

STAFF REPORT

November 24, 2004

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**No. 01UR042 – Revocation of a Use on Review to allow a Communication Tower in the Public Zoning District**      **ITEM 42**

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GENERAL INFORMATION:

PETITIONER	M & K Consulting for Western Wireless Corp.
REQUEST	<b>No. 01UR042 – Revocation of a Use on Review to allow a Communication Tower in the Public Zoning District</b>
EXISTING 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 with a Planned Commercial Development

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East:	General Commercial District with a Planned Commercial Development
West:	General Agriculture District
PUBLIC UTILITIES	To be extended
REPORT BY	Vicki L. Fisher

#### RECOMMENDATION:

Staff recommends that the Revocation of a Use on Review to allow a Communication Tower in the Public Zoning District be tabled and that the existing Use on Review be allowed to continue with the original stipulations of approval and the following additional stipulation:

1. The tower shall have a maximum height of 180 feet. Any expansion of the tower shall require the review and approval of a SDCL 11-6-19 Review.

#### GENERAL COMMENTS:

**(This Staff Report has been updated on November 17, 2004. All revised and/or added text is shown in bold print.) This item was continued at the November 4, 2004 Planning Commission meeting to allow the applicant to either plant the required landscaping or to post surety for the improvement. On November 16, 2004 the applicant submitted surety for the landscaping as identified.**

**At the November 4, 2004 Planning Commission meeting the City Attorney's Office indicated that the City is currently working with Western Wireless to enter into a co-location agreement. The applicant has indicated that they are currently reviewing the agreement and will submit the signed agreement as soon as possible. (Please note that no other part of this Staff Report has been revised.)**

(This Staff Report has been updated on October 27, 2004. All revised and/or added text is shown in bold print.)

(This Staff Report has been updated on June 2, 2004. All revised and/or added text is shown in bold print.) This item was continued at the December 18, 2003 Planning Commission meeting to allow the applicant to remove paint from the City Fire Station. In particular, this item was continued to the June 10, 2004 Planning Commission meeting to allow the weather to warm so the paint could be successfully removed.

On May 27, 2004, staff met with representatives from Western Wireless at the site to discuss the paint and icing issues. Western Wireless has proposed that 200 feet of the tower be removed. A copy of a letter from Western Wireless is attached for review. The decrease in tower height will reduce the surface area for future ice formation and decrease the radius in which ice pieces may fall. Removing 200 feet of the tower will result in a 180 foot high tower and, as such, the Federal Aviation Administration will no longer require that the tower be painted in a red and white paint scheme nor will lighting of the tower be required. It was also noted that paint specs still exist along the south side of the building.

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The applicant has indicated that in lieu of continuing to attempt to remove the paint, the south end of the building will be resurfaced. As such, the applicant is requesting that this item be continued to the September 9, 2004 Planning Commission meeting to allow additional time to resurface the building. (Please note that no other part of this Staff Report has been revised.) A Demolition Permit has been issued to remove 200 feet of the tower. However, to date, the top part of the tower has not been removed as proposed. In addition, a small amount of paint splatters remain on the Fire Station. As such, staff is recommending that this item be continued to the November 4, 2004 Planning Commission meeting to allow the applicant to remove the top of the tower as proposed and to address the paint on the Fire Station structure with the Fire Department staff. A site inspection identified that the top of the tower has been removed. In addition, the paint has been removed from the Fire Station. However, staff has noted that the landscaping as identified on the approved building permit site plan for the tower has not been planted. As such, staff is recommending that prior to Planning Commission approval the landscaping be planted or surety be posted for the landscaping.

This item has been continued several times since the November 7, 2002 Planning Commission meeting to allow the applicant to paint the communication tower and to replace the white strobe lights with red lights as stipulated in the original approval of the Conditional Use Permit for the tower. This item was continued again at the August 21, 2003 Planning Commission meeting and, subsequently, at the October 23, 2003 Planning Commission meeting, to allow the applicant to remove paint that was splattered on the adjacent City Fire Station and on several vehicles parked at the site. This Staff Report has been revised as of December 7, 2003. All revised or added text is shown in bold print.

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;

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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;
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 Corporation) 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 ongoing 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

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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 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.

At the October 10, 2002 Planning Commission meeting, a representative of Western Wireless Corporation requested that this item be continued to the November 7, 2002 Planning Commission meeting to allow Western Wireless Corporation to pursue one of the two options outlined above. On October 11, 2002, a copy of a Federal Aviation Administration application was submitted requesting approval to change the tower lighting from the med-dual light system to a painted tower with red beacon(s) only. On October 21, 2002, staff was contacted by a representative of Black Hills Tower. (Black Hills Tower is under contract with Western Wireless to paint the tower.) The representative indicated that they are having difficulty painting the tower due to the temperature and wind. The tower has to be at least 50 degrees for the paint to stick and there is concern that wind may blow paint onto the new Fire Station roof.

A staff site inspection identified that the tower has been repainted and the white strobe lights have been replaced with red strobe lights. However, staff also noted that the side and roof of the City's fire station as well as several vehicles have been speckled with the red paint used to paint the tower. The paint has been removed from the vehicles, but as of the writing of this Staff Report, a portion of the paint still remains on the wall(s) of the fire station. (The paint has been removed from the majority of the wall as well as the roof of the building.) On July 1, 2003 the applicant indicated that they are working with the original contractor to determine the best way to remove the paint from the textured wall(s). On November 6, 2003, the Fire Department notified the applicant that paint still remained in some areas along the wall. As such, staff is recommending that this item be continued to the December 18, 2003 Planning Commission meeting to allow the applicant to make arrangements for the removal of the paint from the wall(s) as requested by the applicant.

At the October 23, 2003 Planning Commission meeting, Alderperson Sam Kooiker,

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indicated concern with ice falling from the existing tower adjacent to Fire Station #6. As such, Alderperson Kooiker requested information regarding the ability to minimize and/or de-ice the telecommunication tower. Ralph Wyngarden, representative for the petitioner, indicated that he will research the issue and submit information to the City. On December 5, 2003, Mr. Wyngarden indicated that to date he has been unable to find a procedure that is feasible and/or affordable that would resolve the problem. However, Mr. Wyngarden has indicated that he will continue to research the issue and notify the City as soon as he locates a solution.

On December 5, 2003, staff was informed that the splattered paint remains on the building. The weather has now become an issue that prevents the paint from successfully being removed. As such, staff is recommending that this item be continued to the June 10, 2004 Planning Commission meeting at the applicant's request. Please note that Mr. Wyngarden has indicated that he will submit information regarding the ability to minimize and/or de-ice the telecommunication tower as soon as he finds the solution.