant materials that effectively screen the view of the telecommunication tower base and accessory structures from adjoining property.
- Existing Landscaping – The existing tower facility is located near I-470, in the middle of a 7-acre AG zoned parcel. The facility sits in a clear area surrounded by significant mature tree cover on all sides.
- Recommended – No action needs to be taken. This is a lawful non-conforming condition. The zoning ordinance in effect at the time did not provide for any landscaping requirements.

Ordinance Criteria. The criteria enumerated in Section 10.050 were considered in analyzing this request.

- The proposed continued operation of a telecommunication towers at this location will not detrimentally affect the appropriate use of neighboring property.
- The proposed use is a renewal and no change is contemplated. There is no new impact upon the community.
- The use is not expected to negatively impact traffic and/or parking in the area. Typical wireless carriers service their equipment 1-2 times per month utilizing a pick-up truck or SUV. The impact on the street system will range from negligible to no impact.

In considering all the criteria and regulations, staff finds the use to be appropriate and recommends renewal of the special use permit.

Code and Ordinance Requirements

The items in the box below are specific to this development and must be satisfactorily addressed in order to bring the plan into compliance with the Codes and Ordinances of the City.

Fire

1. All issues pertaining to life safety and property protection from the hazards of fire, explosion or dangerous conditions in new and existing buildings, structures and premises,

and to the safety to fire fighters and emergency responders during emergency operations, shall be in accordance with the 2012 International Fire Code.

RGM/cs

Attachments:

1. Site plan, date stamped October 17, 2016 – 8 pages
 - Title Sheet
 - Site Plan with Zoning
 - Site Plan with Dimensions
 - Tower Elevations – 2 pages
 - Signage – 3 pages
2. Statement in Support with special use permit criteria addressed by the applicant, date stamped October 17, 2016 – 10 pages
3. Photos of subject and surrounding properties, date stamped October 17, 2016 – 9 pages
4. Special Use Permit Tower Table – 3 pages, dated January 19, 2017
5. RSMo. §67.5094 of the Uniform Wireless Communications Infrastructure Deployment Act
6. Location Map