

Department of Community Development

Reference: Ron Cox Field Cellular Tower (Conditional Use Permit)

To: Mayor Kenneth J. Kreutzer and Members of City Council

Through: Philip Rodriguez - City Manager

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PURPOSE

This Conditional Use Permit application for a cellular tower and accessory equipment in Brighton is being brought before you for your review and consideration. Per Section 17-8-60 of the City of Brighton's *Land Use and Development Code*, an application seeking a Conditional Use Permit must be presented before the City Council at a public hearing. Following the public hearing, Council shall provide by resolution an approval or denial of the request.

STRATEGIC FOCUS

Supportive, Sustainable Infrastructure

BACKGROUND

Selective Site Consultants, the Applicant, on behalf of AT&T Mobility, is requesting City approval for the installation of a 74' monopole to replace an existing pole that is currently supporting only lighting for a baseball field. The plans show a one foot lightning rod on top of the pole, thus bringing the total structure height to 75'. The new monopole will support cellular equipment for AT&T Mobility, as well as, the existing lighting. Accessory equipment is also being proposed at the site. The subject property, owned by School District 27-J, is located at the southeast corner of S. 8th Avenue and Southern Street.

Conditional use approval is generally the fourth step in the development process when a conditional use permit is required. The process for these instances is as follows:

Annexation > Zoning > Platting > Conditional Use Permit > Building Permits

At this stage, the property has been annexed into the City and given a zoning designation, which generally lays out the allowed land uses for the property. During platting, property lines are determined. Now, the applicant has proposed a use, which may or may not fit in the surrounding area, depending on many factors. The City Council will ultimately determine if the use is appropriate at this location.

The Property was annexed into the City in 1962 as part of the School District 27J – Vikan Middle School Annexation. Currently, the parcel is zoned Public Land (PL) and has been since 1976. Vikan Middle School, a parking lot, and baseball fields occupy the site. AT&T Mobility is proposing

to lease two sites from School District 27-J. The sites being 360 square feet for accessory equipment and 216 square feet for the cellular tower.

Surrounding Land Use(s):

<i>Surrounding</i>	Land Use(s)	Zoning	Annexation Status
North	School District	Public Land (PL)	City
South	School District	Public Land (PL)	City
East	School District, Residential	Public Land (PL), R-1	City
West	School District, Residential	Public Land (PL), R-2, R-3	City

CRITERIA BY WHICH COUNCIL MUST CONSIDER THE ITEM

Comprehensive Plan:

The property this cell tower will be located on is designated as Public Land. As previously stated, the site already supports uses of a public nature. A cellular tower can be thought of to support the public as it will provide those in the area with communications services. The tower itself has a design that is similar to the existing field light poles on the site and in the surrounding area.

Land Use and Development Code:

When reviewing a Conditional Use Permit, the City Council shall use the following criteria, as provided by the *Land Use and Development Code* (ref. Section 17-8-60):

- 1.) *The proposed use shall be consistent with the Brighton Comprehensive Plan and other master plans;*

As stated previously, this proposed cellular tower does comply with the Comprehensive Plan for the area.

- 2.) *The location, size, design, and operating characteristics of the proposed use or structure shall be compatible with the existing and future land uses within the general area in which the proposed use or structure is to be located and will not create significant noise, traffic or other conditions or situations that may be objectionable or detrimental to other permitted uses in the vicinity. Reasonable conditions may be placed on conditional uses or structures to protect the public health, safety, and welfare by mitigating impacts to achieve compatibility and complementary design, especially where a nonresidential use is located adjacent to a residential use;*

The new cellular tower, if approved, will be located along the outfield area of a baseball field next to a parking lot of a property zoned for public land purposes. The tower will be near the center of several properties designated for public use. The tower will utilize a design that mimics ballfield lighting poles, and the applicant's team will be installing a fence that matches those in other areas of the site to screen the accessory equipment. These measures are being carried out to provide compatibility to the surrounding area.

The applicant has proposed an eight (8) foot chain link fence with green slats around the accessory equipment. The fencing is designed to blend in with that of the ballpark and other athletic field fencing in the area. This screening was found sufficient for the project and reviewed by the Development Review Committee (DRC).

- 3.) *The site shall be physically suitable for the type and intensity of the proposed conditional use or structure;*

The site is mostly flat and has adequate space for the cellular tower and its accessory equipment.

- 4.) *The proposed conditional use or structure shall not adversely affect traffic flow or parking in the neighborhood;*

This project is anticipated to create minimal additional traffic trips. There is a proposed easement for access through the lot to the leased areas. No additional off-street parking will be needed due to this proposed cellular tower.

- 5.) *The conditional use is consistent with the purpose and intent of the zoning district and overlay district in which it is located.*

The proposed cellular tower complies with the regulations of the Public Land (PL) zone district including minimum setbacks. The cellular tower and lightning rod will be a total height of seventy-five feet, which is allowed by the Land Use and Development Code.

Development Review Committee (DRC) Review:

The Development Review Committee (DRC) and referral agencies have reviewed the Conditional Use and all comments have been resolved. A complete list of comments and the agencies who made them are available upon request.

The Federal Communications Commission (FCC) has adopted specific regulations involving cell towers directed at local governments. According to the FCC, local governments are allowed to fully regulate cell towers with a few limitations. Below is abbreviated language on each limitation.

- (i) The regulation of the placement, construction, and modification of personal wireless service facilities (i.e., cell towers) by any State or local government or instrumentality thereof
 - I. Shall not unreasonably discriminate among providers of functionally equivalent services; and
 - II. Shall not prohibit or have the effect of prohibiting the provision of personal wireless services.
- (ii) A local government shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government, taking into account the nature and scope of such request.
- (iii) Any decision by a local government to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.
- (iv) No local government may regulate the placement, construction, and modification of personal wireless service facilities based on the environmental effects of radio frequency emissions to the extent that such facilities comply with the FCC's regulations concerning such emissions.
- (v) Any person adversely affected by any final action or failure to act by a local government that is inconsistent with these regulations may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a local government thereof that is inconsistent with these regulations may petition the FCC for relief.

PUBLIC NOTICE AND INQUIRY

As required by the *Land Use and Development Code*, mailings were sent to all property owners within 300' of this proposed Conditional Use. These mailings were sent on July 18, 2018, and included a letter describing the proposed Conditional Use as well as the time and place for the public hearing. Also included with the letter was a map of the subject area. Along with the public mailings, a public hearing sign was posted on July 18, 2018 along Southern Street near the proposed location. Finally, a notice was published in the *Brighton Standard Blade* on July 18, 2018, to give notice to those who are not affected property owners or those who do not drive near this intersection on a consistent basis. As of the date of this staff report, Staff has received no comments regarding the proposed Conditional Use.

SUMMARY OF FINDINGS

In summary, this proposal for a Conditional Use Permit addresses all relevant criteria for consideration set forth by the Comprehensive Plan and the *Land Use and Development Code's* Section 17-16-220 for zone district regulations and Section 17-8-60 for conditional use requirements. Conditions placed upon approval will further ensure that the proposal, if built, will in perpetuity meet the standards set by the City of Brighton.

STAFF RECOMMENDATION

Due to meeting the review criteria of Section 17-8-60 of the City of Brighton *Land Use and Development Code*, staff recommends approval of the Conditional Use Permit, with the following conditions:

- 1.) Construction and maintenance of the Cell Tower and the accompanying equipment shall take place only between the hours of 7:00 AM and 7:00 PM, Monday through Friday.
- 2.) AT&T Mobility, and its successors and assigns, shall install the Cell Tower and related equipment consistent with the specifications set forth in Exhibit B.
- 3.) AT&T Mobility, and its successors and assigns, shall install the fencing consistent with the specifications set forth in Exhibit B.
- 4.) AT&T Mobility, and its successors and assigns, shall be jointly and severally responsible for the proper upkeep and maintenance of the fencing. Maintenance shall include, at a minimum, repair and replacement of the fencing. Such maintenance shall be performed on an ongoing and as-needed basis.
- 5.) AT&T Mobility, and its successors and assigns, shall be responsible for the upkeep and maintenance of the access drive.
- 6.) AT&T Mobility, and its successors and assigns, shall provide to the City a 24/7 contact number.
- 7.) AT&T Mobility, and its successors and assigns, shall remedy any damage to the Property or Cell Tower within thirty calendar days of notice thereof.
- 8.) AT&T Mobility, and its successors and assigns, shall place no signage on the tower itself other than signs necessary for safety purposes.
- 9.) AT&T Mobility, and its successors and assigns, shall provide to the City copies of the necessary recorded site easements prior to the issuance of any building permit.

A draft resolution has been provided to the Council should it decide to proceed with the application as presented.

OPTIONS FOR COUNCIL CONSIDERATION

The City Council has four options when reviewing this Conditional Use Permit application. City Council may:

- 1) Approve the Conditional Use Permit with the conditions presented;
- 2) Approve the Conditional Use Permit with additional or modified conditions;
- 3) Deny the Conditional Use Permit with specific justification regarding the denial; or
- 4) Continue the application to be heard at a later, specified date.

ATTACHMENTS

- Draft Resolution with Conditions (Running with the Land)
- Aerial Map
- Applicant's Site Plans
- Neighboring Property Owner Notification
- Addresses of Property Owners Notified
- Applicant's Buffer Map of Mailing Area
- Newspaper Notice
- Newspaper Publication Proof
- Draft City Staff PowerPoint