

AMENDED
STAFF REPORT

June 26, 2003
Amended July 3, 2003

No. 03OA003 - Ordinance Amendment

ITEM 49

GENERAL INFORMATION:

PETITIONER	Faulk & Foster for Western Wireless
REQUEST	No. 03OA003 - Ordinance Amendment
EXISTING LEGAL DESCRIPTION	Ordinance Amendment to amend Sections 17.14.020 and 17.14.03 to allow microcell cellular communication facilities as defined in Section 17.04.483 on buildings greater than or equal to 45 feet or five stories in a High Density Residential Zoning District
DATE OF APPLICATION	03/01/529
REPORT BY	Vicki L. Fisher

RECOMMENDATION:

Staff recommends that the Ordinance Amendment to amend Sections 17.14.020 and 17.14.03 to allow microcell cellular communication facilities as defined in Section 17.04.483 on buildings greater than or equal to 45 feet or five stories in a High Density Residential Zoning District be denied.

GENERAL COMMENTS:

This request has been amended as of July 3, 2003. All additions have been shown in bold. The applicant has submitted an Ordinance Amendment request to allow microcell cellular communication facilities in the High Density Residential Zoning District on buildings greater than or equal to 45 feet or five stories in height.

On January 10, 2003, the applicant submitted a SDCL 11-6-19 Review to allow a microcell cellular communication facility (telecommunication antennas) on the roof of the Pennington County High Rise Apartment building located at 636 Cathedral Drive. During the review of the request, staff noted that the property was zoned High Density Residential District and that microcell cellular communication facilities are not a permitted use in the district. At the March 27, 2003 Planning Commission meeting, the applicant indicated that he had proposed to locate the antennas on other properties within this area that were zoned appropriately for the proposed use; however, none of the property owners would grant permission. Subsequently, the applicant has requested this Ordinance Amendment to allow the use in the High Density Residential District as outlined above.

STAFF REVIEW:

Staff has reviewed this request for conformance with the four criteria for review of text amendments established in Section 17.54.040(D)(1). A summary of Staff findings are

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outlined below:

1. *The proposed amendments shall be necessary because of substantially changed or changing conditions of the area and districts affected or in the City in general.*

Currently, microcell cellular communication facilities are a permitted use in the following Zoning Districts: Central Business, General Commercial, General Agriculture, Hotel-Motel, Civic Center, Public and Business Park. There have been no substantially changed or changing conditions in the area and districts affected to support the proposed Ordinance Amendment. The above referenced Zoning Districts are located throughout the Rapid City area allowing for complete service coverage for the communication industry. The applicant has even indicated that service coverage could be obtained in Rapid City if property owners located within the permitted Zoning Districts would grant permission. The City should not be held responsible for the failure to obtain the necessary approval from these property owners.

2. *The proposed zoning is consistent with the intent and purposes of this ordinance.*

Chapter 17.14 of the Municipal Code states that the High Density Residential District "...is intended to promote and encourage the establishment and maintenance of a suitable environment for urban residence in areas appropriate by location and character for occupancy by high-density, multiple-family dwellings. One of the important purposes of this district is to create adequate standards of residential development in order to prevent overcrowded and unhealthy housing conditions. The intensity of land use should not be so great as to cause congestion of building or traffic or to preclude the amenities of good housing". The proposed Ordinance Amendment is not an amenity to the district that encourages "good housing". In addition, several hospitals across the country do not allow cellular telephones within sensitive areas of the hospital nor do they allow microcell cellular communication facilities on their rooftops citing interference with medical equipment. The applicant has submitted an article by Dr. Jeff Gilfor addressing the minimal impact cellular telephones have in hospital environments but the article does not address microcell cellular communication facilities (antennas) placed on rooftops. The applicant also submitted an article titled "Cellular and PCS Base Stations". The article states that "even if radiofrequencies (RF) were to be higher than desirable on a rooftop, appropriate restrictions could be placed on access". It is staff's position that this is not a desirable potential health risk appropriate for a residential zoning district.

3. *The proposed amendment will not adversely affect any other part of the City, nor shall any direct or indirect adverse effects result from such an amendment.*

Again staff cites the issue mentioned above referencing the importance of only allowing amenities within the High Density Residential District that encourages "good housing". Allowing microcell cellular communication facilities as proposed would allow a commercial activity within a residential district and could adversely affect several parts and/or areas of

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the City.

4. *The proposed amendments shall be consistent with and not conflict with the Development Plan of Rapid City including any of its elements, Major Street Plan, Land Use Plan and Community Facilities Plan.*

The Development Plan for Rapid City has been established to identify appropriate land use(s) throughout the City and to guide the orderly growth of the community. The proposed Ordinance Amendment is not an appropriate land use in the High Density Residential District nor does it contribute to the orderly growth of the City.

Based on the above referenced criteria, staff is recommending that the Ordinance Amendment to amend Sections 17.14.020 and 17.14.03 to allow microcell cellular communication facilities as defined in Section 17.04.483 on buildings greater than or equal to 45 feet or five stories in a High Density Residential Zoning District be denied.

**Addendum
July 3, 2003**

The City Attorney's staff has advised the Planning Staff that the Telecommunications Act of 1996 does not allow a municipality to regulate cellular antennas based on environmental concerns as long as such antennas are Federal Communications Commission compliant. All references to emissions contained in the original report should be disregarded by the City Council.

Municipalities are not precluded from regulating these antennas based on other appropriate zoning considerations. As previously noted, Chapter 17.14 of the Municipal Code states that the High Density Residential District is intended to promote and encourage the establishment of high-density, multiple-family dwellings. The proposed amendment would allow commercial structures to be located in residential districts. The introduction of commercial structures into this residential zoning district does not promote residential development; in fact, it could establish a precedent for additional commercial structural intrusions into the High Density Residential Zoning district. Adequate areas appropriately zoned under the existing ordinance requirements are available within the community for cellular antennas. For these reasons staff recommends denial of the requested ordinance amendment.