

City of Scottsbluff, Nebraska

Monday, April 8, 2013

Regular Meeting

Item NewBiz4

Ordinance Text change/addition Telecommunication Facilites

Text Change/Addition: Telecommunication Facilites Code

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Community Development Staff has been tasked with creating a section for the Zoning Ordinance regarding Wireless Communications Facilities (WCF).

Currently, the Code does not allow WCFs in Residential or Agricultural Zoning Districts. Adding them as a Conditional Use in Agricultural Zoning seems rational; however adding them to Residential Districts is more problematic from aesthetical and historical perspectives.

The introduction of 4th generation (4G) services imposes a new design challenge. In prior technologies a single, tall tower could serve the entire community with both coverage and capacity, but the demand for high-speed data services in 4G requires the re-use of the finite radio-frequency bandwidth allocated to each service provider/carrier. To do this, it is necessary for carriers to increase capacity for specific areas of high customer demand by constructing additional “local” towers of modest height.

In most regional communities, towers are expressly prohibited in all residential zones by existing regulations that were appropriate in years past when towers were generally of large dimensions. The issue of capacity versus coverage causes us to revisit the regulations, particularly in residential zones. Allowing WCFs in residential zones with an approved Conditional Use Permit (CUP) seems to be the logical method to approach the subject. Generally speaking, the public will want the service but not the tower. We have been advised that these local/utility towers need to be 15-20 feet higher than their surrounding environment, so we could consider a height of about 75’ to be a maximum for these so called utility towers,

Identifying more preferred areas yet enabling complete coverage of high capacity service is probably the most difficult task to consider in creating a regulation. Areas in residential zones that might be perceived as lesser impact could include; parks, public lands, proximity to existing overhead utility corridors and proximity to what might be termed “shadow” structures, such as churches, schools and public facilities, especially those that are multi-story.

Allowing towers to be constructed on private land as either a permanent easement or land rental arrangement probably needs to be an option. Allowing the creation of utility sub-lots that do not meet the minimum lot size for the district should also be considered, although that will probably require amending other portions of the Code. Allowing antennas to be located on existing structures should be considered as an administrative review and approval if subject to a maximum additional height above the existing structure, perhaps 12’, and with some kind of blending in language for aesthetical purposes.

Issues that we want to be pre-addressed in any Code will include; FAA approval, FCC approval, local Airport Zoning approval, security fencing, un-climbable structure, color, maintenance and upkeep, abandonment/de-commissioning and compliance with E-911 Public Safety Access Points (PSAP). Co-location has always been preferred. Although co-location may not be as feasible with shortened towers, the matter should still be addressed in the Code.

Parks, especially larger ones, could be good locations to maintain some setback from residences. There may be some instances where utility easements might be a reasonable location, subject to not interfering with underground utilities. There may be some instances where Public Right-of-Way could be a reasonable location. Although zoning regulations typically apply to private property it seems reasonable to have any applications on public property be required to follow the CUP format.

Overhead utility corridors typically have numerous poles that might range from 30-50 feet in height, or taller. Locating individual towers up to 75 feet in height adjacent to these types of facilities would not be a drastic change of use. These existing utility lines, poles and towers do not typically require engineered plans for their structural components. These types of locations might include the consideration of utility sub-lots. Utility sub-lots may only need to be about 2000 square feet for the new type of facility. Allowing such lots will still require some form of legal access and recognition that the parcel will not be served by water and/or sewer, in addition to amending applicable aspects of the existing zoning and subdivision regulations.

Existing structures could be used as antenna support structure, again perhaps with a mix of administrative approval or CUP requirement. Existing structures might also be considered for shadowing a tower. Putting a 75' tower behind or beside a multi-story structure, or a church with a steeple, might be another way to bring the service into a residential zone without putting it in someone's front yard. These facilities are very directional and may need some flexibility in location versus the center of the top of a building, for instance.

Setbacks are another issue that has traditionally been required, often to a very restrictive level. It seems that requiring compliance with a sufficient Structural Code should lessen those needs. We have been advised by the industry that these towers will be standing when your home and/or other structures are gone. Setbacks from lot lines do not seem too applicable. Setbacks from residences might be a fair consideration, perhaps the height of the tower. This will need to be discussed. Should there be required setbacks from schools? If a 75 foot tower were located near a 40 foot school building, what might the dangers be in a tornado, for instance? It seems that the occupants would already be in a storm designated location. Collapsible towers might be a consideration, yet it seems that one might be inherently increasing the risk of collapse if that plan is built into the structure.

There are two general areas that must be considered as we look into allowing these facilities into our neighborhoods. One is that the services that are provided by WCFs have been traditionally been provided by a string of telephone poles. Although WCF providers are not a traditional utility they do provide a functionally equivalent service. Most of the public and our emergency service providers will want the service, so we have some obligation to allow the delivery of that service. In all likelihood a handful of WCF utility towers will ultimately replace the myriad of poles and cables associated with landline telephony.

The other area of interest is the legal requirements from the Federal government that have a bearing in these matters, even though in some aspects they seem to supersede the intent of zoning regulations. The 1996 Federal Telecommunications Act grants the Federal Communications Commission (FCC) exclusive jurisdiction over certain aspects of

telecommunications services. It references that a local government shall not unreasonably discriminate among providers of functionally equivalent services and shall not prohibit or have the effect of prohibiting the provision of personal wireless services. The question of potential health impacts may arise but no local government may regulate the placement of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the FCC's regulations concerning such emissions. The full text of the Act is available at www.fcc.gov.

This should give lots to consider. Meanwhile, we are steadfastly working on a draft for consideration. Although it may not be in your packet, we will get it to you ASAP. We do not expect to recommend a specific document for adoption at this hearing. Our goal would be to have that available for the May hearing after another round of discussion. The primary aspect missing at this point is public involvement. We ask that the Planning Commission expressly push for that at the April hearing. Perhaps the newspaper will publish an article to that effect. If not, we will do our own press release to insure that the public involvement is solicited prior to any Planning Commission recommendation to the Council on these matters.

Please call if you have any questions or require additional information.