

STAFF REPORT

October 10, 2002

No. 01UR042 – Revocation of a Use on Review to allow a Communication Tower in the Public Zoning District **ITEM 41**

GENERAL INFORMATION:

PETITIONER	M & K Consulting for Western Wireless Corp.
REQUEST	No. 01UR042 – Revocation of a Use on Review to allow a Communication Tower in the Public Zoning District
LEGAL DESCRIPTION	a parcel of land located in Tract "A" of Tract 1 of the W1/2SW1/4 of Section 23, T.1N., R.7E., B.H.M., Pennington County, South Dakota; (as set out in Plat Book 11, Page 207 of the Pennington County Register of Deeds); More particularly describes as: Commencing at the Northwest Corner of Tract "A", which bears N0°01'49"W a distance of 1516.46 feet from the Southwest Corner of Section 23, T.1N., R.7E., B.H.M., being the POINT OF BEGINNING; Thence S89°59'13"E along the north boundary of said Tract "A" a distance of 527.28 feet; Thence S07°18'58"W a distance of 460.40 feet to the proposed centerline of Tish Drive, Thence N82°32'54"W along said centerline a distance of 9.91 feet to the beginning of a curve concave to the Southwest having a radius of 150.00 feet and a central angle of 54°38'42"; Thence along said centerline and along said curve an arc distance of 143.06 feet; Thence along said centerline S42°48'28"W a distance of 483.98 feet to a point on the west section line of Section 23 and the west boundary of said Tract "A"; thence N0°01'49"W along said section line and along the west boundary of Tract "A" a distance of 857.37 feet to the point of beginning. Containing 6.90 Acres more or less
PARCEL ACREAGE	Approximately 6.90 acres
LOCATION	North of Golden Eagle Drive and adjacent to old Marine Life
EXISTING ZONING	Public District
SURROUNDING ZONING	
North:	Business Park District
South:	Office Commercial District w/ PCD
East:	General Commercial District w/PCD
West:	General Agriculture District

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PUBLIC UTILITIES To be extended

REPORT BY Vicki L. Fisher

RECOMMENDATION:

Staff recommends that the Use on Review to allow a Communication Tower in the Public Zoning District be revoked.

GENERAL COMMENTS:

On October 15, 2001, the City Council approved Conditional Use Permit (formerly known as Use on Review) #01UR042 to allow the location of a 380 foot communication tower and three 10 foot X 20 foot accessory buildings in the Public Zoning District. The City of Rapid City has identified this parcel as the location for a fire station and has recently platted the subject property.

On January 4, 2002, the City issued a building permit to allow for the construction of the communication tower and three accessory structures on the property. The communication tower and one accessory structure are currently located on the property. In addition, the fire station is currently being constructed on the site.

STAFF REVIEW:

The Conditional Use Permit for the communication tower was approved with the following stipulations:

Engineering Division Recommendations:

1. Prior to issuance of a Building Permit, a detailed geotechnical study shall be submitted for review and approval;

Building Inspection Division Recommendations:

2. A Building Permit shall be obtained prior to any construction;
3. Prior to issuance of a Building Permit, three sets of Architectural/Engineer stamped plans shall be provided for review and approval;
4. A Certificate of Completion shall be obtained prior to any use of the tower;

Urban Planning Division Recommendations:

5. The tower shall be designed to allow for the co-location of a minimum of two additional antennas (for a total of three antennae) except where the additional antennas would interfere or impact the applicant's proposed antenna(s);
6. The tower shall not be illuminated by artificial means and shall not display strobe lights unless such lighting is specifically required by the Federal Aviation Administration or other federal or state authority and that red strobe lighting will be utilized if lighting is required;
7. The tower shall remain unpainted allowing the galvanized steel color to show or painted white unless alternative colors are required by the Federal Aviation Administration or other federal or state authority;

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8. Prior to issuance of a Building Permit, the section line highway right-of-way shall be vacated or the applicant shall obtain a variance to allow structures within the required side yard setback;
9. No commercial advertising signage shall be allowed on the tower;
10. That all requirements of the Off-Street Parking Ordinance shall be continually met; and,
11. The Use on Review shall expire if the use is not undertaken and completed within two years of the date of approval by the City Council or if the use as approved has ceased for a period of two years.

To date, the applicant (Western Wireless Corp.) is not in compliance with stipulation #6 which states that red strobe lighting will be utilized if lighting is required by the Federal Aviation Administration or other federal or state authority. Western Wireless currently has white strobe lights installed and operating on the tower.

Staff contacted Western Wireless on several occasions regarding the above referenced violation. To date, no corrective action has been taken. For this reason, on August 5, 2002, the Rapid City City Council directed City staff to contact the applicant regarding this on-going violation and to seek corrective action.

Pursuant to the provisions of Section 17.54.030(J) of the Rapid City Municipal Code this notice is given in writing thirty days prior to the actual revocation of the Conditional Use Permit. If during that thirty day period, proof of compliance is made by the holder of the Conditional Use Permit, the Conditional Use Permit shall be continued in force. If a hearing is requested following receipt of this notice of intent to revoke and prior to the expiration of the thirty day notice period, a public hearing shall be scheduled before the Rapid City Planning Commission and a final determination on such revocation shall be made.

A certified letter was mailed to the applicant on August 12, 2002 giving notice of the violation. (A copy of the letter is attached for your review.) On September 11, 2002, Dorothy Kelly with Western Wireless Corporation transmitted an e-mail to the Planning Department indicating that they were in the process of investigating shielding the strobe light(s) in order to prevent the light from shining on the ground. On September 12, 2002, Western Wireless Corporation representative, Dorothy Kelly, was notified that the Conditional Use Permit precluded the use of white strobe lights and that shielding the white strobe lights as proposed would require a Major Amendment to the previously approved Conditional Use Permit. On September 25, 2002, Dorothy Kelly indicated that Western Wireless Corporation research indicates that the best relief would come from the installation of a special shield to alleviate the downward shine of the white strobe lights and that a representative from the shield manufacturer would be scheduling a meeting with staff to discuss the pending issues. On September 25, 2002, Dorothy Kelly was notified again that shielding the white strobe lights as proposed would require a Major Amendment to the Conditional Use Permit to amend stipulation No. 6 striking the requirement that red strobe lighting be utilized if lighting is required by the Federal Aviation Agency. In addition, Ms. Kelly was informed that another option may be to submit a revised proposal to the Federal Aviation Agency to allow a painted tower and red strobe lights for use during evenings

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eliminating the need to utilize white strobe lights on the tower. To date, the applicant has not submitted a Major Amendment to the Conditional Use Permit as identified nor has the tower been painted and the white strobe lights removed. Pursuant to the provisions of Section 17.54.030(J) of the Rapid City Municipal Code, staff is recommending revocation of this Conditional Use Permit. If the Conditional Use Permit is revoked, the applicant must remove the communication tower and the accessory structure currently located on the property.