



## Legislation Text

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### *Department of Community Development*

Reference: First Presbyterian Church Cellular Tower (Conditional Use Permit)

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

Through: Philip A. Rodriguez - City Manager

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Date Prepared: August 10, 2018

### **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**

Wyco Field Services, the Applicant, on behalf of Crown Castle, who has leased space on the subject parcel, is requesting City approval for the installation of an approximately 70' cell tower. The plans show a cell tower that will be designed to look like a pine tree to be located near an existing stealth pole that is to remain on site. The new tower will support cellular equipment for Verizon Wireless, while also being able to support any future carriers. Accessory equipment is also being proposed at the site. The subject property, owned by the First Presbyterian Church, is located immediately east of South 27<sup>th</sup> Avenue, south of 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 portion of the Property this cell tower would be located on was annexed into the City in 1980 as part of the Leeper-Erger Property Annexation. The portion of the Property the church sits on was annexed into the City in 1985 as part of the Church of Christ Annexation. Currently, the parcel is zoned as part of the First Presbyterian Church Planned Unit

Development (PUD) and has been since 1985. Currently, the church, a parking lot, and an existing cell tower occupy the site, with a large portion of the site being undeveloped. Crown Castle is proposing to expand their leased area from the church to include room for this second tower, which would house Verizon equipment as well as have space to house other carriers. The existing tower currently supports T-Mobile equipment. The reason this company is not looking to locate any additional antenna on the exist tower is that they state the existing tower, due to its internal antenna design, does not have the capabilities to house the equipment they wish to use.

#### Surrounding Land Use(s):

Surrounding	Land Use(s)	Zoning	Annexation Status
<b>North</b>	Single-Family Residential	R-1 Single-Family Res	City
<b>South</b>	Medical Office	C-O Commercial Office	City
<b>East</b>	Single-Family Residential	Sugar Creek PUD	City
<b>West</b>	Single-Family Residential	Bromley Creek PUD	City

#### CRITERIA BY WHICH COUNCIL MUST CONSIDER THE ITEM

##### Comprehensive Plan:

The property this cell tower will be located on is designated as Low-Density Residential. Within Low-Density Residential, *Be Brighton*, the City's Comprehensive Plan, plans for secondary uses to homes. Generally, these secondary uses are supposed to support the people who live in the neighborhoods. Supporting uses can include anything from churches and school to applications such as this one, a cell tower. A cell tower can be thought to support the neighborhood as it will provide those in the area with communications services, which are vital not only for the health and safety of a neighborhood but also becoming more important as the world becomes more interconnected. The tower itself has a design that is similar to a pine tree, which will help it blend in with existing trees. Both the drawing of the proposed tower and an example of a recently built tower can both be seen in the presentation, which is attached to this packet as an exhibit.

##### 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 cell 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 cell tower, if approved, will be located near the existing cell tower on the Property. The tower will use a design that mimics a tree and the applicant's team will be installing a fence that matches the existing fencing on site to screen the accessory equipment. These measures are being carried out to provide compatibility to the surrounding area.  
  
Speaking with the applicant and having seen pictures, the new cell towers have been designed to better emulate the appearance of trees and are more realistic than past designs. Additionally, the applicant is proposing to extend the existing fencing to screen the new equipment. Like the existing fence, the new fence would be a cedar wood design. 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. The applicant has access to the

equipment per their lease with the church. No additional off-street parking will be needed due to this proposed cell 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 First Presbyterian Church PUD zone district, including setbacks. The cell tower will be a total height of seventy 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.

According to a document released by the Federal Communications Commission, "A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance," there are not definite setback requirements for cellular facilities. The distance from a facility that is considered safe is dependent on a variety of factors, including but not limited to the frequency of the signal, the power of the signal, and the length of time a person is exposed to the signal, just to name a few. Because of this, staff has requested for the applicant to have an expert on RF signals attend the public hearing and be able to answer questions.

**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 August 8, 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 August 9, 2018 along South 27<sup>th</sup> Avenue near the proposed location by the applicant. Finally, a notice was published in the *Brighton Standard Blade* on August 15, 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.

### **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. 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;
- 2) Approve the Conditional Use Permit with 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
- Aerial Map
- Applicant's Site Plans (Exhibit B of Resolution)
- Neighboring Property Owner Notification Letter
- Addresses of Property Owners Notified
- Newspaper Notice
- Draft City Staff PowerPoint