Agenda Packet

NORFOLK CITY COUNCIL MEETING

Monday, December 21, 2015
5:30 p.m.

Created 12/18/2015 2:04 PM

City of Norfolk
NEBRASKA
right at home.

309 N 5th Street
Norfolk, NE 68701
P402-844-2012 F402-844-2028
www.ci.norfolk.ne.us

NOTICE OF MEETING
CITY OF NORFOLK, NEBRASKA

NOTICE IS HEREBY GIVEN that a meeting of the City Council of the City of Norfolk, Nebraska, will be held at 5:30 p.m. on Monday, December 21, 2015, in the Council Chambers, 309 N. 5th St., Norfolk, Nebraska, which meeting will be open to the public.

The Mayor and City Council reserve the right to adjourn into closed session as per Section 84-1410 of the Nebraska Revised Statutes.

An agenda for such meeting, kept continually current, is available at the office of the City Clerk, 309 N 5th St, Norfolk Nebraska, during normal business hours.

Individuals requiring physical or sensory accommodations, who desire to attend or participate, please contact the City Clerk's office at (402) 844-2000 no later than 4:30 p.m. on the Friday preceding the meeting.

Elizabeth A. Deck
City Clerk

Publish (December 18, 2015)
1 P.O.P.

EQUAL HOUSING OPPORTUNITY

AGENDA

NORFOLK CITY COUNCIL MEETING

December 21, 2015

In accordance with Section 84-1412 sub-section eight (8) of the Reissue Revised Statutes of the State of Nebraska 1943, as amended, one copy of all reproducible written material to be discussed is available to the public at this meeting for examination and copying. The Mayor and City Council reserve the right to adjourn into closed session as per Section 84-1410 of the Nebraska Revised Statutes.

CALL TO ORDER

1. 5:30 p.m. - call meeting to order
2. Inform the public about the location of the Open Meetings Act posted in the Council Chambers and accessible to members of the public
3. Moment of silence/Pledge of Allegiance to the flag of the United States of America
4. Roll call

RECOMMENDED ACTIONS

5. Approval of consent agenda. **Motion**
   All items in the consent agenda are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council member or a citizen so requests, in which event the item will be removed from the consent agenda and considered separately.
6. Approval of full agenda. **Motion**

CONSENT AGENDA

7. Consideration of approval of the minutes of the December 7, 2015, City Council meeting. **Motion**
8. Consideration of approval to accept the low bid from Norfolk Truck Center to purchase a replacement dump truck for the Street Division in the amount of $76,020.00. **Motion**
9. Consideration of approval of the Mayor's reappointment of Councilman Jim Lange, Councilman Thad Murren, and Councilman Dick Pfeil to the Railroad Transportation Safety District for a one-year term as required by state statutes. **Motion**

10. Consideration of approval of forwarding a letter of no recommendation to the Nebraska Liquor Control Commission on the manager application for Tina M. Krings in connection with the Class B liquor license of Casey's Retail Company, dba Casey's General Store #2370, 1020 West Benjamin Avenue, Norfolk, Nebraska. **Motion**

11. Consideration of approval of an update to the Limited English Proficiency Plan adopted by the City Council on December 3, 2012 which includes a grievance procedure. **Motion**

12. Consideration of approval of a Spectrum Lease agreement with Sensus Radio allowing the Water Division to use the service area radio frequencies for their FlexNet meter read equipment. **Motion**

13. Consideration of approval of a change to the personnel manual reference to the budgeting process for the amount of the employee educational reimbursement requested along with the specifics of the time frame for that request and necessary documentation. **Motion**

14. Consideration of approval to advertise for bids for the purchase of a Self-Contained Breathing Air Station for purposes of filling the Fire Department's self-contained breathing apparatus (SCBA's). **Motion**

15. Consideration of approval of all bills on file. **Motion**

PUBLIC HEARINGS AND RELATED ACTION

16. Public hearing to receive a report on findings and suggestions from the Economic Development Citizen Advisory Review Committee as required by State Statutes Section 18-2715.

REGULAR AGENDA

17. Consideration of Resolution No. 2015-34 related to the Conditional Use Permit for Telebeep, Inc. to have a communications tower at 2208 Elmer's Lane. Resolution No. 2015-34 was tabled at the November 2, 2015 City Council meeting. **Resolution 2015-34**

18. Consideration of approval of Change Order No. 1 with Elkhorn Paving Construction for Concrete Improvements 2015-1 project resulting in a net increase of $44,381.19. **Motion**

PUBLIC COMMENT PERIOD

19. No action can occur at this time.

City of Norfolk NEBRASKA
right at home.

309 N 5th Street
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P402-844-2012 F402-844-2028
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STAFF MEMORANDUM

NORFOLK CITY COUNCIL MEETING

December 21, 2015

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CONSENT AGENDA

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   See Enclosure 7.

8. Consideration of approval to accept the low bid from Norfolk Truck Center to purchase a replacement dump truck for the Street Division in the amount of $76,020.00. **Motion**

   See Enclosure 8.

9. Consideration of approval of the Mayor's reappointment of Councilman Jim Lange, Councilman Thad Murren, and Councilman Dick Pfeil to the Railroad Transportation Safety District for a one-year term as required by state statutes. **Motion**

10. Consideration of approval of forwarding a letter of no recommendation to the Nebraska Liquor Control Commission on the manager application for Tina M. Krings in connection with the Class B liquor license of Casey's Retail Company, dba Casey's General Store #2370, 1020 West Benjamin Avenue, Norfolk, Nebraska. **Motion**

    See Enclosure 10.

11. Consideration of approval of an update to the Limited English Proficiency Plan adopted by the City Council on December 3, 2012 which includes a grievance procedure. **Motion**

    The Limited English Proficiency Plan (LEP) had been prepared to address the City of Norfolk's responsibilities as a recipient of Federal financial assistance as they relate to the needs of individuals with limited English language skills. The Plan had been prepared in accordance with Title VI of the Civil Rights Act of 1964 which prohibits discrimination on the basis of race, color or national origin in programs and activities receiving Federal financial assistance. Specifically Title VI provides that "no person shall, on the grounds of race, color or national origin be excluded from participation in, be denied the benefits or, be subject to discrimination under any program or activity receiving Federal financial assistance with disabilities.

    The LEP has been updated to include language that more specifically relates to how "Oral Interpretation Services" will be handled by telephone or in-person. This language is included under Section III, "Language Assistance." Additional information has been added to this updated plan to include "Compliance/Grievance Procedures" language which is under Section VIII.

    See Enclosure 11.

12. Consideration of approval of a Spectrum Lease agreement with Sensus Radio allowing the Water Division to use the service area radio frequencies for their FlexNet meter read equipment. **Motion**

    The City of Norfolk has approximately 10,000 water meters and these are all currently read with a touch read system. The City will be using radio read at select locations. The Sensus radio reads requires a no-cost license frequency. The Sensus lease is a no charge lease and is required for radio read meters.

    See Enclosure 12.

13. Consideration of approval of a change to the personnel manual reference to the budgeting process for the amount of the employee educational reimbursement requested along with the specifics of the time frame for that request and necessary documentation. **Motion**

The time frames included are "The reimbursement shall be made on a rolling 12-month interval beginning from the time the first class is completed." Included in the agenda package is the policy showing the underlined portion of the policy that is being added and the strike through is the language that will be deleted.

See Enclosure 13.

14. Consideration of approval to advertise for bids for the purchase of a Self-Contained Breathing Air Station for purposes of filling the Fire Department's self-contained breathing apparatus (SCBA's). **Motion**

15. Consideration of approval of all bills on file. **Motion**

PUBLIC HEARINGS AND RELATED ACTION

16. Public hearing to receive a report on findings and suggestions from the Economic Development Citizen Advisory Review Committee as required by State Statutes Section 18-2715.

State Statutes require a Citizen Advisory Review Committee (CARC). The citizens serving on CARC are: Bill Canham, Cindy Morrow, Jim Mangels, Aaron Otten, and Jan Einspahr. The City's Finance Officer serves as an ex officio non-voting member of CARC.

State Statutes require the CARC to meet at least once in every six-month period and to report to the City Council on its findings and suggestions at a public hearing called for that purpose. The CARC met on December 3, 2015 and the CARC's report, which includes the CARC Review Checklist, is included in the agenda packet.

As noted in the CARC report, the CARC found that the City's Economic Development Program (EDP) is operating in compliance with the budget and the voter-approved economic development plan. The CARC suggested the City obtain a letter of intent from Black Hills Energy that it is still planning construction of the natural gas pipeline. That letter of intent has since been received from Black Hills Energy and is included in the agenda packet.

See Enclosure 16.

REGULAR AGENDA

17. Consideration of Resolution No. 2015-34 related to the Conditional Use Permit for Telebeep, Inc. to have a communications tower at 2208 Elmer's Lane. Resolution No. 2015-34 was tabled at the November 2, 2015 City Council meeting. **Resolution 2015-34**

    On October 6, 2015, the Norfolk Planning Commission approved (by a 6 to 3 vote) a Conditional Use Permit for Telebeep, Inc. to have a communications tower at 2208 Elmer's Lane. The Conditional Use Permit contains certain terms and conditions. Ross & Maggie Stoffer filed an appeal on October 14, 2015. According to Section 27-56 of City Code, an appeal may occur to the City Clerk within fifteen days after the Planning Commission decision. The City Council may reverse, affirm, or modify the decision of the Planning Commission. The Council has before them for consideration three resolutions on the Conditional Use Permit. Resolution No. 2015-34 (A) reverses the Planning Commission decision regarding the Conditional Use Permit. Resolution No. 2015-34 (B) affirms the Planning Commission decision regarding the Conditional Use Permit. Resolution No. 2015-34 (C) modifies the Planning Commission decision regarding the Conditional Use Permit.

    See Enclosure 17.

18. Consideration of approval of Change Order No. 1 with Elkhorn Paving Construction for Concrete Improvements 2015-1 project resulting in a net increase of $44,381.19. **Motion**

    On March 15, 2015 the Mayor and City Council awarded a $523,717.15 contract for the Concrete Improvements 2015-1 project. Change Order No. 1 provides for $34,315.70 of additional work on East Pasewalk Avenue from 1st Street east 630 feet, $1,965.78 of additional work on Krenzien Avenue from Michigan Avenue to the northwest, and $8,099.71 of additional work on Krenzien Avenue from Michigan Avenue to the southeast. The additional work on Pasewalk Avenue was primarily due to additional work related to storm sewer conflicts with existing underground utilities and additional sod. The additional work on Krenzien Avenue was primarily additional concrete. The balance of changes balanced bid quantities to actual quantities.

    Staff recommend approval of Change Order No. 1 with Elkhorn Paving Construction resulting in a net increase of $44,381.19.

    See Enclosure 18.

PUBLIC COMMENT PERIOD

19. No action can occur at this time.

Public comments are subject to City Code Section 2.18.1. The chair may further limit comments after consideration of the length of the City Council meeting and the number of citizens desiring to address the elected officials.

CITY OF NORFOLK, NEBRASKA

The Mayor and City Council of the City of Norfolk, Nebraska met in regular session in the Council Chambers, 309 North 5th Street, Norfolk, Nebraska on the 7th day of December, 2015, beginning at 5:30 p.m.

Following a moment of silence and the Pledge of Allegiance to the flag of the United States of America, Mayor Sue Fuchtman called the meeting to order. Roll call found the following Councilmembers present: Corey Granquist, Jim Lange, Rob Merrill, Shane Clausen, Josh Moenning, Dave Fauss, and Dick Pfeil. Absent: Thad Murren.

Staff members present were: City Administrator Shane Weidner, Director of Public Works Dennis Smith, City Attorney Clint Schukei, City Clerk Beth Deck, Finance Officer Randy Gates, Police Chief Bill Mizner, Wastewater Plant Superintendent Todd Boling, Administrative Secretary Bethene Hoff, Risk Manager Lyle Lutt, Fire Chief Scott Cordes, City Planner Val Grimes, Prevention Manager Trent Howard, Staff Engineer John Heine, City Engineer Mark Dolechek, Water & Sewer Director Dennis Watts and Communications Director Diane Becker.

The Mayor presided and the City Clerk recorded the proceedings.

The Mayor informed the public about the location of the current copy of the Open Meetings Act posted in the City Council Chambers and accessible to members of the public.

Notice of the meeting was given in advance thereof by publication in the Norfolk Daily News, Norfolk, Nebraska, the designated method of giving notice, as shown by affidavit of publication.

Notice was given to the Mayor and all members of the Council and a copy of their acknowledgement of receipt of notice and agenda is attached to the minutes. Availability of the agenda was communicated in the advance notice and in the notice to the Mayor and Council of this meeting. All proceedings hereafter shown were taken while the convened meeting was open to the public.

Agenda Motions

Councilmember Merrill moved, seconded by Councilmember Moenning to approve the consent agenda as printed. Roll call: Ayes: Councilmembers Granquist, Lange, Merrill, Clausen, Moenning, Fauss and Pfeil. Nays: None. Absent: Murren. Motion carried.

Councilmember Lange moved, seconded by Councilmember Fauss to adopt the full agenda as printed. Roll call: Ayes: Councilmembers Granquist, Lange, Merrill, Clausen, Moenning, Fauss and Pfeil. Nays: None. Absent: Murren. Motion carried.

Consent Agenda Items Approved

Minutes of the November 16, 2015, City Council meeting

Elkhorn Paving Construction Co., Inc. Change Order No. 2 for Paving District No. 505 (Fox Ridge Estates Addition Phase IV) resulting in a net increase of $1,626.00

Maintenance Agreement No. 19 with the Nebraska Department of Roads for calendar year 2016 and authorization for the Mayor to execute a Certificate of Compliance at the end of 2016

Mayor's appointment of Lisa Blackman to the Vehicle Parking District Advisory Board as an alternate board member for a term ending August 2018

Mayor to execute the Storm Water Management Plan Program Grant Intergovernmental Agreement

Northern Truck Equipment low bid of $68,807.00 to purchase a new live floor transfer trailer for the Transfer Station

Vessco Inc. bid for SBR diffusers at the Water Pollution Control Plant in the amount of $74,940.00

Elkhorn Paving Construction Company Change Order No. 1 for Paving District No. 508, Walters' East Knolls 11th Addition, resulting in a net decrease of $960.00

Letter of no recommendation to the Nebraska Liquor Control Commission on the manager application for Patrick J. Dytrych in connection with the Class DK liquor license of STL of Nebraska, Inc., dba Target Store T-0856, 1510 Market Lane, Norfolk, Nebraska

Letter of no recommendation to the Nebraska Liquor Control Commission on the manager application for Steven C. Roker in connection with the Class D liquor license of Walgreen Company, dba Walgreens #04531, 1300 West Norfolk Avenue, Norfolk, Nebraska

Olsson Associates, Inc. Amendment #3 to Letter Agreement for professional engineering services for the Victory Road Detention Cell project for an amount not to exceed $19,700.00

Assignment of Lease wherein the City assigns to the YMCA its interest in the January 20, 2015 Lease between the City and Mennonite Disaster Service for rental of portions of the auditorium

YMCA agreement to trade snow removal responsibilities of certain sidewalks and the auditorium parking lot

Advertise for bids from towing operators to contract with the City to provide official police towing services

Advertise for bids for Farm Management Services for City of Norfolk properties

Bills in the amount of $1,424,289.81

Public Hearings and Related Items

Public Hearing
(708 McKinley Avenue)

A public hearing was held to comply with the provisions of N.R.S. 18-1755 to acquire property at 708 McKinley Avenue. City Administrator Shane Weidner provided information to the Mayor and City Council. The property was formerly owned by Randy Hupp, Personal Representative of the Estate of James C. Hupp. The property is located along McKinley Avenue by Ta-Ha-Zouka Park and is now being managed by RS Resources LLC. Weidner said elected

officials had the purchase of the property as one of their goals several years ago for future expansion/enhancement of Ta-Ha-Zouka Park.

No one appeared either in favor of or in opposition to the purchase and the Mayor declared the hearing closed.

Real Estate Purchase Agreement
(RS Resources, LLC, 708 McKinley Ave)

Councilmember Fauss moved, seconded by Councilmember Moenning, to approve a Real Estate Purchase Agreement with RS Resources, LLC providing for the City's purchase of property at 708 McKinley Avenue for the purchase price of $164,000.00.

Roll call: Ayes: Councilmembers Granquist, Lange, Merrill, Clausen, Moenning, Fauss and Pfeil. Nays: None. Absent: Murren. Motion carried.

Public Hearing
(OCT Pipe, LLC Redevelopment Plan)

A public hearing was held to consider the OCT Pipe, LLC Redevelopment Plan. Economic Development Director Courtney Dentlinger provided information to the Mayor and City Council. OCT Pipe, L.L.C., the Redeveloper, has submitted the proposed Redevelopment Plan included in the agenda packet. The Plan was recommended and approved by the Norfolk Planning Commission on November 17, 2015 and approved by the Community Development Agency on November 30, 2015. However, since then the Redeveloper submitted a revised construction cost schedule. Total cost is still approximately $127 million, but there were significant changes to some of the items in the cost schedule. For example, rail is now $3,190,000 compared $9,180,854 in the original schedule and grading is now $3,350,000 compared to $690,335 in the original schedule. Also, there have been some major reclassifications in equipment costs. The Agency approved the modified plan with the revised construction cost schedule at the 5:15 p.m. Agency meeting on December 7, 2015.

The Plan is for 102.5 acres and located south of Eisenhower Avenue, west of Victory Road, north of Magnet Drive, and is bordered on the west by the Nebraska Central Railroad. This land is all within the area determined to be blighted and substandard by City Council Resolution No. 2007-12. The Redeveloper plans to construct a 1,103,404 square foot industrial building for pipe manufacture and a new headquarters office building of 6,500 square feet. Redeveloper will employ 180 employees with an annual payroll of $13,458,000. The Plan contemplates issuance of a tax increment financing (TIF) bond for permissible costs of the redevelopment, defined as the cost of: 1) constructing access to Eisenhower Avenue to the north and Victory Road to the east of the Project Area; 2) constructing adequate water and sewer systems to service the Project Area and the surrounding area; 3) concrete and asphalt paving and construction of rail access; 4) site preparation to include removal of abandoned building foundations, filling and grading the site; and 5) construction period interest incurred by Redeveloper as permissible costs. The Redeveloper has indicated that without TIF it is not economically feasible to develop the site.

Bill Mowinkle, ESU #8, has concerns with infrastructure and emergency response because of the high needs students who attend ESU #8. Mowinkle feels infrastructure improvements need to be made to this area because of the new industries locating north of Norfolk.

No one else appeared either in favor of or in opposition to the OCT Pipe Redevelopment Plan and the Mayor declared the hearing closed.

Resolution No. 2015-37
(OCT Pipe Redevelopment Plan)

Councilmember Merrill moved, seconded by Councilmember Lange, to adopt Resolution No. 2015-37 approving the OCT Pipe Redevelopment Plan as discussed.

Roll call: Ayes: Councilmembers Granquist, Lange, Merrill, Clausen, Moenning, Fauss and Pfeil. Nays: None. Absent: Murren. Motion carried. Resolution No. 2015-37 was adopted.

Regular Agenda

Sales Tax Report

Finance Officer Randy Gates provided information on the November sales tax report (September sales).

Resolution No. 2015-38
(Eisenhower Avenue Bridge)

Councilmember Fauss moved, seconded by Councilmember Lange to adopt Resolution No. 2015-38 approving Madison County closing Eisenhower Avenue from 1,188 feet east of 13th Street to 3,383 feet east of 13th Street including the bridge over the North Fork of the Elkhorn River.

City Administrator Shane Weidner explained State Statute Section 39-1725 provides that a county board can only vacate and abandon a part of a county road located within a municipality's zoning jurisdiction with prior approval of the municipality's governing body. Weidner said the bridge was built in 1906, has a 5-ton weight limit, and emergency response vehicles cannot use the road. Northeast Industrial Highway is located one-half mile to the north of Eisenhower Avenue to handle traffic. According to a traffic study completed by Madison County, approximately 275 vehicles use that portion of Eisenhower on a daily basis. Weidner also has liability concerns because of public safety issues.

Fire Chief Scott Cordes said the bridge/road is not a viable option for emergency vehicles because of the weight limit and angle of the bridge.

Doug Stevens, Apache Mfg, spoke in opposition to closing Eisenhower Avenue. Stevens feels the road has a lot of traffic and ESU #8 needs it for access to the school.

Kay Jaeger, 115 W Cedar Avenue, spoke in opposition to closing the road and read the following information presented at the Madison County Commissioners meeting on December 1, 2015 into the record: "We have 20 plus students with special needs, some of our students have health issues that at times require immediate care, including transportation via rescue unit to the hospital. Our school is surrounded by farm ground and there will soon be a chemical fertilizer facility located at 1st and Eisenhower, just east of our school. If there were to be a fire, an incident at the fertilizer facility or any type of accident that would force the closure of 1st Street or the east end of our road, we would have no way to evacuate our students. We use that bridge

many times during the school day. We go to Norfolk High School each day to pick up our hot lunch. We have groups of students that travel to job sites at Golden Living, Greenline, HyVee West, Sunset Plaza, Little Ceasars, Mercy Meals, Norfolk Senior Center, Culver's Divot's. Faith Regional and Pizza Hut. We understand that road and bridge maintenance can be costly but if saving this bridge saves even one life, we would like to believe that you would consider it worth the cost. Respectfully, Employees of Eastern Learning Center (ESU #8)."

Dick Johnson, Madison County Highway Superintendent, stated the Eisenhower Bridge is structurally deficient. The bridge is inspected annually and shows deterioration but the biggest concern is the alignment of the bridge which has two 90 degree angles and is a public safety issue. The estimated cost to replace the bridge is $2 to 2.5 million. Johnson does not recommend replacing the bridge. Some grant funding may be available for bridge replacement but there currently is $10 million available and $16 to $18 million in projects and the funds would probably not be available for 6-7 years.

Councilmember Clausen questioned whether the bridge would ever be reopened once it is closed. Clausen suggested considering this issue once the new industries are up and operating.

Johnson said the county does have two buyers interested in the bridge and it could be reopened in the future. Johnson said another issue with the road is the terrible connection of Eisenhower Avenue to Highway 81.

Councilmember Lange feels the school would be safer for loading and unloading students with the bridge closed. Lange said the City Council resolution doesn't necessarily mean the bridge will be closed but it gives Madison County the option to close it if warranted.

Councilmember Fauss and Moenning feel traffic will increase on Benjamin Avenue if the Eisenhower Avenue Bridge is closed.

Ron Schmidt, Madison County Commissioner, spoke with Tim Baxter from NERMA, Madison County insurer, who said if the road is signed correctly, liability concerns should not be an issue.

Roll call on Resolution No. 2015-38. Ayes: Lange and Pfeil. Nays: Granquist, Merrill, Clausen, Moenning and Fauss. Absent: Murren. Motion on Resolution No. 2015-38 failed.

Ordinance No. 5375
(Purchasing)

Councilmember Fauss introduced, seconded by Councilmember Moenning, Ordinance No. 5375 entitled: AN ORDINANCE OF THE CITY OF NORFOLK, NEBRASKA TO AMEND SECTION 2-110 OF THE OFFICIAL CITY CODE TO ALLOW THE CITY TO PURCHASE SUPPLIES, EQUIPMENT, OR SERVICES FROM A VENDOR BY WAY OF A CONTRACT OR AGREEMENT AUTHORIZED BY THE INTERLOCAL COOPERATION ACT OR UNDER A CONTRACT OR AGREEMENT WITH A JOINT PUBLIC AGENCY WHERE THE ACQUISITION COST OF THE ITEM BEING PURCHASED HAS BEEN ESTABLISHED THROUGH A PUBLIC PROCUREMENT PROCESS; TO PROVIDE WHTN THE IORDINANCE SHALL BE IN FULL FORCE AND EFFECT; AND TO PROVIDE FOR THE PUBLCIATION OF THIS ORDINACE IN PAMPHLET FORM and moved that the ordinance be passed on first reading. Said ordinance was then read into the record by title by the City Clerk.

Roll call: Ayes: Councilmembers Granquist, Lange, Merrill, Clausen, Moenning, Fauss and Pfeil. Nays: None. Absent: Murren. Motion carried. Ordinance No. 5375 passed on first reading.

Councilmember Lange moved, seconded by Councilmember Fauss, that the statutory rule requiring reading on three different days be suspended.

Roll call: Ayes: Councilmembers Granquist, Lange, Merrill, Clausen, Moenning, Fauss and Pfeil. Nays: None. Absent: Murren. Motion carried. The motion to suspend the rules was adopted by three-fourths of the Council and the statutory rule requiring reading on three different days was suspended for consideration of said ordinance.

Thereafter Councilmember Lange moved, seconded by Councilmember Fauss, that the statutory rules requiring reading on three different days be suspended and for final passage of the ordinance. The Mayor then stated the question "Shall Ordinance No. 5375 be passed and adopted?"

Roll call: Ayes: Councilmembers Granquist, Lange, Merrill, Clausen, Moenning, Fauss and Pfeil. Nays: None. Absent: Murren. Motion carried. The passage and adoption of said ordinance having been concurred in by a majority of all members of the Council, the Mayor signed and approved the ordinance and the City Clerk attested the passage and adoption of the same and affixed her signature thereto. The Mayor then instructed the City Clerk to publish said Ordinance No. 5375 as required by law.

Omaha-Council Bluffs Metropolitan Area Planning Agency
(Oblique Aerial Photography)

Councilmember Merrill moved, seconded by Councilmember Fauss to approve an agreement with the Omaha-Council Bluffs Metropolitan Area Planning Agency (MAPA) to obtain oblique aerial photography for the region with the City of Norfolk's cost share totaling $52,172.00 to be made in three equal payments over 3 years (2016, 2017, 2018).

Public Works Director Dennis Smith explained one of the benefits of the City of Norfolk working with MAPA on this project is the benefit of MAPA subject experts.

Roll call: Ayes: Councilmembers Granquist, Lange, Merrill, Clausen, Moenning, Fauss and Pfeil. Nays: None. Absent: Murren. Motion carried.

There being no further business, the Mayor declared the meeting adjourned at 6:58 p.m.

_____
Sue Fuchtman
Mayor

ATTEST:

_____
Elizabeth A. Deck
City Clerk

(S E A L)

I, the undersigned Clerk, hereby certify that the foregoing is the full, true and correct original document of proceedings of Monday, December 7, 2015, had and done by the Mayor and City Council; that all of the subjects included in the proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to the meeting; that at least one copy of all reproducible material discussed at the meeting was available at the meeting for examination and copying by members of the public; that the said minutes were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

_____

Elizabeth A. Deck
City Clerk

(S E A L)

CITY OF NORFOLK % STREET DIVISION

BIDS DUE - 11/30/2015 3:00pm

DUMP TRUCK

VENDOR	Model	TOTAL	CREDIT CRD	Cash Discount	TRADE	NET	DELIVERY
Cornhusker International; Mark Hess	2017 International 7300	$ 90,156.00	3.50%		$ 10,500.00	$ 79,656.00	NA
Norfolk Truck Center, Norfolk; Corey Sundberg	2017 Freightliner 108SD	$ 92,520.00	2.50%		$ 16,500.00	$ 76,020.00	120 days
Peterbuilt of Norfolk; Don Burns	2017 Peterbuilt 337	$ 94,555.00	$ 85,445.00		$ 12,000.00	$ 82,555.00	120 days
Sanitation Products, Sioux Falls; Jay Larson	2017 Freightliner 108SD	$ 94,319.00			$ 3,000.00	$ 91,319.00	90-140 days
Trade-In:							
1994 International Dump Truck							
Model 4700							
Engine: DT 408							
Mileage: 58,968							
Automatic Transmission: Allison MT-643							
30,000 GVWR							
VIN #1HTSCACN9RH601261							

MANAGER APPLICATION
INSERT - FORM 3c

NEBRASKA LIQUOR CONTROL COMMISSION
301 CENTENNIAL MALL SOUTH
PO BOX 95046
LINCOLN, NE 68509-5046
PHONE: (402) 471-2571
FAX: (402) 471-2814
Website: www.lcc.nebraska.gov

Office Use

RECEIVED

SEP 2 2015

NEBRASKA LIQUOR CONTROL COMMISSION

MUST BE:

- ✓ **Citizen of the United States. Include copy of US birth certificate, naturalization paper or current US passport**
- ✓ **Nebraska resident. Include copy of voter registration in the State of Nebraska**
- ✓ **Fingerprinted. See Form 147 for further information, this form MUST be included with your application.**
- ✓ **21 years of age or older**

Corporation/LLC information

Name of Corporation/LLC: CASEY'S RETAIL COMPANY

Premise information

Liquor License Number: 052345 Class Type B (if new application leave blank)

Premise Trade Name/DBA: CASEY'S GENERAL STORE #2370

Premise Street Address: 1020 W BENJAMIN

City: NORFOLK County: MADISON Zip Code: 68701

Premise Phone Number: (402) 379-0967

Email address: [redacted]

The individual whose name is listed as a corporate officer or managing member as reported on insert form 3a or 3b or listed with the Commission. Click on this link to see authorized individuals. http://www.lcc.ne.gov/license_search/licsearch.cgi

RICHARDT T. SCHAPPERT PRESIDENT FOR CASEY'S RETAIL COMPANY

SIGNATURE REQUIRED BY CORPORATE OFFICER / MANAGING MEMBER
(Faxed signatures are acceptable)

1500025941

Manager's information must be completed below PLEASE PRINT CLEARLY

Last Name: KRINGS First Name: TINA MI: M

Home Address (include PO Box if applicable):

City: County: Zip Code:

Home Phone Number: Business Phone Number: (515) 371-9626

Social Security Number: Drivers License Number & State:

Date Of Birth: Place Of Birth:

Email address:

RECEIVED
SEP 2
NEBRASKA LIQUOR
CONTROL COMMISSION

Are you married? If yes, complete spouse's information (Even if a spousal affidavit has been submitted)

☐ YES ☑ NO

Spouse's information

Spouses Last Name: First Name: MI:

Social Security Number: Drivers License Number & State:

Date Of Birth: Place Of Birth:

APPLICANT & SPOUSE MUST LIST RESIDENCE(S) FOR THE PAST TEN (10) YEARS

APPLICANT **SPOUSE**

CITY & STATE	YEAR FROM	YEAR TO	CITY & STATE	YEAR FROM	YEAR TO

MANAGER'S LAST TWO EMPLOYERS

YEAR FROM	TO	NAME OF EMPLOYER	NAME OF SUPERVISOR	TELEPHONE NUMBER
9/2001	CURRENT	CASEY'S GENERAL STORES	JAN KONRAD	(515) 965-6517
01/1998	08/2001	ARNOLD ENGINEERING	PLANT CLOSED	N/A

1. **READ CAREFULLY. ANSWER COMPLETELY AND ACCURATELY.**
   Must be completed by both applicant and spouse, unless spouse has filed an affidavit of non-participation.

Has anyone who is a party to this application, or their spouse, EVER been convicted of or plead guilty to any charge. Charge means any charge alleging a felony, misdemeanor, violation of a federal or state law; a violation of a local law, ordinance or resolution. List the nature of the charge, where the charge occurred and the year and month of the conviction or plea. Also list any charges pending at the time of this application. If multiple parties, please list charges by each individual's name.

RECEIVED
SEP 2 2015
NEBRASKA LIQUOR CONTROL COMMISSION

☐ YES ☑ NO

If yes, please explain below or attach a separate page.

Name of Applicant	Date of Conviction (mm/yyyy)	Where Convicted (City & State)	Description of Charge	Disposition
OFFICERS ON APPLICATION FORM				

2. Have you or your spouse ever been approved or made application for a liquor license in Nebraska or any other state?

☑ YES ☐ NO

IF YES, list the name of the premise(s):
CASEY'S GENERAL STORES- MULTIPLE NEBRASKA STORES- PLEASE SEE LIST

3. Do you, as a manager, qualify under Nebraska Liquor Control Act (§53-131.01) and do you intend to supervise, in person, the management of the business?

☑ YES ☐ NO

City of Norfolk
NEBRASKA
right at home.

309 N 5th Street
Norfolk, NE 68701-4092
P402-844-2000 F402-844-2001
www.ci.norfolk.ne.us

December 22, 2015

NE Liquor Control Commission
Attn: Licensing
Email: shannon.nyhoff@nebraska.gov

Dear Shannon:

On December 2, 2015, the City of Norfolk received the Manager Application of Tina M. Krings in connection with Class B liquor license of Casey's Retail Company, dba Casey's General Store #2370, 1020 West Benjamin Avenue, Norfolk, Nebraska. At the December 21, 2015 meeting, the City Council approved submitting a letter of no recommendation on the manager application.

Sincerely,

CITY OF NORFOLK

Sue Fuchtman
Mayor

Enclosures

cc: Tina M. Krings

Norfolk POLICE

202 N. 7th Street
Norfolk, NE 68701
402-644-8700
www.ci.norfolk.ne.us

William L. Mizner
Chief of Police

bmizner@ci.norfolk.ne.us

TO: Beth Deck
City Clerk

FROM: Bill Mizner
Chief of Police

RE: Casey's #2370 Manager Background Investigation

DATE: December 3, 2015

The Police Division conducted a background investigation on the liquor license manager application for Caseys General Store #2370, located at 1020 W. Benjamin Avenue in Norfolk, Nebraska. The manager listed on the application is Tina M. Krings, age 47, who resides in Norfolk, Nebraska.

This Casey's General Store currently holds Class B liquor license #052345 through the Nebraska Liquor Control Commission. Krings is also the manager of Casey's General Store #2710 located at 2640 W. Norfolk, Nebraska. It has Class B license #071397 and is in good standing.

A check of Division records found no alcohol- or criminal-related contacts.

A check of the Nebraska Criminal Justice Information System found no criminal entries. There were two civil cases, both of which were divorces.

A check of the Nebraska Liquor Control Commission website indicated Casey's #2370 received an enforcement warning in 2009. There were no other violations listed.

Limited English Proficiency Plan

Title VI Coordinator
Human Resources Director
309 North 5th Street
Norfolk, NE 68701
(402)844-2010

December 21, 2015

I. Introduction

This *Limited English Proficiency Plan* (LEP) has been prepared to address the City of Norfolk's responsibilities as a recipient of Federal financial assistance as they relate to the needs of individuals with limited English language skills. The plan has been prepared in accordance with Title VI of the Civil Rights Act of 1964 which prohibits discrimination on the basis of race, color or national origin in programs and activities receiving Federal finance assistance. Specifically Title VI provides that "no person shall, on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, be subject to discrimination under any program or activity receiving Federal financial assistance."

Executive Order 13166, titled *Improving Access to Services for Persons with Limited English Proficiency,* indicates that differing treatment based upon a person's inability to speak, read, write or understand English is a type of national origin discrimination. It directs Federal agencies to publish guidance for its respective recipients clarifying their obligation to ensure that such discrimination does not take place. This order applies to all state and local agencies which receive federal funds, including the City of Norfolk.

Plan Summary

The City of Norfolk has developed this *Limited English Proficiency Plan* to help identify reasonable steps for providing language assistance to persons with limited English proficiency who wish to access services provided. As defined Executive Order 13166, LEP persons are those who do not speak English as their primary language and have limited ability to read, speak, write or understand English.

This plan outlines how to identify a person who may need language assistance, the ways in which assistance may be provided, staff training that may be required, and how to notify LEP persons that assistance is available.

As part of preparing this Plan, the City of Norfolk used the four-factor LEP analysis which considers the following factors:

1. The number or proportion of LEP persons in the service area who may be served by the City of Norfolk.
2. The frequency with which LEP persons come in contact with City of Norfolk services.
3. The nature and importance of services provided by the City of Norfolk to the LEP population.
4. The resources available to the City staff and overall costs to provide LEP assistance.

II. Meaningful Access: Analysis of the Four Factors

1. The number or a proportion of LEP persons in the service area who may be served or are likely to require City of Norfolk services.

According to the U.S. 2010 Census Report and detailed in its document 2006-2010 American Community Survey 5-Year Estimates for Norfolk, Nebraska it is determined that:

- 19,648 speak only English — 88.92% of population
- 1,155 Speak another language(s) classified as "Speak English Very Well" — 5.23% of population
- 506 Speak another language(s) classified as "Speak English Well" — 2.29% of population
- 482 Speak another language(s) classified as "Speak English Not Well" — 2.18% of population
- 304 Speak another language(s) classified as "Speak English Not at All" — 1.38% of population

This data indicates that only 3.56% of the population in Norfolk, Nebraska are LEP persons.

2. The frequency with which LEP persons come in contact with City of Norfolk services.

The City will continue to assess the frequency with which its employees have, or could have, contact with LEP persons. This includes documenting face-to-face contacts, telephone inquiries and applications for employment, water and sewer utility service, library services, housing services, building permits and police and fire services. The City employees have indicated that there is occasional contact with persons with LEP in regard to Spanish; however, there is very infrequent contact with LEP persons that speak a language other than Spanish as their primary language.

.

3. The nature and importance of services provided by City of Norfolk to the LEP population.

There is no large geographic concentration of any type of LEP individuals in the service area for the City of Norfolk. The overwhelming majority of the population speaks only English. As a result there are not many social, service, professional and leadership organizations within the City of Norfolk service area that focus on outreach to LEP individuals. The City of Norfolk elected officials and staff are most likely to encounter LEP individuals through office visits, phone conversations, notifications from staff of impacts on services and attendance at meetings.

4. The resources available to the City of Norfolk, and overall costs to provide LEP assistance.

The City of Norfolk will continue to review its available resources that could be used for providing LEP assistance, which of its documents would be most valuable to be translated if the need should arise, and contact local citizens that would be willing to provide voluntary Spanish translation if needed within a reasonable time period. Other language assistance, if needed, would be provided through a telephone interpreter line for which City of Norfolk would pay a fee.

III. Language Assistance

A person who does not speak English as their primary language and who has a limited ability to read, write, speak or understand English may be a Limited English Proficient person and may be entitled to language assistance with respect to City of Norfolk services. Language assistance can include interpretation, which means oral or spoken transfer of a message from one language into another language and/or translation, which means the written transfer of a message from one language into another language.

After identification or anticipation of an LEP person who needs language assistance, the City of Norfolk may utilize any of the following:

- Post notice of LEP Plan and the availability of interpretation or translation services free of charge in languages LEP persons would understand.
- Provide "I Speak" cards to assist in identifying the language interpretation needed if the occasion arises.
- Provide necessary documents in the needed language.

When the City of Norfolk sponsors an informational meeting or event, a staff person may greet participants as they arrive. By informally engaging participants in conversation it is possible to gauge each attendee's ability to speak and understand English. Although translation may not be able to be provided at the event it will help identify the need for future events.

A. Language Assistance Measures-Although there is a very low percentage in the City of Norfolk of LEP individuals, that is, persons who speak English "not well" or "not at all", it will strive to offer the following measures:

1. The City of Norfolk staff will take reasonable steps to provide the opportunity for meaningful access to LEP clients who have difficulty communicating English.
2. The following resources will be available to accommodate LEP persons:
   - i. Volunteer interpreters for the Spanish language are available and will be provided within a reasonable time period.
   - ii. Language interpretation will be accessed for all other languages through a telephone interpretation service.

B. Periodic Reviews - City of Norfolk staff will be informally surveyed periodically on their experience concerning any contacts with LEP persons since the last periodic review.

C. Oral Interpretation Services

The following describes the process the City of Norfolk staff will use when receiving LEP individuals through telephone communication or in-person visits. This process follows the City's Administrative Procedure for handling LEP individuals.

Telephone Communication

A staff member who receives a call from a LEP individual will assess the primary language needed by the individual. If that staff member is bilingual and speaks a language relevant to the LEP caller, then that staff member will assist the individual. If communication becomes difficult for any reason, the staff member will transfer the call to another City employee having language skills relevant to the LEP caller.

If a City staff member receives a call from a LEP individual and does not speak the language of the caller, the staff member will transfer the call to another member who has the relevant language skills.

If there is not a City staff member that speaks a language relevant to the LEP caller, then the staff member can use the Language Line to communicate with the caller.

In-Person Individual Visit

For in-person visits, staff will assess the language needs of in-person LEP visitors. Staff will be equipped with HUD's "I Speak" language card to facilitate language identification, if necessary. (Education for all City employees in customer service related positions on the appropriate use of the cards will be provided via a staff meeting or when newly hired.)

If no City staff members can effectively assist an LEP individual, then the staff member may utilize the Language Line.

Employees shall document any request made for LEP assistance as well as the action taken and notify Accounting of the use of the Language Line service.

IV. Staff Training

The following training will be provided to all staff:

- Information on the Title VI Policy and LEP responsibilities.
- Description of language assistance services offered to the public.
- Use of the "I Speak" cards.
- Documentation of language assistance requests.
- How to handle a potential Title VI/LEP complaint.

All contractors or subcontractors performing work for City of Norfolk will be required to follow the Title VI/LEP guidelines.

V. Translation of Documents

• City of Norfolk weighed the cost and benefits of translating documents for potential LEP groups. Considering the expense of translating the documents, the likelihood of frequent changes in documents and other relevant factors, at this time it is an unnecessary burden to have any documents translated.

• Due to the very small local LEP population, City of Norfolk does not have a formal outreach procedure in place, as of 2012. Translation resources have been identified and are limited in this region. However, when and if the need arises for LEP outreach, City of Norfolk will prepare documents or schedule meetings for which the target audience is expected to include LEP individuals. As is needed documents, notices, flyers and agendas will be printed in an alternative language based on the known LEP population.

VI. Monitoring

The City of Norfolk will monitor and update the LEP Plan as required. At a minimum, the plan will be reviewed and updated when data from next U.S. Census is available, or when it is clear that higher concentrations of LEP individuals are present in the City of Norfolk service area. Updates will include the following:

- The number of documented LEP person contacts encountered annually.
- How the needs of LEP persons have been addressed.
- Determine the current LEP population in the service area.
- Determine whether the need for translation services has changed.
- Determine whether local language assistance programs have been effective and sufficient to meet the need.
- Determine whether City of Norfolk's financial resources are sufficient to fund language assistance resources needed.
- Determine whether the City of Norfolk fully complies with the goals of this LEP Plan.
- Determine whether complaints have been received concerning the City's failure to meet the needs of LEP individuals.

VII. Dissemination of City of Norfolk LEP Plan

- Post signs at City offices notifying LEP persons of the LEP Plan and how to access language services.
- The City of Norfolk's LEP Plan and Title VI complaint procedure is located on the City of Norfolk's website at www.ci.norfolk.ne.us. Any person or agency may request a copy of the Plan via telephone, fax, mail, or in person and will be provided a copy of the Plan at no cost. LEP individuals may request a copy of the Plan in alternative languages which will be provided if feasible.

VIII. Compliance/Grievance Procedures

All complaints regarding access or alleged discrimination shall be submitted in writing to the Title VI Coordinator. The Title VI Coordinator Administrator shall establish procedures for hearing complaints, requests or suggestions from persons, regarding language barriers to accessing and participating in the public services, activities, functions, and facilities in the community on an individual basis. The Title VI Coordinator shall issue a written recommendation within thirty (30) days of notification of complaint.

If the complaint cannot be resolved to the satisfaction of the complainant, it will then be heard by the City Council. A determination shall be made within thirty (30) days of the hearing. The City Council's decision is final.

A record of the action taken shall be maintained as a part of the records or minutes at each level of the grievance process. Use of this grievance procedure is not a prerequisite to the pursuit of other remedies nor does it preclude an individual from filing a complaint with other appropriate agencies.

Questions or comments regarding the LEP Plan may be submitted to the City of Norfolk:

Title VI Coordinator
Human Resources Director
309 North 5th Street
Norfolk, NE 68701
(402) 844-2010

FCC Notification for Spectrum Manager Lease
Ownership Disclosure Information
and
Spectrum Lease Agreement
("Agreement")

This Agreement contains two parts: Part (1) is The FCC Notification for Spectrum Manager Lease, to be filed with the FCC by Sensus on behalf of the Customer, coupled with Ownership Disclosure Information required for the FCC lease and Part (2) is a Spectrum Lease Agreement between Sensus as Lessor and Customer as Lessee. Together, these two parts create the Agreement.

The number of pages in this Agreement is indicated below, and Customer represents that it has received, reviewed, and completed the entire Agreement. By their signatures below, the parties agree to the terms and conditions set forth in this Agreement. The parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year written below.

Sensus USA Inc. & Sensus Spectrum, LLC (together, "Sensus")	**Customer: City of Norfolk (NE)**
Sensus USA Inc. Signature: _____ Name: Colin Flannery Title: Vice President Date: _____	Signature: _____ Name: Dennis Watts Title: Water & Sewer Director Date: 11-12-15
Sensus Spectrum, LLC Signature: _____ Name: Colin Flannery Title: Vice President Date: _____	Customer contact person for FCC filings: Name: Dennis Watts Phone: 402-844-2210 Email: dwatts@ci.norfolk.ne.us Customer FRN: _____ Customer Tax ID: _____

Part 1: Notification for Spectrum Manager Lease

In order for Sensus to apply to the FCC on the Customer's behalf for a spectrum manager lease, Customer must complete the information below in boxes one (1) through ten (10) and certify via authorized signature. Customer's signature will indicate that Customer authorizes Sensus to file the spectrum manager lease notification on FCC Form 608 with the Customer as spectrum Lessee, and if Customer does not already have one, ownership disclosure information on FCC Form 602.

Customer / Lessee Information

1

Customer/Lessee Name: City of Norfolk Water & Sewer Division		
Attention To: Dennis Watts	**Name of Real Party in Interest**:	
Street Address: 300 South 49th Street		**City**:Norfolk
State: Ne	**Zip**: 68701	**Phone**:402-844-2210
Fax: 402-644-2588	**Email**:dwatts@ci.norfolk.	

Is Customer contact information same as above? ☒Yes ☐No (If No, complete box 2 below)

Additional Customer/Lessee Contact Information

2

Company Name:		
Attention To:		
Street Address:		**City**:
State:	**Zip**:	**Phone**:
Fax:	**Email**:	

3

Customer/Lessee is a(n) (Select one): ☐Individual I ☐ Unincorporated Association I ☐Trust
☒Government Entity I ☐Corporation I ☐ Limited Liability Company I ☐General Partnership
☐Limited Partnership I ☐Limited Liability Partnership I ☐Consortium I ☐ Other _____

4

FCC Form 602: FCC File Number of Customer's Form 602 Ownership Information: _____. If Customer has not filed a Form 602, Sensus will file one for Customer. Please complete questions 5, 6, and 7 below if Customer does not have a Form 602 on file.
Customer must complete items 8, 9 and 10 irrespective of whether Customer has an ownership report on file.

5

Customer Tax ID:

6

Individual Contact For FCC Matters

Please designate one individual (the Director of Public Works or similar person) who is responsible to the FCC for the operation of the FlexNet radio system.	
Name Dennis Watts	
Title: Water & Sewer Director	
Email: dwatts@ci.norfolk.ne.us	Phone: 402-844-2210

Ownership Disclosure Information

7

Customer/Lessee to list the names of the Mayor and all Council Members below, as well as verify citizenship and ownership interests in any entity regulated by the FCC. Such ownership must be disclosed where a mayor/council member owns 10% or more, directly or indirectly, or has operating control of any entity subject to FCC regulation. If any answer to Ownership question is Yes, or any answer to Citizenship question is No, provide an attachment with further explanation.

	US Citizen?	Ownership Disclosure?
Mayor: Sue Fuchtman	☒Yes ☐No	☐Yes ☒No
Council Member: Dick Pfeil	☒Yes ☐No	☐Yes ☒No
Council Member: Corey Granquist	☒Yes ☐No	☐Yes ☒No
Council Member: Dave Fauss	☒Yes ☐No	☐Yes ☒No
Council Member: Jim Lange	☒Yes ☐No	☐Yes ☒No
Council Member: Josh Moenning	☒Yes ☐No	☐Yes ☒No
Council Member: Rob Merrill	☒Yes ☐No	☐Yes ☒No
Council Member: Shane Clausen	☒Yes ☐No	☐Yes ☒No
Council Member: Thad Murren	☒Yes ☐No	☐Yes ☒No
Council Member:	☐Yes ☐No	☐Yes ☐No

8

Alien Ownership Questions (if the answer is Yes, provide an attachment explaining the circumstances)

1) Is the Customer/Lessee a foreign government or the representative of any foreign government?	☐Yes ☒No

9

Basic Qualification Information

1) Has the Customer or any party to this application had any FCC station authorization, license, or construction permit revoked or had any application for an initial, modification or renewal of FCC station authorization, license or construction permit denied by the Commission?	☐Yes ☒No
2) Has the Customer or any party to this filing, or any party directly or indirectly controlling the Customer or any party to this filing ever been convicted of a felony by any state or federal court?	☐Yes ☒No
3) Has any court finally adjudged the Customer or any party directly or indirectly controlling the Customer guilty of unlawfully monopolizing or attempting to unlawfully monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangement, or any other means or unfair methods of competition?	☐Yes ☒No

10

Customer/Lessee Certification Statements

1) The Customer/Lessee agrees that the Lease is not a sale or transfer of the license itself.	☒Yes
2) The Customer/Lessee acknowledges that it is required to comply with the Commission's Rules and Regulations and other applicable law at all times, and if the Customer/Lessee fails to so comply, the Lease may be revoked, cancelled, or terminated by either the Licensee or the Commission.	☒Yes
3) The Customer/Lessee certifies that neither it nor any other party to the Application/Notification is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C § 862, because of a conviction for possession or distribution of a controlled substance (*See* Section 1.2002(b) of the rules, 47 CFR § 1.2002(b), for the definition of "party to the application" as used in this certification.)	☒Yes
4) The Customer/Lessee hereby accepts Commission oversight and enforcement consistent with the license and lease authorization. The Lessee acknowledges that it must cooperate fully with any investigation or inquiry conducted either by the Commission or the Licensee, allow the Commission or the Licensee to conduct on-site inspections of transmission facilities, and suspend operations at the direction of the Commission or the Licensee and to the extent that such suspension of operation would be consistent with applicable Commission policies.	☒Yes

5) The Customer/Lessee acknowledges that in the event an authorization held by a Licensee that it has association with it a spectrum leasing arrangement that is the subject of this filing is revoked, cancelled, terminated, or otherwise ceases to be in effect, the Customer/Lessee will have no continuing authority to use the leased spectrum and will be required to terminate its operations no later than the date on which the Licensee ceases to have any authority to operate under the license, unless otherwise authorized by the Commission.	☒Yes
6) The Customer/Lessee agrees the Lease shall not be assigned to any entity that is not eligible or qualified to enter into a spectrum leasing arrangement under the Commission's Rules and Regulations.	☒Yes
7) The Customer/Lessee waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by spectrum lease or otherwise.	☒Yes
8) The Customer/Lessee certifies that it is not in default on any payment for Commission licenses and that it is not delinquent on any non-tax debt owed to any federal agency.	☒Yes

The Customer/Lessee certifies that all of its statements made in this Application/Notification and in the schedules, exhibits, attachments, or documents incorporated by reference are material, are part of this Application/Notification, and are true, complete, correct, and made in good faith. The Customer/Lessee shall notify Sensus in writing in the event any information supplied on this form changes.

Type or Printed Name of Party Authorized to Sign

First Name: Dennis	MI: G	Last Name: Watts	Suffix:
Title: Water & Sewer Director		Customer Name: City of Norfolk Water & Sewer Division	
Signature:			Date: 11-12-15
FAILURE TO SIGN THIS APPLICATION MAY RESULT IN DISMISSAL OF THE APPLICATION AND FORFEITURE OF ANY FEES PAID.			
WILLFUL FALSE STATEMENTS MADE ON THIS FORM OR ANY ATTACHMENTS ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. Code, Title 18, Section 1001) AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. Code, Title 47, Section 312(a)(1)) AND/OR FORFEITURE (U.S. Code Title 47, Section 503).			

Part 2: SPECTRUM LEASE AGREEMENT

Background

A. Customer has bought or will buy or use FlexNet equipment manufactured by Sensus;
B. Sensus is leasing spectrum to Customer to operate the FlexNet equipment;
C. The spectrum that Sensus is leasing is authorized by Sensus' FCC License(s); and
D. Sensus is leasing spectrum to Customer in the area where FlexNet equipment will be operated (the "Service Area").

Agreement

A. **Spectrum Lease.** Sensus hereby grants to Customer and Customer accepts a spectrum manager lease ("Lease") over the frequencies of the FCC License and solely within Customer's Service Area. (The frequencies of the FCC License within Customer's geographic Service Area are called the "Leased Spectrum"). For use of the spectrum, Sensus shall partition $1 from the annual/monthly or other ongoing fees already being paid by Customer, and such amount is hereby allocated to the spectrum Lease pursuant to this Agreement.

B. **FCC Forms.** At the Federal Communications Commission (FCC), Sensus will; (1) obtain an FCC Registration Number (FRN) for Customer; (2) submit on behalf of Customer the FCC Form 602 Ownership Disclosure Information if Customer has not already done so; and (3) file a FCC Form 608, notification/application for long-term spectrum manager lease. This Lease becomes effective when the FCC accepts the FCC Form 608.

C. **Lease Application.** In order to complete the FCC lease application, Customer will:
   i. Complete and sign the representations in Part 1 of this Agreement such that Customer demonstrates it qualifies for a spectrum lease under FCC rules. Customer's signature will indicate that Customer authorizes Sensus to; (1) obtain an FRN on behalf of Customer; (2) submit the FCC Form 602 Ownership Disclosure Information on behalf of Customer if Customer has not already done so; and (3) file the spectrum manager lease notification on FCC Form 608 with the Customer as spectrum lessee.
   ii. Give Sensus the coordinates of the boundaries of Customer's Service Area or, alternatively, approve Sensus' estimation of the same.
   iii. If Customer has not already done so; Customer hereby authorizes Sensus to apply on Customer's behalf and obtain for Customer a Federal Registration Number (FRN, the FCC's unique identifier for each licensee) and shall supply Sensus with Customer's Taxpayer Identification Number (TIN).
   iv. Provide any other information or other cooperation reasonably necessary for the Parties to perform as set forth herein.

D. **Permitted Use of Spectrum Lease.** Customer may transmit or receive over the Leased Spectrum only in the Service Area and only using FlexNet equipment manufactured by Sensus and used in accordance with Sensus' specifications. Customer may use the Leased Spectrum only to read and direct meters in support of Customer's primary utility business or any other operation approved by Sensus in writing. Without limiting the foregoing, Customer is prohibited from reselling, subleasing or sublicensing the Leased Spectrum or from transmitting voice communications over the Leased Spectrum.

E. **Term of Spectrum Lease.** Unless terminated earlier (because for example Customer stopped using the FlexNet equipment), this Lease will have the same term as the FCC license. If Customer is operating in compliance with this Agreement and Customer's underlying agreement with Sensus and is current on any payments owed to Sensus, when the FCC License renews, the Parties will apply to the FCC to renew this Lease.

F. **Termination of Spectrum Lease.** The Lease will terminate: (a) two months after Customer stops transmitting with FlexNet equipment manufactured by Sensus; (b) upon termination, revocation or expiration of the FCC License; or (c) upon Customer's breach of this Agreement.

G. **FCC Compliance.** The following FCC requirements apply
   i. Pursuant to 47 CFR 1.9040(a);
      (a) Customer must comply at all times with applicable FCC rules. This Agreement may be revoked by Sensus or the FCC if Customer fails to so comply;
      (b) If the FCC License is terminated, Customer has no continuing right to use the Leased Spectrum unless otherwise authorized by the FCC;
      (c) This Agreement is not an assignment, sale or other transfer of the FCC License;
      (d) This Agreement may not be assigned except upon written consent of Sensus, which consent may be withheld in its discretion; and
      (e) In any event, Sensus will not consent to an assignment that does not satisfy FCC rules.
   ii. Referencing 47 CFR 1.9010, Sensus retains *de jure* and *de facto* control over the applicable radio facilities, including that,

(a) Sensus will be responsible for Customer's compliance with FCC policies and rules. Sensus represents and warrants that it has engineered the FlexNet equipment and accompanying software and other programs to comply with FCC rules. Customer will operate the FlexNet equipment subject to Sensus' supervision and control and solely in accordance with Sensus' specifications. Sensus retains the right to inspect Customer's radio operations hereunder and to terminate this Agreement or take any other necessary steps to resolve a violation of FCC rules, including to order Customer to cease transmission. Sensus will act as spectrum manager in assigning spectrum under the FCC License so as to avoid any harmful interference or other violation of FCC rules. Sensus will be responsible for resolving any interference complaints or other FCC rule violations that may arise; and

(b) Sensus will file any necessary FCC forms or applications and Customer agrees reasonably to assist Sensus with such filing by providing any necessary information or other cooperation. Sensus will otherwise interact with the FCC with respect to this Agreement, the FCC License or FlexNet equipment.

H. **Interference.** Customer agrees to report to Sensus promptly, and in no event later than 72 hours afterward, any incident related to the Leased Spectrum, including where Customer experiences harmful interference, receives a complaint or other notice of having caused harmful interference, or receives any type of communication from the FCC or other government agency regarding radio transmission.

I. **Limitation of Liability.** Each parties' liability in any and all causes of action arising under, out of or in relation to this Agreement, its negotiation, performance, breach or termination (collectively, "Causes of Action") shall be limited to direct damages. Neither party shall be liable for any indirect, incidental, special or consequential damages. This is so whether the Causes of Action are in tort, including, without limitation, negligence or strict liability, in contract, under statute or otherwise. The limitations on liability set forth in this Agreement are fundamental inducements to both parties to enter into this Agreement. They apply unconditionally and in all respects. They are to be interpreted broadly so as to give the maximum protection permitted under law.

[Rest of this page intentionally left blank.]

###

EXHIBIT A

FCC LICENSE(S) AND LICENSED FREQUENCIES

Call Sign	Market Number	Channel Block	Market Name
WQDQ234	BEA118	AM	Omaha, NE-IA-MO
WQDQ235	BEA118	AN	Omaha, NE-IA-MO
WQDQ236	BEA118	AO	Omaha, NE-IA-MO
WQDQ237	BEA118	AP	Omaha, NE-IA-MO

EXHIBIT B

GEOGRAPHIC BOUNDARIES OF UTILITY'S SERVICE AREA

Channels (Base/Remote Frequency)	**Locations** (Coordinates)
932.0000 - 932.0500 MHz uplink, **941.0000 - 941.0500 MHz downlink**	**42 03 42.1 N, 097 27 56.0 W** **42 02 48.4 N, 097 29 05.0 W** **42 01 56.0 N, 097 29 05.2 W** **42 00 10.7 N, 097 25 54.6 W** **42 00 08.5 N, 097 23 50.1 W** **42 00 48.0 N, 097 22 06.9 W** **42 02 49.7 N, 097 22 06.6 W** **42 03 43.1 N, 097 23 15.7 W**

Sec. 15.50. College Credit Reimbursement Policy.

Any full-time employee with the City of Norfolk may be reimbursed for college credit classes ~~taken~~ completed by the employee. ~~This reimbursement is limited to $1000 per employee per year~~. Reimbursement shall be allowed as established in the municipal budget. ~~However~~ To receive reimbursement for the class, the ~~student~~ employee must pass the class with a grade of C or higher. Proof of the grade of C or higher must be shown to receive the reimbursement. The amount budgeted can be applied to ~~$1000 applies~~ tuition, books and fees. To receive reimbursement for books purchased for classes, credit hours taken and applicable fees, a receipt must be provided to account payable personnel. All classes taken must be on the employee's own time. The reimbursement shall be made on a rolling 12-month interval beginning from the time the first class is completed. Should the employee leave the City within one year after completion of course work, other than through a reduction in force, the employee shall reimburse the City for the costs incurred one year prior to his/her leaving. (Amended 12-17-01, 7-2009, 10-1-2011)

Economic Development Citizen Advisory Review Committee

Semi-annual Report

December 3, 2015

The CARC met on December 3, 2015. Members in attendance were as follows: Jan Einspahr, Aaron Otten, Cindy Morrow, and Randy Gates (ex-officio non-voting member). Members absent were as follows: Bill Canham and Jim Mangels. Guests present were Candace Bossard and Sheila Rios from the City of Norfolk. The agenda for the meeting and related action was as follows:

1. **Review current funding of City's Economic Development Fund.**

   The Committee reviewed the Economic Development Fund (EDF) financial statements from May 2015 to October 2015. As of October 31, the EDF had $4 million of cash. Bond proceeds from June 2014 have not been expended as of October 31. The only expenditure during the period was debt service payments on the bonds.

2. **Commitment of LB 840 funds to Northeast Nebraska Line.**

   Black Hills Energy is committed to constructing a pipeline from Bancroft to Norfolk. The size of the pipe has not been announced. OCT Pipe, LLC has announced plans to construct a manufacturing facility in Norfolk. They will be a significant user of gas from the new pipeline.

3. **Economic Development update.**

   Black Hills Energy's Board of Directors has reaffirmed its approval of the Northeast Nebraska Line project.

4. **Consideration of CARC findings and suggestions for the public hearing at the December 21 Council meeting.**

   a. The CARC finds that the City's EDP is operating in compliance with the budget and the voter-approved economic development plan.

   b. State Statues require at least 50% of revenues be expended or committed after five full budget years following initiation of the program. This required the City to have 50% expended or committed by October 1, 2015. On June 30, 2014 the City entered into an agreement with Black Hills Energy committing $3.6 million for construction of a natural gas pipeline. This agreement was in effect on October 1, 2015 and remains in effect. While not necessary for the expenditure of LB840 funds for an infrastructure project, this agreement contemplated Tejas Tubular, or one of its subsidiaries, will be the applicant for this funding. It is now known that

Tejas Tubular will not be applying for funding and the agreement is being modified to reflect that there will not be an applicant. The CARC suggests the City obtain a letter of intent from Black Hills Energy that it is still planning construction of the natural gas pipeline pending modification of the June 30, 2014 agreement. *That letter of intent has since been received from Black Hills Energy and* is *included with the CARC report.*

CITY OF NORFOLK ECONOMIC DEVELOPMENT PROGRAM

CITIZENS ADVISORY REVIEW COMMITTEE

REVIEW CHECKLIST

FOR THE MEETING OF December 3, 2015

I. REVIEW OF ECONOMIC DEVELOPMENT FUND FINANCIAL STATEMENTS

a. Has a separate economic development fund been established? Yes.
b. Has all money received by reason of the Economic Development Program been deposited into the fund? Yes.
c. Have all disbursements from the fund been for purposes prescribed in the Local Option Municipal Economic Development Act and the City of Norfolk Economic Development Plan? Yes.
d. Is money in the fund invested in the City's pooled investment account? Yes.
e. Is only the minimum required amount being spent from the fund to assist in administration of the program? Yes. Nothing is being paid for administration out of the ED Fund.

II. REVIEW OF ACTIVITIES

a. Are activities of the Economic Development Program eligible activities under Section III of the voter approved Economic Development Plan? Yes.

III. REVIEW OF NEW APPLICATIONS No new applications this period.

a. Is it an eligible business as defined in Section III of the voter approved Economic Development Plan?
b. Does the Company employ people and carry on jobs in any other Nebraska city or cities?
    i. If so, has the company agreed to maintain employment in the other Nebraska city or cities as required in Statues?
c. Is the amount of funding no more than 50% of project cost?
d. Is there a 10% minimum equity investment?
e. Is the application complete and related documentation submitted as required in Section VI of the voter approved Economic Development Plan?

	City staff has received and reviewed		
	Yes*	No	N/A
i. A detailed description of the project			
ii. Employment, wage, and financial projections			
iii. Current and past financial statements			
iv. Personal financial statements of principals involved			

v. Financing requirements for the project			
vi. Total project cost			
vii. Completed Economic Development Program Application			
viii. Additional information requested by the program administrator			

*Items marked Yes are available for review during CARC meeting if CARC members sign confidentiality statements for the applicant.

IV. REVIEW OF EDS RECOMMENDATION No new projects to review this period.

a. Has the EDS met to review the project?
b. Has the EDS provided a recommendation to the program administrator?

V. REVIEW OF COUNCIL No new projects approved by the Council this period.

a. Has the Norfolk City Council approved the project?

VI. REVIEW OF LOAN No new loans this period.

a. Is the interest rate at least half of prime rate on the date of loan approval?
b. Is term of note equal to or less than
    i. 5 years for assets other than capital assets
    ii. 15 years for capital assets
c. Does security for loans include a personal and/or corporate guarantee?
d. Has a loan repayment schedule providing for monthly, quarterly or annual payments been approved in conjunction with project approval?
e. If a portion of the loan is approved as a forgivable loan based upon job creation or retention, is the City, or its contracting agency, auditing and verifying the job creation or retention?
f. Is at most 99% of the loan forgivable?

VII. REVIEW OF PURCHASE OF REAL ESTATE OR OPTION TO PURCHASE No real estate purchased or optioned this period.

a. Is land to be purchased or optioned identified through local analysis by the City of Norfolk and/or an Industrial Site Evaluation team organized by the City of Norfolk or the program administrator?
b. Is the land free of excessive easements, covenants and other encumbrances?
c. Does the land conform, or is it able to be rezoned to conform, with the intended use?
d. Are proceeds from sale of such land returned to the City of Norfolk's economic development fund for re-use?

VIII. REVIEW OF CONFIDENTIALITY

a. Has the City taken the necessary steps to ensure the confidentiality of confidential information it receives from qualifying businesses? Yes. Confidential information is stored in a secure location. Only employees who have signed a confidentiality statement have access to confidential information.

IX. REVIEW OF PROCESS TO ASSURE THAT ALL APPLICABLE LAWS, REGULATIONS AND REQUIREMENTS ARE MET BY THE CITY AND QUALIFYING BUSINESSES

a. Has the city attorney reviewed all contracts, official documents, land transactions and other official actions related to the Economic Development? No documents or other official actions to review this period.

X. CARC FINDINGS AND SUGGESTIONS – Section 18-2715(3) of Statues provides for the CARC to:

review the functioning and progress of the economic development program and to advise the governing body of the city with regard to the program. At least once in every six-month period after the effective date of the ordinance, the committee shall report to the governing body on its findings and suggestions at a public hearing called for that purpose.

a. What are the CARC's findings? The City's EDP is operating in compliance with the budget and the voter-approved economic development plan.

b. What suggestions, if any, does the CARC have? State Statues require at least 50% of revenues be expended or committed after five full budget years following initiation of the program. This required the City to have 50% expended or committed by October 1, 2015. On June 30, 2014 the City entered into an agreement with Black Hills Energy committing $3.6 million for construction of a natural gas pipeline. This agreement was in effect on October 1, 2015 and remains in effect. While not necessary for the expenditure of LB840 funds, this agreement contemplated Tejas Tubular, or one of its subsidiaries, will be the applicant for this funding. It is now known that Tejas Tubular will not be applying for funding and the agreement is being modified to reflect that there will not be an applicant. The CARC suggests the City obtain a letter of intent from Black Hills

Energy that it is still planning construction of the natural gas pipeline pending modification of the June 30, 2014 agreement. *That letter of intent has since been received from Black Hills Energy and is included with the CARC report.*

Black Hills Energy

Jeff Sylvester
Vice President, Nebraska Gas Operations
Jeff.Sylvester@blackhillscorp.com

PO Box 83008
Lincoln, NE 68501

December 10, 2015

City of Norfolk
Mayor Sue Fuchtman
309 N 5th Street
Norfolk, NE 68701

Dear Mayor Fuchtman:

I'm writing today to update you on the status of the Northeast Nebraska Line. As you recall, the City of Norfolk and Black Hills/Nebraska Gas Utility Company, LLC d/b/a Black Hills Energy entered into the Northeast Nebraska Line Funding Assistance Agreement on June 30, 2014. Earlier this year, we notified you that the timeline for the project had changed and I'm pleased to tell you that we are resuming the construction project.

To that end, our new timeline anticipates beginning construction of the Northeast Nebraska Line (NENL) in early spring of 2016 and completing the project in the fall of 2016. Currently, we have signed easement agreements from 70 percent of the landowners along the route and all landowners will soon receive a letter notifying them of the new construction timeline. Our team will also be resuming discussions with the remaining landowners and working towards completing easement acquisition.

We intend to contact the City of Norfolk staff soon to update and amend the current Northeast Nebraska Line Funding Assistance agreement.

Thank you for your partnership as we continue working to increase the supply and availability of natural gas in Northeast Nebraska. Black Hills Energy is committed to the NENL project and working hard to continue providing safe, and reliable natural gas in Northeast Nebraska for many years.

Sincerely,

Jeff Sylvester

November 6, 2015

Communications Towers

Research and synopsis from other 1st class cities:
Columbus, Fremont, Grand Island, Kearney, Scottsbluff

Synopsis:
We spoke with planning staff from Columbus, Fremont, Grand Island, Kearney and Scottsbluff. We inquired if their city has had similar scenarios of utilizing a utility pole as a communication tower. Following are the responses from our telephone conversations and other 1st class city communication tower codes. All cities are unique in regards to their code, uses, topography, needs and other factors that determine how each community responds to individual situations.

Per my review of other first class cities' communications tower code, it appears to me that Norfolk is one of the least restrictive cities when it comes to requirements such as: permit submittals, tower siting regarding permitted zoning districts, setbacks, proof of colocation viability, and separation distances between towers. Attached after this synopsis are excerpt examples and the full communication tower codes for the researched cities.

Utility Poles utilized as Communications Tower:
Columbus – They have never heard of the particular situation of utilizing a utility pole as a communication tower, but said that they would not categorize a private broadband/internet company as a utility.

Fremont – They have not had this situation arise in their city. Did say that if a pole was being used for the purpose of communication/internet, then that would make it a communication tower. Therefore the communication tower code requirements would be need to be followed.

Grand Island – Similar line of sight poles have been requested from the city. Yes, they consider utility poles having this use as a communication tower and require a conditional use permit for them.

Kearney – NPPD manages their system and private cellular and internet providers are in negotiations with NPPD to work with using existing poles.

Scottsbluff – They are negotiating with NPPD to use existing poles with a licensing agreement, so that no more poles than necessary are installed.

Valerie Grimes, City Planner

Trenton Howard, Prevention Manager

Tower Definitions:

Norfolk - *Tower* shall mean a structure situated on a site that is intended for transmitting or receiving television, radio, or telephone communication. (also see Antenna)
Antenna shall mean any attached or external system of wires, poles, rods, reflecting disks or similar devices used for the transmission or reception of electromagnetic waves. (also see Satellite dish antenna and Tower)
Satellite dish antenna shall mean a round, parabolic antenna incorporating a reflective surface that is solid, open mesh, or bar configured and is in the shape of a shallow dish, or cone and used to transmit and/or receive radio or electromagnetic waves.

Columbus - *"Tower"* means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio and similar communication purposes, including self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like. The term includes the structure and any support thereto.

Fremont - *Communications Tower:* A structure(s) for the transmission or broadcasting of radio, television, radar, or microwaves, ordinarily exceeding the maximum height permitted in its zoning district. Typical uses include broadcasting towers and cellular communications towers.

Grand Island - *Tower* means a self-supporting lattice, guyed, or monopole structure which supports Telecommunications Facilities. The term Tower shall not include non-commercial amateur radio operators equipment as licensed by the FCC or structure supporting an earth station antenna serving residential premises or dwelling units exclusively.

Kearney - *Tower* shall mean any structure that is designed and constructed primarily for the purpose of supporting one (1) or more antennas, including any antenna support structure, self-supporting lattice towers, guy towers, or monopole towers. The term encompasses personal wireless service facilities, radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers or personal communications services towers, alternative tower structures, and the like.

Scottsbluff - *Tower(s)* means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers or monopole towers.

Examples of Tower Setbacks from Other Uses:

Norfolk - Freestanding towers shall be located so that the distance from the base of the tower to any adjoining property line or the supporting structure of a separate neighboring tower is a minimum of 100% of the tower height. The planning commission may reduce the set back with a conditional use permit if it determines that such reduction does not constitute a hazard to safety or property on adjacent properties or rights-of-way.

Columbus - Towers must be set back a distance equal to at least one hundred percent (100%) of the height of the tower from any adjoining lot line. Tower separation shall be measured from the base of the tower to the lot line of the off-site uses and/or designated areas as specified in Table 1.

Table 1:

Off-site Use/Designated Area	Separation Distance
Single-family or duplex residential units1	200 feet or 300% height of tower whichever is greater
Vacant single-family or duplex residentially zoned land which is either platted or has preliminary subdivision plan approval which is not expired	200 feet or 300% height of tower 2 whichever is greater
Vacant unplatted residentially zoned lands 3	100 feet or 100% height of tower whichever is greater
Existing multi-family residential units greater than duplex units	100 feet or 100% height of tower whichever is greater
Non-residentially zoned lands or non-residential uses	None; only setbacks apply

1 Includes modular homes and mobile homes used for living purposes.
2 Separation measured from base of tower to closest building setback line.
3 Includes any unplatted residential use properties without a valid preliminary subdivision plan or valid development plan approval and any multi-family residentially zoned land greater than duplex.

Fremont –

(a) All towers up to fifty (50) feet in height shall be set back on the sides a distance equal to the underlying setback requirements in the applicable zoning district. Towers in excess of fifty (50) feet in height shall be set back a distance equal to the manufacturers designed fall distance rate. The height of the tower shall be measured from the floor of the base pad to the top of the tower. Setback requirements shall be measured from the base of the tower to the nearest boundary line of the tract of land on which it is located.

(b) Towers of one hundred fifty (150) feet or less in height located in or adjacent to any residential district or LC, CC, DC or GC commercial district shall be separated from any residential structure, school, church and/or occupied structures other than those utilized by the tower owner, by a minimum of one hundred percent (100%) of the height of the tower.

(c) Towers exceeding one hundred fifty (150) feet in height may not be located in any R1 through R5 residential district or LC, CC, DC or GC commercial district, and must be separated from said district by a minimum of the height of the proposed tower. Towers with heights greater than one hundred fifty (150) feet shall only be located in an industrial or agriculturally zoned district.

Grand Island -

(A) All towers up to fifty (50) feet in height shall be set back on all sides a distance equal to the underlying setback requirement in the applicable zoning district. Towers in excess of fifty (50) feet in height shall be set back one additional foot for each foot of tower height in excess of fifty (50) feet, except where such setback is from property owned, controlled and/or maintained by the City of Grand Island and the City Council finds in granting the permit that reducing such additional setback will not cause harm to the intended use of the public property. The height of a tower shall be measured from the grade at the foot of the base pad to the top of any telecommunications facilities or antennas attached thereto. Setback

requirements shall be measured from the base of the tower to the property line of the tract of land on which it is located.

(B) Towers exceeding one hundred (100) feet in height may not be located in any residential zoned district and must be separated from all residential zoned land and occupied structures other than those utilized by the tower owner, by a minimum of two hundred (200) feet or one hundred percent (100%) of the height of the proposed tower, whichever is greater.

(C) Towers of one hundred (100) feet or less in height may be located in residential zoned districts provided said tower is separated from any residential structure, school, church, and/or occupied structures other than those utilized by the tower owner, by a minimum of one hundred percent (100%) of the height of proposed tower.

Kearney - Tower setbacks shall be measured from the base of the tower to the property line of the parcel on which it is located. Unless there are unusual geographic limitations or other public policy considerations as determined in the City's sole discretion, in residential districts and residential land use areas, where permitted, towers shall be set back from all property lines a distance equal to three hundred percent (300%) of tower height as measured from ground level. Except as provided herein and except for unusual geographic limitations or other public policy considerations, as determined in the City's sole discretion, towers shall comply with the minimum setback requirements of the area in which they are located in all other zoning districts.

Scottsbluff - Required setbacks will be determined on individual site bases through review of each Conditional Use Permit. Collapsible Tower design may be required in certain instances.

Examples of Separation Distances between Towers:

Norfolk – None

Columbus – Separation distances between towers shall be applicable for and measured between the proposed tower and preexisting towers. The separation distances shall be measured by drawing or following a straight line between the base of the existing tower and the proposed base, pursuant to a site plan, of the proposed tower. The separation distances (listed in linear feet) shall be as shown in Table 2.

Table 2: Existing Towers - Types

	Lattice	Guyed	Monopole 75 Ft in Height or Greater	Monopole Less Than 75 Ft. in Height
Lattice	5000	5000	1500	750
Guyed	5000	5000	1500	750
Monopole 75 Ft. in Height or Greater	1500	1500	1500	750
Monopole Less Than 75 Ft. in Height	750	750	750	750

Fremont - (a) Monopole tower structures shall be separated from all other towers whether monopole, self-supporting lattice or guyed towers by a minimum of seven hundred fifty (750) feet.

(b) Self-supporting lattice or guyed towers shall be separated from all other self-supporting lattice or guyed towers by a minimum of one thousand five hundred (1,500) feet.

Grand Island - (1) Monopole tower structures shall be separated from all other towers, whether monopole, self-supporting lattice, or guyed, by a minimum of seven hundred fifty (750) feet.

(2) Self-supporting lattice or guyed towers shall be separated from all other self-supporting or guyed towers by a minimum of one thousand five hundred (1,500) feet.

Kearney – None

Scottsbluff - None

13 ARTICLE THIRTEEN

WIRELESS TELECOMMUNICATIONS TOWERS AND ANTENNAS

13-1 Purpose

The purpose of this ordinance is to establish general guidelines for the siting of wireless communications towers and antennas. The goals of this ordinance are to: (1) protect residential areas and land uses from potential adverse impacts of towers and antennas; (2) encourage the location of towers in non-residential areas; (3) minimize the total number of towers throughout the community; (4) strongly encourage the joint use of new and existing tower sites as a primary option rather than construction of additional single-use towers; (5) encourage users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal; (6) encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas through careful design, siting, landscape screening, and innovative camouflaging techniques; (7) enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently; (8) consider the public health and safety of communication towers; and (9) avoid potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures. In furtherance of these goals, the City of Columbus shall give due consideration to the City of Columbus' Comprehensive Plan, Zoning Code and Zoning Map, existing land uses, and environmentally sensitive areas in approving sites for the location of towers and antennas.

13-2 Definitions

The following terms shall have the meanings set forth below:

a. "Alternative tower structure" means man-made trees, clock towers, bell steeples, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

b. "Antenna" means any exterior transmitting or receiving device mounted on a tower, building or structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals.

c. "Backhaul network" means the lines that connect a provider's towers/cell sites to one or more cellular telephone switching offices, and/or long distance providers, or the public switched telephone network.

d. "FAA" means the Federal Aviation Administration.

e. "FCC" means the Federal Communications Commission.

f. "Height" means, when referring to a tower or other structure, the distance measured from the finished grade of the parcel to the highest point on the tower or other structure, including the base pad and any antenna.

g. "Preexisting towers and preexisting antennas" means any tower or antenna for which a building permit or special use permit has been properly issued prior to the effective date of this

ordinance, including permitted towers or antennas that have not yet been constructed so long as such approval is current and not expired.

h. "Tower" means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio and similar communication purposes, including self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like. The term includes the structure and any support thereto.

13-3 Applicability

a. New Towers and Antennas. All new towers or antennas in the City of Columbus shall be subject to these regulations, except as provided in Sections 3(b) through (d), inclusive.

b. Amateur Radio station Operators/Receive Only Antennas. See Section 7-3(b) Zoning Code.

c. Preexisting Towers or Antennas. Preexisting towers and preexisting antennas shall not be required to meet the requirements of this ordinance, other than the requirements of Sections 4 (f) and 4(g). All damaged or destroyed towers shall be subject to and governed by the provisions of Section 10.

d. AM Array. For purposes of implementing this ordinance, an AM array, consisting of one or more tower units and supporting ground system which functions as one AM broadcasting antenna, shall be considered one tower. Measurements for setbacks and separation distances shall be measured from the outer perimeter of the towers included in the AM array. Additional tower units may be added within the perimeter of the AM array by right.

13-4 General Requirements

a. Building Permit. Each applicant for an antenna or tower shall complete and submit to Zoning Administrator, an application for a Building Permit. Such permit shall be issued only upon compliance with this Ordinance.

b. Principal or Accessory Use. Antennas and towers may be considered either principal or accessory uses. A different existing use of an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot.

c. Lot Size. For purposes of determining whether the installation of a tower or antenna complies with district development regulations, including but not limited to setback requirements, lot-coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lot.

d. Inventory of Existing Sites. Each applicant for an antenna and/or tower shall provide to the Zoning Administrator an inventory of its existing towers, antennas, or sites approved for towers or antennas, that are either within the jurisdiction of the City of Columbus or within the two-mile extra-territorial jurisdiction thereof, including specific information about the location, height, and design of each tower. The Zoning Administrator may share such information with other applicants applying for administrative approvals or special use permits under this ordinance or

other organizations seeking to locate antennas within the jurisdiction of the City of Columbus, provided, however that the Zoning Administrator is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

e. Aesthetics. Towers and antennas shall meet the following requirements:

1. Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness.
2. At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings.
3. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.

f. Lighting. Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views.

g. State or Federal Requirements. All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this ordinance shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state and federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.

h. Building Codes; Safety Standards. To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the City of Columbus concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards. Failure to bring such tower into compliance within said thirty (30) days shall constitute grounds for the removal of the tower or antenna at the owner's expense.

i. Measurement. For purposes of measurement, tower setbacks and separation distances shall be calculated and applied to facilities located in the City of Columbus irrespective of municipal and county jurisdictional boundaries.

j. Not Essential Services. Towers and antennas shall be regulated and permitted pursuant to this ordinance and shall not be regulated or permitted as essential services, public utilities, or private utilities.

k. Public Notice. For purposes of this ordinance, all notices shall be given pursuant to Section 12-3 (e) to 12-3 (r) of the Zoning Code.

l. Signs. No signs shall be allowed on an antenna or tower.

m. Buildings and Support Equipment. Buildings and support equipment associated with antennas or towers shall comply with the requirements of Section 8.

n. Multiple Antenna/Tower Plan. The City of Columbus encourages the users of towers and antennas to submit a single application for approval of multiple towers and/or antenna sites. Applications for approval of multiple sites shall be given priority in the review process.

13-5 Permitted Uses.

a. General. The uses listed in this Section are deemed to be permitted uses and shall not require administrative approval or a special use permit.

b. Permitted Uses. The following uses are specifically permitted:

1. Antennas or towers located on property owned by the City of Columbus provided a license or lease authorizing such antenna or tower has been approved by the City of Columbus.

13-6 Administratively Approved Uses.

a. General. The following provisions shall govern the issuance of administrative approvals for towers and antennas:

1. The Zoning Administrator may administratively approve the uses listed in this Section.

2. Each applicant for administrative approval shall apply to the Zoning Administrator providing the information set forth in Sections 7(b)(1) and 7(b)(3) of this ordinance and a non-refundable fee as established by resolution of the City Council to reimburse the City of Columbus for the costs of reviewing the application.

3. The Zoning Administrator shall review the application for administrative approval and determine if the proposed use complies with Sections 4, 7(b)(4) and 7(b)(5) of this ordinance.

4. The Zoning Administrator shall respond to each such application within sixty (60) days after receiving it by either approving or denying the application. If the Zoning Administrator fails to respond to the applicant within said sixty (60) days, then the application shall be deemed to be approved.

5. In connection with any such administrative approval, the Zoning Administrator may, in order to encourage shared use, administratively waive any zoning district setback requirements in Section 7(b)(4) or separation distances between towers in Section 7(b)(5) by up to fifty percent (50%).

6. In connection with any such administrative approval, the Zoning Administrator may, in order to encourage the use of monopoles, administratively allow the reconstruction of an existing tower to monopole construction.

7. If an administrative approval is denied, the applicant shall have the right to file an application for a special use permit pursuant to Section 7.

b. List of Administratively Approved Uses. The following uses may be approved by the Zoning Administrator after conducting an administrative review:

1. Locating a tower or antenna, including the placement of additional buildings or other supporting equipment used in connection with said tower or antenna, in any industrial or heavy commercial zoning district.

2. Locating antennas on existing structures or towers consistent with the terms of subsections (a) and (b) below.

a. Antennas on existing structures. Any antenna which is not attached to a tower may be approved by the Zoning Administrator as an accessory use to any commercial, industrial, professional, institutional, or multi-family structure of eight or more dwelling units, provided:

(i) The antenna does not extend more than thirty (30) feet above the highest point of the structure;
(ii) The antenna complies with all applicable FCC and FAA regulations; and
(iii) The antenna complies with all applicable building codes.

b. Antennas on existing towers. An antenna which is attached to an existing tower may be approved by the Zoning Administrator and, to minimize adverse visual impacts associated with the proliferation and clustering of towers, collocation of antennas by more than one carrier on existing towers shall take precedence over the construction of new towers, provided such collocation is accomplished in a manner consistent with the following:

(i) A tower which is modified or reconstructed to accommodate the collocation of an additional antenna shall be of the same tower type as the existing tower, unless the Zoning Administrator allows reconstruction as a monopole.

(ii) Height
(a) An existing tower may be modified or rebuilt to a taller height, not to exceed thirty (30) feet over the tower's existing height, to accommodate the collocation of an additional antenna.
(b) The height change referred to in subsection (iii)(a) may only occur one time per communication tower.
(c) The additional height referred to in subsection (iii)(a) shall not require an additional distance separation as set forth in section 7. The tower's premodification height shall be used to calculate such distance separations.

(iii) On-site location
(a) A tower which is being rebuilt to accommodate the collocation of an additional antenna may be moved onsite within fifty (50) feet of its existing location.
(b) After the tower is rebuilt to accommodate collocation, only one tower may remain on the site.
(c) A relocated onsite tower shall continue to be measured from the original tower location for purposes of calculating separation distances between towers pursuant to section 7 (b)(5). The relocation of a tower

hereunder shall in no way be deemed to cause a violation of Section 7(b)(5).

(d) The on-site relocation of a tower which comes within the separation distances to residential units or residentially zoned lands as established in Section 7(b)(5) shall only be permitted when approved by the Zoning Administrator.

3. New towers in non-residential zoning districts. Locating any new tower in a non-residential zoning district other than industrial or heavy commercial, provided a licensed professional engineer certifies the tower can structurally accommodate the number of shared users proposed by the applicant; the Zoning Administrator concludes the tower is in conformity with the goals set forth in Section 1 and the requirements of Section 4; the tower meets the setback requirements in Section 7(b)(4) and separation distances in Section 7(b)(5); and the tower meets the following height and usage criteria:
   (i) for a single user, up to ninety (90) feet in height;
   (ii) for two users, up to one hundred twenty (120) feet in height; and
   (iii) for three or more users, up to one hundred fifty (150) feet in height.

4. Locating any alternative tower structure in a zoning district other than industrial or heavy commercial that in the judgment of the Zoning Administrator is in conformity with the goals set forth in Section 1 of this ordinance.

5. Installing a cable mirocell network through the use of multiple low-powered transmitters/receivers attached to existing wireline systems, such as conventional cable or telephone wires, or similar technology that does not require the use of towers.

13-7 Special Use Permits.

(a) General. The following provisions shall govern the issuance of special use permits for towers or antennas by the Planning Commission and City Council:

(1) If the tower or antenna is not a permitted use under Section 5 of this ordinance or permitted to be approved administratively pursuant to Section 6 of this ordinance, then a special use permit shall be required for the construction of a tower or the placement of an antenna in all zoning districts.

(2) Applications for special use permits under this Section shall be subject to the procedures and requirements of Chapter 12 of the Zoning Code, except as modified in this Section.

(3) In granting a special use permit, the Planning Commission may recommend and the City Council may impose conditions to the extent the Planning Commission or City Council, as the case may be, concludes such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties.

(4) Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by a licensed professional engineer.

(5) An applicant for a special use permit shall submit the information described in this Section and a non-refundable fee as established by resolution of the City Council to reimburse the City of Columbus for the costs of reviewing the application.

(6) The Planning Commission may recommend and the City Council may waive any zoning district setback requirements set forth in Section 13-7(b)(4) or separation

distances between towers in Section 13-7(b)(5) by up to 50%, provided there is satisfactory evidence to address safety concerns. Safety criteria to be considered include, but are not limited to, engineering data, durability of the tower, character of adjoining properties, likelihood of inhabitability of adjoining properties, height of tower, proximity to structures or other improvements and any other safety criteria deemed appropriate.

(b) Towers.

(1) Information required. In addition to any information required for applications for special use permits pursuant to Chapter 12 of the Zoning Code, applicants for a special use permit for a tower shall submit the following information:

(i) A scaled site plan clearly indicating the location, type and height of the proposed tower, on-site land uses and zoning, adjacent land uses and zoning (including when adjacent to other municipalities), Comprehensive Plan classification of the site and all properties within the applicable separation distances set forth in Section 7(b)(5), adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower and any other structures, topography, parking, and other information deemed by the Zoning Administrator to be necessary to assess compliance with this ordinance.

(ii) Legal description of the parent tract and leased parcel (if applicable).

(iii) The setback distance between the proposed tower and the nearest residential unit, platted residentially zoned properties, and unplatted residentially zoned properties.

(iv) The separation distance from other towers described in the inventory of existing sites submitted pursuant to Section 4(c) shall be shown on an updated site plan or map. The applicant shall also identify the type of construction of the existing tower(s) and the owner/operator of the existing tower(s), if known.

(v) A landscape plan showing specific landscape materials.

(vi) Method of fencing, and finished color and, if applicable, the method of camouflage and illumination.

(vii) A description of compliance with Sections 4(c), (d), (e), (f), (g), (k), and (l), 7(b)(4), 7(b)(5) and all applicable federal, state or local laws.

(viii) A notarized statement by the applicant as to whether construction of the tower will accommodate collocation of additional antennas for future users.

(ix) Identification of the entities providing the backhaul network for the tower(s) described in the application and other cellular sites owned or operated by the applicant in the municipality.

(x) A description of the suitability of the use of existing towers, other structures or alternative technology not requiring the use of towers or

structures to provide the services to be provided through the use of the proposed new tower.

(xi) A description of the feasible location(s) of future towers or antennas within the City of Columbus based upon existing physical, engineering, technological or geographical limitations in the event the proposed tower is erected.

(2) Factors Considered in Granting Special Use Permits for Towers. In addition to any standards for consideration of special use permit applications pursuant to Chapter 12 of the Zoning Code, the Planning Commission and City Council shall consider the following factors in determining whether to issue a special use permit:

(i) Height of the proposed tower;

(ii) Proximity of the tower to residential structures and residential district boundaries;

(iii) Nature of uses on adjacent and nearby properties;

(iv) Surrounding topography;

(v) Surrounding tree coverage and foliage;

(vi) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;

(vii) Proposed ingress and egress;

(viii) Availability of suitable existing towers, other structures, or alternative technologies not requiring the use of towers or structures, as discussed in Section 7(b)(3) of this ordinance; and

(ix) The goals set forth in Section 1 of this Ordinance.

(3) Availability of Suitable Existing Towers, Other Structures, or Alternative Technology. No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the City Council that no existing tower, structure or alternative technology that does not require the use of towers or structures can accommodate the applicant's a proposed antenna. An applicant shall submit information requested by the Planning Commission or City Council related to the availability of suitable existing towers, other structures or alternative technology. Evidence submitted to demonstrate that no existing tower, structure or alternative technology can accommodate the applicant's proposed antenna may consist of any of the following:

(i) No existing towers or structures are located within the geographic area which meet applicant's engineering requirements.

(ii) Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.

(iii) Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.

(iv) The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.

(v) The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.

(vi) The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.

(vii) The applicant demonstrates that an alternative technology that does not require the use of towers or structures, such as a cable microcell network using multiple low-powered transmitters/receivers attached to a wireline system, is unsuitable. Costs of alternative technology that exceed new tower or antenna development shall not be presumed to render the technology unsuitable.

(4) Setbacks. The following setback requirements shall apply to all towers for which a special use permit is required:

i. Towers must be set back a distance equal to at least one hundred percent (100%) of the height of the tower from any adjoining lot line.

ii. Guys and accessory buildings must satisfy the minimum zoning district setback requirements.

(5) Separation. The following separation requirements shall apply to all towers and antennas for which a special use permit is required:

(i) Separation from off-site uses/designated areas.

(a) Tower separation shall be measured from the base of the tower to the lot line of the off-site uses and/or designated areas as specified

(b) in Table 1, except as otherwise provided in Table 1.

(c) Separation requirements for towers shall comply with the minimum standards established in Table 1.

Table 1:

Off-site Use/Designated Area	Separation Distance
Single-family or duplex residential units[1]	200 feet or 300% height of tower whichever is greater
Vacant single-family or duplex residentially zoned land which is either platted or has preliminary subdivision plan approval which is not expired	200 feet or 300% height of tower [2] whichever is greater
Vacant unplatted residentially zoned lands [3]	100 feet or 100% height of tower whichever is greater
Existing multi-family residential units greater than duplex units	100 feet or 100% height of tower whichever is greater
Non-residentially zoned lands or non-residential uses	None; only setbacks apply

[1] Includes modular homes and mobile homes used for living purposes.
[2] Separation measured from base of tower to closest building setback line.
[3] Includes any unplatted residential use properties without a valid preliminary subdivision plan or valid development plan approval and any multi-family residentially zoned land greater than duplex.

(ii) Separation distances between towers.

(a) Separation distances between towers shall be applicable for and measured between the proposed tower and preexisting towers. The separation distances shall be measured by drawing or following a straight line between the base of the existing tower and the proposed base, pursuant to a site plan, of the proposed tower. The separation distances (listed in linear feet) shall be as shown in Table 2.

(2) Table 2:

Existing Towers - Types

	Lattice	Guyed	Monopole 75 Ft in Height or Greater	Monopole Less Than 75 Ft. in Height
Lattice	5000	5000	1500	750
Guyed	5000	5000	1500	750
Monopole 75 Ft. in Height or Greater	1500	1500	1500	750
Monopole Less Than 75 Ft. in Height	750	750	750	750

(6) Security fencing. Towers shall be enclosed by security fencing not less than six feet in height and shall also be equipped with an appropriate anti-climbing device; provided however, that the City Council may waive such requirements, as it deems appropriate.

(7) Landscaping. The following requirements shall govern the landscaping surrounding towers for which a special use permit is required:

(i) Tower facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from property used for residences. The standard buffer shall consist of a landscaped strip at least four (4) feet wide outside the perimeter of the compound.

(ii) In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived.

(iii) Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large, wooded lots, natural growth around the property perimeter may be sufficient buffer.

13-8 Buildings or Other Equipment Storage.

(a) Antennas Mounted on Structures or Rooftops. The equipment cabinet or structure used in association with antennas shall comply with the following:

(i) Equipment storage buildings or cabinets shall comply with all applicable building codes.

(b) Antennas Mounted on Utility Poles or Light Poles. The equipment cabinet or structure used in association with antennas shall be located in accordance with the following:

(1) In residential districts, the equipment cabinet or structure must comply with set back requirements of Chapter 4 of the Zoning Code.

(i) The cabinet/structure shall not be located in a front yard. For side and rear yards, the cabinet/structure shall be screened by an evergreen hedge with an ultimate height of at least 8 feet and a planted height of at least 3 feet.

(2) The structure or cabinet shall be screened by an evergreen hedge with an ultimate height of eight (8) feet and a planted height of at least 36 inches. In all other instances, structures or cabinets shall be screened from view of all residential properties which abut or are directly across the street from the structure or cabinet by a solid fence six (6) feet in height or an evergreen hedge with an ultimate height of eight (8) feet and a planted height of at least 36 inches.

(c) Antennas Located on Towers. The related unmanned equipment structure shall be located in accordance with the minimum yard requirements of the zoning district in which located.

(d) Modification of Building Size Requirements. The requirements of Sections 8(a) through (c) may be modified by the Zoning Administrator in the case of administratively approved uses or by the City Council in the case of uses permitted by special use to encourage collaction.

13-9 Removal of Abandoned Antennas and Towers. Any antenna or tower that is not operated for a continues period of twelve (12) months shall be considered abandoned, and the owner of such antenna or tower shall remove the same within ninety (90) days of receipt of notice from the City of Columbus notifying the owner of such abandonment. Failure to remove an abandoned antenna or tower within said ninety (90) days shall be grounds to remove the tower or antenna at the owner's

expense. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower.

13-10 Nonconforming Uses.

(a) Not expansion of Nonconforming Use. Towers that are constructed, and antennas that are installed, in accordance with the provisions of this ordinance shall not be deemed to constitute the expansion of a nonconforming use or structure.

(b) Preexisting towers. Preexisting towers shall be allowed to continue their usage as they presently exist. Routine maintenance shall be permitted on such preexisting towers. New construction other than routine maintenance on a preexisting tower shall comply with the requirements of this ordinance, including the permit required under Section 4.

(c) Rebuilding Damaged or Destroyed Nonconforming Towers or Antennas. Notwithstanding Section 9, bona fide nonconforming towers or antennas that are damaged or destroyed may be rebuilt upon obtaining administrative approval or a special use permit. Building permits to rebuild the facility shall comply with the then applicable building codes and shall be obtained within 180 days from the date the facility is damaged or destroyed. If no permit is obtained or if said permit expires, the tower or antenna shall be deemed abandoned as specified in Section 9.

7-3 Height Exceptions

These provisions allow exceptions to the height limit of any zoning district in certain situations.

a. Vertical Projection

Chimneys, cooling towers, building mechanical equipment, elevator bulkheads, fire towers, grain elevators, non-parabolic receiving antennas, tanks, solariums, steeples, penthouses not exceeding 25 percent of total roof area, flag poles, stage towers or scenery lofts, and water towers may be built to any height in accordance with existing and future ordinances.

b. Radio Towers

1. Radio towers, operated by licensed amateur radio operators, may be built to a height as set forth in paragraph 2 below provided such towers do not exceed the height limitations set by Table 4-3. This exception does not apply to parabolic antennas, designed to receive signals from satellites.

2. Such radio towers shall not be located within a street yard of the primary use, and shall be located no less than 110 percent of the tower's height from a property line of an adjacent property within any zoning district.

c. Dwellings

Dwellings may exceed the height limit of their zoning districts by a maximum of ten feet, provided that each such building shall have a side yard setback of one foot in addition to required setbacks from each property line for each foot of height over the maximum height of the zoning district.

d. Wind Energy Conservation Systems (WECS)

Wind Energy Conservation Systems are exempt from the height restrictions of the base district.

e. Federal Aviation Administration Rules

No structure may be built in any zoning district which exceeds the maximum height permitted under the rules of the Federal Aviation Administration. These rules describe the glide angles and operational patterns for any airport within the planning jurisdiction of the City of Columbus.

Table 4-2: Permitted Uses by Zoning District

P = Uses permitted by Right S = Uses permitted by Special Permit

Use Types	AG	RR	R-1	R-2	R-3	RMH	O	LC	UC	B-1	B-2	ML/ C-1	MH	Supple-mentary Regulation
Industrial Uses														
Custom Manufacturing									P	P	P	P	P	
Light Industry										P	S	P	P	
General Industry												P	P	
Heavy Industry													P	
Resource Extraction	S	S											P	6-6(a)
Salvage Services													P	6-6(b)
Warehousing										S		P	P	
Construction Yards												P	P	
Recycling Collection											P	P	P	
Recycling Processing												P	P	
Transportation Uses														
Aviation	P												P	
Railroad Facilities										S	S	P	P	
Truck Terminal												P		
Transportation Terminal	S									P	P	P	P	
Miscellaneous Uses														
Broadcasting Tower	*S	*S	*S	*S	*S	*S		*S	*S		*S	*S	*S	
Construction Batch Plant	S	S										P	P	
WECS (Wind Energy Conservation System)	P	P	S	S	S	S		S	S		S	P	P	
Landfill (Non-Putrescible)	S	S											S	
Landfill (Putrescible)	S												S	
Alternative Energy Production Devices	P	P	S	S	S	S		S	S		S	P	P	

* See Chapter 13 of the Zoning Code. Towers permitted under Section 5 of Chapter 13 or towers that are eligible for administrative approval under Section 6 of Chapter 13 are exempt from the Special Use Permit requirement. For all other towers, Special Use Permits shall be governed by Chapter 13 of the Zoning Code and, particularly, the procedures and criteria set forth in Section 7 thereof.

Columbus, NE

a. Alternative Energy Production Devices

The use of a site for the production of energy utilizing methods that do not involve the oxidation, combustion, or fission of primary materials. Typical uses include solar collector fields, geothermal energy installations, or water-powered mills or generating facilities.

b. Broadcasting/Receiving Tower

Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio and similar communication purposes, including self-supporting lattice towers, guyed towers or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures and the like. The term includes the structure and any support thereto.

c. Construction Batch Plant

A temporary demountable facility used for the manufacturing of concrete, asphalt, or other paving materials intended for specific construction projects.

d. Wind Energy Conservation System (WECS)

Any device which converts wind energy to a form of usable energy, including wind charges, windmills, or wind turbines.

e. Landfill (Non-Putrescible Solid Waste Disposal)

The use of a site as a depository for solid wastes that do not readily undergo chemical or biological breakdown under conditions normally associated with land disposal operations. Typical disposal material would include ashes, concrete, paving wastes, rock, brick, lumber, roofing materials, and ceramic tile.

f. Landfill (Putrescible and Non-Putrescible Solid Waste Disposal)

The use of a site as a depository for any solid waste except hazardous and toxic waste as defined by the Federal Environmental Protection Agency and/or the State of Nebraska. Typical disposal material would include non-putrescible wastes; and putrescible wastes such as vegetation, tree parts, agricultural wastes (garbage), and manure.

609 Maximum Permitted Sound Levels Adjacent to Residential Zoning Districts

Table 6-1 displays the maximum permitted sound levels that may be generated by uses in the CC, GC, BP, or LI zoning districts where adjacent to residential zoning districts. All measurements shall be taken at or within the boundary between the originating district and the adjacent residential zoning district with a sound level meter meeting ANSI specifications for a Type II or better general purpose sound level meter. The A-weighted response shall be used.

Table 6-1: Maximum Permitted Sound Levels at Residential Boundaries

Originating Zoning District	Time	Maximum One Hour Leq* (dbA)
CC, GC, LI	7:00 a.m. - 10:00 p.m.	60
	10:00 p.m. - 7:00 a.m.	55
GI	7:00 a.m. - 10:00 p.m.	65
	10:00 p.m. - 7:00 a.m.	55

* Leq is the constant sound level that, in a given situation and time period, conveys the same sound energy as the actual time-varying A-weighted sound. It is the average sound level and accurately portrays the sound the human ear actually hears.

610 Supplemental Use Regulations: Miscellaneous Uses

a. Communications Towers

Communications towers, where permitted, are subject to the following additional requirements:

1. Co-Location: It is the policy of the City of Fremont to encourage the co-location of new communications towers with existing towers or as part of suitable existing structures. All applications for approval of a communications tower location shall include evidence that all potential alternatives for location on existing towers or suitable buildings has been explored and exhausted. Applicants may not be denied space on an existing tower within the City of Fremont unless mechanical, structural, or regulatory factors prevent co-location.

   The City encourages co-location of wireless telecommunication facilities to minimize the number of telecommunication sites.

   a. No wireless telecommunication facility owner or operator shall unfairly exclude a telecommunication competitor from using the same facility or location. Upon request by the City, the owner or operator shall provide evidence why co-location is not possible.

   b. If a telecommunication competitor attempts to co-locate a facility on an existing or approved telecommunication facility or location, and the parties cannot reach agreement, the City may require a third party technical study at the expense of either or both parties to determine the feasibility of co-location.

   All applications for a tower shall include a statement to demonstrate the need for the new tower and provide supporting documentation as to why co-location is not possible on an existing structure in the area and a letter of intent to allow co-location on the proposed antenna support structure.

2. All applications for approval of a CMRS (Commercial Mobile Radio Service) facility, meaning any use of property for towers, antennas, equipment and equipment shelter(s) or cabinets employed in reception, switching and/or transmission of wireless telecommunications services,

including but not limited to, paging, enhanced specialized mobile radio, personal communications services, microwave link antenna, cellular telephone and other related technologies by a public or private company providing any type of CMRS wireless service under an FCC license shall include the following:

(a) A site plan showing the location and legal description of the site; on-site land uses and zoning; adjacent roadways; parking and access; areas of vegetation and landscaping to be added; setbacks from property lines; and, the location of the facility, including all related improvements and equipment.
(b) A vicinity map showing adjacent properties, land uses, zoning and roadways within one mile of a proposed CMRS site.
(c) Elevation drawings of the proposed facility showing all antennas, towers, tower heights, structures, existing buildings, walls and/or roofs on which antennas are mounted, equipment buildings/cabinets, fencing, screening, lighting and other improvements related to the facility showing specific materials, placement and colors.
(d) A narrative report describing the facility and the technical, economic and other reasons for its design and location, the need for the facility and its role in the network, and describing the capacity of the structure, including the number and type of antennas it can accommodate.
(e) A coverage map and a survey of existing towers including type and location and a statement to demonstrate the need for the new tower and provide supporting documentation as to why co-location is not possible on an existing tower in the area.
(f) A letter of intent to allow co-location on the antenna support structure. Facility owners shall not unreasonably exclude competitors from using the same facility or location.
(g) A letter of intent to remove the facility at the expense of the facility and/or property owner if it is abandoned.

3. Towers shall be located at the following setbacks:

(a) All towers up to fifty (50) feet in height shall be set back on the sides a distance equal to the underlying setback requirements in the applicable zoning district. Towers in excess of fifty (50) feet in height shall be set back a distance equal to the manufacturers designed fall distance rate. The height of the tower shall be measured from the floor of the base pad to the top of the tower. Setback requirements shall be measured from the base of the tower to the nearest boundary line of the tract of land on which it is located.

(b) Towers of one hundred fifty (150) feet or less in height located in or adjacent to any residential district or LC, CC, DC or GC commercial district shall be separated from any residential structure, school, church and/or occupied structures other than those utilized by the tower owner, by a minimum of one hundred percent (100%) of the height of the tower.

(c) Towers exceeding one hundred fifty (150) feet in height may not be located in any R1 through R5 residential district or LC, CC, DC or GC commercial district, and must be separated from said district by a minimum of the height of the proposed tower. Towers with heights greater than one hundred fifty (150) feet shall only be located in an industrial or agriculturally zoned district.

4. Towers must meet the following minimum separation requirements from other towers:

(a) Monopole tower structures shall be separated from all other towers whether monopole, self-supporting lattice or guyed towers by a minimum of seven hundred fifty (750) feet.

(b) Self-supporting lattice or guyed towers shall be separated from all other self-supporting lattice or guyed towers by a minimum of one thousand five hundred (1,500) feet.

5. The tower facility shall be designed to be aesthetically and architecturally compatible with the built environment of the City of Fremont. Associated support buildings shall be designed with materials that are consistent with those in the surrounding neighborhood. Metal exteriors shall not be permitted for support accessory buildings.

6. All tower facilities shall provide landscaped peripheral yards with a minimum depth of 35 feet. One tree consistent with the provisions of Article 8 shall be planted for every 500 square feet of required peripheral yard area.

7. Abandonment: All applications shall include a letter of intent to remove the facility at the expense of the facility or property owner if it is abandoned. Communication towers and facilities will be considered abandoned if they are unused by all providers at the facility for a period of 12 months. Determination of abandonment shall be made by the Zoning Administrator and/or his/her designees, who shall have the right to request documentation from the facility owner and/or communication provider regarding tower or antenna usage. Upon abandonment, the facility owner or property owner shall have 120 days to:

   (a) Reuse the facility or transfer it to another communication provider who will reuse it; or, dismantle the facility. If the facility is not removed within 120 days of abandonment, the City may remove the facility at the facility's and/or the property owner's expense. If the facility is removed, City approval of the facility will expire. If the City cannot recover expenses directly from the facility and/or the property owner, the City will file a lien against the property to recover the removal expenses.

   (b) One extension, at no charge, of no more than six months in duration of the abandonment grace period may be granted upon written request of the communication provider. Such requests must be received one month in advance of expiration of the abandonment grace period.

8. The following are exempt from the preceding Section 610-a requirements:

   (a) Existing towers and antennas and any repair or maintenance of the same.
   (b) Ham radio towers, citizen band transmitters and antennas.
   (c) Microwave dishes for home or business use of less than one meter in diameter.
   (d) Towers for public safety and emergency communications.

9. By adopting Section 610-a "Communication Towers" the City is not attempting to regulate radio frequency power densities or electromagnetic fields, which regulation is controlled by the FCC.

b. Landfills

1. Compliance with Codes: Each landfill must comply with all relevant city, county, State, or Federal codes and statutes.

2. Prevention of Hazards: No facility shall present a hazard to surrounding residents or properties.

3. Drainage and Water Supply: No landfill may modify or prevent the flow of major natural drainage ways within the jurisdiction of the City of Fremont. Landfills shall not produce a measurable increase in pollution in any public water-based recreational facility or in any waterway or well that is a part of a public or private water supply.

4. Minimum Separation from Residential Uses: No non-putrescible landfill may be established within 300 feet of a developed residential or public use. No landfill involving the disposal of putrescible or septic wastes shall be established within one-fourth mile of any residential, public, or commercial zoning district; or any State of Federal Highway.

5. Restoration of Site: The site of any landfill must be restored, stabilized, planted, and seeded within six months after the end of the operation. Dissipation of waste products must be accomplished in a manner approved by the State of Nebraska's Department of Environmental Quality.

6. Toxic Waste: The disposal of hazardous, toxic, or radioactive wastes as defined by the Federal Environmental Protection Agency shall be prohibited within the City of Fremont and its extra-territorial jurisdiction.

c. Wind Energy Conservation Systems (WECS)

1. The distance from all lot lines or any building or power line to any tower support base of a WECS shall be equal to the sum of the tower height and the diameter of the rotor. A reduction of this requirement may be granted as part of a Conditional Use Permit approval if the Planning Commission finds that the reduction is consistent with public health, safety, and welfare.

2. The distance between the tower support bases of any two WECS shall be the minimum of five rotor lengths, determined by the size of the largest rotor. A reduction of this requirement may be granted as part of a Conditional Use Permit approval if the Planning Commission finds that the reduction does not impede the operation of either WECS.

3. The WECS operation shall not interfere with radio, television, computer, or other electronic operations on adjacent properties.

4. A fence six feet high with a locking gate shall be placed around any WECS tower base; or the tower climbing apparatus shall begin no lower than twelve feet above ground.

5. The WECS is exempt from the height restrictions of the base district.

611 Supplemental Use Regulations: Accessory Uses

a. Home-Based Businesses

Home-based businesses are permitted with a conditional use permit provided it is demonstrated that:

1. External Effects:

(a) No alterations will be made to the building that changes the residential character of appearance of the dwelling to accommodate the home-based business other than signage permitted within this section.

(b) The home-based business will not create any noise, odors, bright lights, electronic interference, storage or other external effects that constitute a public or private nuisance to neighboring properties or public right of way.

d. Truck Terminal

A facility for the receipt, transfer, short term storage, and dispatching of goods transported by truck.

311 Miscellaneous Type Uses

a. Alternative Energy Production Devices

The use of a site for the production of energy utilizing methods that do not involve the oxidation, combustion, or fission of primary materials. Typical uses include solar collector fields, geothermal energy installations, or water-powered mills or generating facilities.

b. Amateur Radio Tower

A structure(s) for the transmission or broadcasting of electromagnetic signals by FCC licensed Amateur Radio operators.

c. Communications Tower

A structure(s) for the transmission or broadcasting of radio, television, radar, or microwaves, ordinarily exceeding the maximum height permitted in its zoning district. Typical uses include broadcasting towers and cellular communications towers.

d. Construction Batch Plant

A temporary demountable facility used for the manufacturing of concrete, asphalt, or other paving materials intended for specific construction projects.

e. Landfill (Non-putrescible Solid Waste Disposal)

The use of a site as a depository for solid wastes that do not readily undergo chemical or biological breakdown under conditions normally associated with land disposal operations. Typical disposal material would include ashes, concrete, paving wastes, rock, brick, lumber, roofing materials and ceramic tile.

f. Landfill (Putrescible and Non-putrescible Solid Waste Disposal)

The use of a site as a depository for any solid waste except hazardous and toxic waste as defined by the Federal Environmental Protection Agency and/or the State of Nebraska. Typical disposal material would include non-putrescible wastes; and putrescible wastes such as vegetation, tree parts, agricultural wastes (garbage) and manure.

g. Wind Energy Conservation System (WECS)

Any device, which converts wind energy to a form of usable energy, including wind charges, windmills, or wind turbines.

Table 4-2 Permitted Uses by Zoning Districts

Use Types	AG	RR	RL	R-1	R-2	R-3	R-4	R-5	UC	LC	CC	DC	GC	BP	LI	GI	Addl Reg
Industrial Uses																	
Agricultural Industry[1]															C	P	608a
Construction Yards[1]															P	P	608a
Custom Manufacturing									C		C	P	P	P	P	P	608a
Light Industry[1]														C	P	P	608a
General Industry[1]															P	P	608a
Heavy Industry[1]																C	608a
Recycling Collection[1]											C	C	C		C	C	608a
Recycling Processing[1]															C	C	608a
Refuse Transfer Station[1]																P	608a
Resource Extraction[1]	C	C	C													C	607a 608a
Salvage Services[1]																C	607b, 608a
Vehicle Storage (Long-term)[1]			C										C		P	P	608a
Warehousing (Enclosed)[1]	C											C	C	P	P	P	608a
Warehousing (Open)[1]															C	P	608a
Transportation Uses																	
Aviation[1]	C													C	C	C	
Railroad Facilities[1]												C	C	C	P	P	
Truck Terminal[1]													C		C	P	
Transportation Terminal[1]											P	P	P		P	P	
Miscellaneous Uses																	
Alternative Energy Production Devices	C	C	C	C	C		C	C	C	C		C	C	P	P	P	
Amateur Radio Tower	P	P	C	P	P		P	P	P	P	P	P	P	P	P	P	
Communications Tower	C	C	C	C(P)	C(P)	C(P)	C(P)	C(P)	C			C	C	P	P	P	610a
Construction Batch Plant[1]	C												C		C	P	
Landfill (Non-Putrescible)[1]																C	610b
Landfill (Putrescible)[1]																	610b
WECS	C	C	C	C	C	C	C	C	C	C	C	C	C	P	P	P	610c

P=Uses Permitted by Right C=Uses Permitted by Conditional Use Permit Blank=Use Not Permitted

1. Use subject to Site Plan Approval, as set forth in Section 1202 C(P) = Conditional at Public Sites Only

Article XI. Wireless Communication Towers

§36-168. Purpose

The Communications Act of 1934 as amended by the Telecommunications Act of 1996 (the Act) grants the Federal Communications Commission (FCC) exclusive jurisdiction over certain aspects of telecommunications services. This Article is intended to regulate towers, telecommunications facilities and antennas in the City in conformance with the Act without prohibiting or tending to prohibit any person from providing wireless telecommunications services. Telecommunications facilities, towers and antennas in the City, to protect residential areas and land uses from potential adverse impact of installation of towers and antennas through careful design, siting, and camouflaging, to promote and encourage shared use/collocation of towers and other antenna support structures rather than the construction of additional single use towers, to avoid potential damage to property caused by towers, telecommunications facilities and antennas by ensuring such structures are soundly and carefully designed, constructed, modified, maintained, repaired and removed when no longer used or are determined to be structurally unsound and to ensure that towers and antennas are compatible with surrounding land uses.

§36-169. Definitions

As used in this Article, the following terms shall have the following meanings:

Antenna means a device, designed and intended for transmitting or receiving television, radio, or microwave signals, direct satellite service (including direct-to-home satellite service), and/or video programming services via multipoint distribution services.

Antenna Support Structure means any building or structure other than a tower which can be used for location of telecommunications facilities.

Applicant means any person that applies for a Tower Development Permit.

Application means a process by which the owner of a tract of land within the zoning jurisdiction of the City submits a request to develop, construct, modify, or operate a tower upon such tract of land. The term application includes all written documentation, verbal statements, and representations, in whatever form or forum, made by an applicant to the City concerning such request.

Conforming Commercial Earth Station means a satellite dish which is two meters or less in diameter and is located in an area where commercial or industrial uses are generally permitted under this code.

Engineer means any engineer qualified and licensed by any state or territory of the United States of America.

Owner means any person with fee simple title or a leasehold exceeding (ten) 10 years in duration to any tract of land within the zoning jurisdiction of the City who desires to develop, construct, modify, or operate a tower upon such tract of land.

Person Any natural person, firm, partnership, association, corporation, company, or other legal entity, private or public, whether for profit or not for profit.

Satellite Dish Antenna means an antenna consisting of a radiation element intended for transmitting or receiving television, radio, microwave, or radiation signals and supported by a structure with or without a reflective component to the radiating dish, usually circular in shape.

Stealth means any telecommunications facility, tower, or antenna which is designed to enhance compatibility with adjacent land uses, including, but not limited to, architecturally screened roof-mounted antennas, antennas integrated into architectural elements, and towers designed to look other than like a tower such as light poles, power poles and trees.

Telecommunications Facilities means any cables, wires, lines, waive guides, antennas, or any other equipment or facilities associated with the transmission or reception of communications which a person seeks to locate or has installed upon or near a tower or antenna support structure. However, telecommunications facilities shall not include:

(1) Any Conforming Commercial Earth Station antenna two (2) meters in diameter or less which is located on real estate zoned AG, TA, RO, B1, B2, B3, M1, M2, M3 and ME.

(2) Any earth station antenna or satellite dish antenna of one (1) meter or less in diameter, regardless of the zoning applicable to the location of the antenna.

Tower means a self-supporting lattice, guyed, or monopole structure which supports Telecommunications Facilities. The term Tower shall not include non-commercial amateur radio operators equipment as licensed by the FCC or structure supporting an earth station antenna serving residential premises or dwelling units exclusively.

Tower Development Permit means a permit issued by the City upon approval by the Mayor and City Council of an application to develop a tower within the zoning jurisdiction of the City; which permit shall continue in full force and effect for so long as the tower to which it applies conforms to this Article. Upon issuance, a Tower

Development Permit shall be deemed to run with the land during the permit's duration and may be transferred, conveyed and assigned by the applicant to assigns and successors-in-interest.

Tower Owner means any person with an ownership interest of any nature in a proposed or existing tower following the issuance of a Tower Development Permit.

All terms in this Article which are not specifically defined herein shall be construed in accordance with the Communications Act of 1934, the Telecommunications Act of 1996 and the Rules and Regulations of the Federal Communications Commission (FCC).

§36-170. Location Of Towers and Construction Standards

(A) Towers shall be permitted conditional uses of land in only those zoning districts where specifically listed and authorized in this code.

(B) No person shall develop, construct, modify or operate a tower upon any tract of land within the zoning jurisdiction of the City prior to approval of its application for a Tower Development Permit by the Mayor and City Council and issuance of the permit by the City. Applicants shall submit their application for a Tower Development Permit to the Building Department in triplicate and shall pay a filing fee in accordance with the City of Grand Island Fee Schedule.

(C) All towers, telecommunications facilities and antennas on which construction is commenced within the zoning jurisdiction of the City after February 1, 1998, shall conform to the Building Code and all other construction standards set forth in the City Code, federal and state law, and applicable American National Standards Institute (ANSI) standards. Upon completion of construction of a tower and prior to the commencement of use, an engineer's certification that the tower is structurally sound and in conformance with all of the aforementioned applicable regulatory standards shall be filed with the Building Department.

§36-171. Application To Develop A Tower

Prior to commencement of development or construction of a tower, an application shall be submitted in triplicate to the Building Department for a Tower Development Permit and shall include the following:

(A) The name, address and telephone number of the owner and if applicable, the lessee of the tract of land upon which the tower is to be located. Applicants shall include the owner of the tract of land and all persons having an ownership interest in the proposed tower. The application shall be executed by all applicants.

(B) The legal description and address of the tract of land on which the tower is to be located.

(C) The names, addresses and telephone numbers of all owners of other towers or useable antenna support structures within a one (1) mile radius of the location of the proposed tower, including publicly and privately owned towers or structures.

(D) An affidavit attesting to the fact that the applicant has made diligent but unsuccessful efforts to obtain permission to install or collocate the applicant's telecommunications facilities on a tower or useable antenna support structure within a one (1) mile radius of the proposed tower location or written technical evidence from an engineer that the applicant's telecommunications facilities cannot be installed or collocated on another tower or useable antenna support structure within a one (1) mile radius of the proposed tower location.

(E) Written technical evidence from an engineer that the proposed tower will meet the Building Code, all other construction standards set forth by the City Code and federal and state law and applicable ANSI standards.

(F) Color photo simulations showing the proposed location of the tower with a photo- realistic representation of the proposed tower as it would appear viewed from the nearest residential zoned property and nearest roadway, street or highway.

(G) Descriptions and diagrams of the proposed tower, telecommunications facilities and/or antenna, manufacturer's literature, appurtenances such as buildings, driveway, parking area and fences or other security enclosures with sufficient detail to allow persons reviewing the application to understand the kind and nature of the proposed facility.

(H) An application for a building permit pursuant to Chapter 8 of the City Code.

§36-172. Tower Development Permit; Procedure

After receipt of an application for a Tower Development Permit, the City Clerk shall schedule a public hearing before the City Council to consider such application. Notice of such application shall be placed in a newspaper of general circulation in the City at least one (1) time ten (10) days prior to such hearing. In addition to the publication, the City Clerk shall cause a notice to be posted in a conspicuous place on the property on which action is pending. Such notice shall be not less than eighteen (18) inches in height and twenty four (24) inches in width with a white or yellow background and black letters not less than one and one-half (1½) inches in height. Such posted notice shall be

so placed upon the premises so that it is easily visible from the street nearest the same and shall be so posted at least ten (10) days prior to the date of such hearing. It shall be unlawful for anyone to remove, mutilate, destroy, or change such posted notice prior to such hearing. Any person so doing shall be deemed guilty of a misdemeanor. The public hearing shall be held at which all interested parties shall be heard. The City Council may approve a Tower Development Permit as requested in the pending application with any conditions or safeguards it deems reasonable and appropriate based upon the application and/or input received at the public hearing or deny the application. In all zoning districts in which towers are a permitted conditional use of land, the Tower Development Permit shall be deemed a conditional use permit for said tract of land.

§36-173. Setbacks and Separation or Buffer Requirements

(A) All towers up to fifty (50) feet in height shall be set back on all sides a distance equal to the underlying setback requirement in the applicable zoning district. Towers in excess of fifty (50) feet in height shall be set back one additional foot for each foot of tower height in excess of fifty (50) feet, except where such setback is from property owned, controlled and/or maintained by the City of Grand Island and the City Council finds in granting the permit that reducing such additional setback will not cause harm to the intended use of the public property. The height of a tower shall be measured from the grade at the foot of the base pad to the top of any telecommunications facilities or antennas attached thereto. Setback requirements shall be measured from the base of the tower to the property line of the tract of land on which it is located.

(B) Towers exceeding one hundred (100) feet in height may not be located in any residential zoned district and must be separated from all residential zoned land and occupied structures other than those utilized by the tower owner, by a minimum of two hundred (200) feet or one hundred percent (100%) of the height of the proposed tower, whichever is greater.

(C) Towers of one hundred (100) feet or less in height may be located in residential zoned districts provided said tower is separated from any residential structure, school, church, and/or occupied structures other than those utilized by the tower owner, by a minimum of one hundred percent (100%) of the height of proposed tower.

(D) Towers must meet the following minimum separation requirements from other towers:

(1) Monopole tower structures shall be separated from all other towers, whether monopole, self-supporting lattice, or guyed, by a minimum of seven hundred fifty (750) feet.

(2) Self-supporting lattice or guyed towers shall be separated from all other self-supporting or guyed towers by a minimum of one thousand five hundred (1,500) feet.

Amended by Ordinance No. 9222, effective 06-16-09

§36-174. Structural Standards for Towers Adopted

The *Structural Standards For Steel Antenna Towers And Antenna Supporting Structures*, 1991 Edition (ANSI/EIA/TIA 222-E-1991) is hereby adopted, together with any amendments thereto as may be made from time to time, except such portions as are hereinafter deleted, modified, or amended by ordinance and set forth in this chapter of the City Code.

§36-175. Illumination and Security Fences

(A) Towers shall not be artificially lighted except as required by the Federal Aviation Administration (FAA). In cases where there are residential zoned properties located within a distance of 300% of the height of the tower, any tower subject to this Article shall be equipped with dual mode lighting.

(B) All self-supporting lattice or guyed towers shall be enclosed within a security fence or other structure designed to preclude unauthorized access. Monopole towers shall be designed and constructed in a manner which will preclude to the extent practical, unauthorized climbing of said structure.

§36-176. Exterior Finish

Towers not requiring FAA painting or marking shall have an exterior finish which enhances compatibility with adjacent land uses, subject to review and approval by the City Council as part of the application approval process. All towers which must be approved as a conditional use shall be of stealth design unless stealth features are impractical or the cost of such features represents an undue burden on the applicant.

§36-177. Landscaping

All tracts of land on which towers, antenna support structures, telecommunications facilities and/or antennas are located shall be subject to the landscaping requirements of the City Code.

§36-178. Maintenance, Repair or Modification of Existing Towers

All towers constructed or under construction on February 1, 1998 may continue in existence as a non-conforming structure and may be maintained or repaired without complying with any of the requirements of this Article. Nonconforming structures or uses may not be enlarged or the degree of nonconformance increased without complying with this Article, including applying for and obtaining a Tower Development Permit. Any modification or reconstruction of a tower constructed or under construction on February 1, 1998, shall require compliance with the requirements of this Article including applying for and obtaining a Tower Development Permit. Said application shall describe and specify all items which do not comply with this Article and may request, subject to approval by the Mayor and City Council, an exemption from compliance as a condition of the Tower Development Permit.

§36-179. Inspections

The City reserves the right to conduct an inspection of towers, antenna support structures, telecommunications facilities and antennas upon reasonable notice to the tower owner or operator to determine compliance with this Article and to prevent structural and equipment failures and accidents which may cause damage, injuries or nuisances to the public. Inspections may be made to determine compliance with the Building Code and any other construction standards set forth in the City Code, federal and state law or applicable ANSI standards.

§36-180. Maintenance

The towers, antenna support structures, telecommunications facilities and antennas shall at all times be kept and maintained in good condition, order and repair so that the same does not constitute a nuisance to or a danger to the life or property of any person or the public.

§36-181. Abandonment

If any tower shall cease to be used for a period of three hundred sixty-five (365) consecutive days, the Building Department shall notify the tower owner that the site will be subject to a determination by the Building Department Director that the site has been abandoned. Upon issuance of a Notice to Show Cause by the Building Department Director, the tower owner shall have thirty (30) days to show by a preponderance of the evidence that the tower has been in use or under repair during the period of apparent abandonment. In the event the tower owner fails to show that the tower has been in use or under repair during the relevant period, the Building Department Director shall issue a final determination of abandonment of the site and the tower owner shall have seventy five (75) days thereafter to dismantle and move the tower. In the event the tower is not dismantled and removed, the tower shall be declared a public nuisance by the Building Department Director, or his/her designee and a written request shall be directed to the City Attorney to proceed to abate said public nuisance pursuant to §20-15 of the Grand Island City Code, and charge the costs thereof against the real estate on which the tower is located or the owner of record of the said real estate.

§36-182. Satellite Dish Antennas, Regulation

After February 1, 1998 installation of satellite dish antennas shall be permitted within the zoning jurisdiction of the City of Grand Island only upon compliance with the following criteria:

(A) In residential zoned districts, satellite dish antennas may not exceed a diameter of ten (10) feet.

(B) Single family residences may not have more than one (1) satellite dish antenna.

(C) Multiple family residences with ten or less dwelling units may have no more than one (1) satellite dish antenna. Multiple family residences with more than ten (10) dwelling units may have no more than two (2) satellite dish antennas.

(D) In residential zoning districts, satellite dish antennas shall not be installed in the required front yard setback area or side yard setback area.

(E) All satellite dish antennas installed within the zoning jurisdiction of the City after February 1, 1998, shall be of a neutral color such as black, gray, brown, or such other color as will blend with the surrounding dominant color in order to camouflage the antenna.

§36-183. Severability

If any clause, section, or any other part of this Article shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Article shall not be affected thereby, but shall remain in full force and effect.

36-28. Permitted Modifications of Height Regulations

The height limitations of this chapter shall not apply to:

Belfries	Public Monuments
Chimneys	Ornamental Towers and Spires
Church Spires	Radio and Television
Conveyors	Towers less than 100 feet in height
Cooling Towers	Silos
Elevator Bulkheads	Smoke Stacks
Fire Towers	Stage Towers or Scenery Lots
Water Towers and Standpipes	Tanks
Flag Poles	Air-Pollution Prevention Devices
Mechanical Penthouses	Helistop, Heliports, Helipads

When permitted in a zoning district, public or semi-public service buildings, hospitals, institutions, or schools may be erected to a height not exceeding seventy-five (75) feet when each required yard line is increased by at least one (1) foot for each one (1) foot of additional building height above the height regulations for the zoning district in which the building is located.

46-110 TELECOMMUNICATIONS TOWERS

A. Definitions

For the purpose of this Section, the following terms shall have the meaning ascribed to them below:

1. *Abandonment* shall mean:

(a) To cease operation for a period of sixty (60) or more consecutive days;

(b) To reduce the affected radiated power of an antenna by seventy-five percent (75%) for sixty (60) or more consecutive days;

(c) To relocate an antenna at a point less than eighty percent (80%) of the height of an antenna support structure; or

(d) To reduce the number of transmissions from an antenna by seventy-five percent (75%) for sixty (60) or more consecutive days.

2. *Antenna* shall mean any exterior apparatus designed for telephonic, radio, data, Internet or television communications through the sending and/or receiving of electromagnetic waves including equipment attached to a tower, pole, light standard or building for the purpose of providing personal wireless services including, for example, unlicensed wireless telecommunications services, wireless telecommunications services utilizing frequencies authorized by the Federal Communications Commission for "cellular," "paging," "enhanced specialized mobile radio," "low power mobile radio" and "personal communications services" telecommunications services, and its attendant base station.

3. *Antenna Height* shall mean the vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure even if said highest point is an antenna. Measurement of tower height shall include antenna, base pad, and other appurtenances and shall be measured from the finished grade of the parcel. If the support structure is on a sloped grade, then the average between the highest and lowest grades of the parcel shall be used in calculating the antenna height.

4. *Antenna Support Structure* shall mean any pole, light standard, telescoping mast, tower, tripod or other structure which supports a device used in the transmitting or receiving of radio, telephonic or television frequency or television signals.

5. *Cell Site* shall mean a tract or parcel of land that contains the telecommunications service facilities including any antenna, tower support structure, accessory buildings, and parking, and may include other uses associated with and ancillary to telecommunications services.

6. *FAA* shall mean the Federal Aviation Administration.

7. *FCC* shall mean the Federal Communications Commission.

8. *Governing Authority* shall mean the governing authority of the City, namely the City Council.

9. *Personal Wireless Service* and *Personal Wireless Service Facilities*, as used in this Section, shall be defined in the same manner as in Title 47, United States Code, Section 332(c)(7)(C), as they may be amended now or in the future.

10. *Tower* shall mean any structure that is designed and constructed primarily for the purpose of supporting one (1) or more antennas, including any antenna support structure, self-supporting lattice towers, guy towers, or monopole towers. The term encompasses personal wireless service facilities, radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers or personal communications services towers, alternative tower structures, and the like.

B. Exemptions

The following are exempt from the provisions of this Section and shall be permitted in all zones:

1. Industrial processing equipment and scientific or medical equipment using frequencies regulated by the FCC.

2. Antennas and related equipment no more than three (3) feet in height that are being stored, shipped, or displayed for sale.

3. Radar systems for military and civilian communications and navigation.

4. Wireless radio utilized for temporary emergency communications in the event of a disaster.

5. Licensed amateur (ham) radio operations.

6. Satellite dish antennas less than two (2) meters in diameter, including direct to home satellite services, when used as a secondary use of the property.

7. Routine maintenance or repair of a personal wireless service facility and related equipment (excluding structure work or changes in height or dimensions of antennas, towers, or buildings), provided that compliance with the standards of this Section are maintained.

8. Subject to compliance with all other applicable standards of this Section, a building permit application need not be filed for emergency repair or maintenance of a personal wireless service facility until thirty (30) days after the completion of such emergency activity.

C. Policy Statement

The Planning Commission and City Council have received requests to site towers and antennas. The purpose of this Section is to provide specific regulations for the placement, construction and modification of radio, television, and personal wireless service facilities. The provisions of this Section are not intended to and shall not be interpreted to prohibit or to have the effect of prohibiting the provision of radio, television, and personal wireless services, nor shall the provisions of this Section be applied in such a manner as to unreasonably discriminate between providers of functionally equivalent services. The goals of this Section are to: (i) encourage the location of towers on public property and in non-residential areas and to minimize the total number of towers throughout the City; (ii) encourage strongly the joint use of new and existing tower sites; (iii) encourage users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the City is minimal; (iv) encourage users of towers and antennas to configure them in a way that minimizes the visual impact of the towers and antennas; and (v) enhance the ability of the providers of telecommunications services to provide such services throughout the City quickly, effectively, and efficiently. Accordingly, the City Council finds that the promulgation of this Section is warranted and necessary:

1. To manage the location of towers and antennas in the City and provide for the use of public property for the placement thereof;
2. To protect residential areas and land uses from potential adverse impacts of towers and falling ice;
3. To minimize visual and aesthetic impacts of towers through minimal use of towers, careful design, siting, landscape screening, and innovative camouflaging techniques;
4. To accommodate the growing need for towers;
5. To promote and encourage shared use/co-location of existing and new towers as a primary option rather than construction of additional single-use towers, and to reduce the number of such structures needed in the future;
6. To consider the public health and safety of towers to the extent allowed by the Telecommunications Act of 1996; and
7. To avoid potential damage to adjacent properties through engineering and proper siting of antenna support structure.

New Uses: All new antennas shall comply with this Section after the date of passage.

Existing Uses: All towers existing on the date of passage of this Ordinance shall be allowed to continue their usage as they presently exist. Routine maintenance shall be permitted on such existing towers. New construction other than routine maintenance on existing towers shall comply with the requirements of this Section.

D. Industry Site Selection Criteria

In siting a new tower or antenna site, it is anticipated that the industry will propose locations that are technically compatible with the established network. A general area is to be identified based upon engineering constraints and the desired area of service. Specific locations within that general area will be evaluated using the following criteria, which are not listed in order of priority;

1. Topography as it relates to line of sight transmissions for optimum efficiency.
2. Availability of road access.
3. Availability of electric power.
4. Availability of land-based telephone lines or microwave link capability.
5. Leaseable lands, and landlords who want facilities to be located on their properties consistent with zoning regulations.
6. Screening potential of existing vegetation, structures and topographic features.
7. Zoning that will allow personal wireless service facilities.
8. Compatibility with adjacent land uses.
9. The fewest number of sites to cover the desired area.
10. The greatest amount of coverage, consistent with physical requirements.
11. Opportunities to mitigate possible visual impact.

12. Availability of suitable existing structures for antenna mounting.

E. City Site Selection Criteria

1. As a fundamental element of this Section, the telecommunications company proposing to construct an antenna support structure, or mount an antenna on an existing structure, is required to demonstrate, using technological evidence, that the antenna must go where it is proposed in order to satisfy its function in the company's grid system. Further, the company must demonstrate by technological evidence that the height requested is the minimum height necessary.

2. Applications for necessary permits will only be processed when the applicant demonstrates that it is either an FCC licensed telecommunications provider or has in place necessary agreements with an FCC licensed telecommunications provider for use or lease of the support structure.

3. Personal wireless service facilities should be located and designed to minimize any impacts on residential property values. Sites should be placed in locations where the existing topography, vegetation, buildings or other structures provide the greatest amount of screening.

4. Location and design of sites in all districts should consider the impact of the site on the surrounding neighborhood and the visual impact within the zone district. In residential districts and residential land use areas, the minimum lot size for towers shall be three (3) acres.

F. Priorities.

The following establishes the order of priorities for locating new communications facilities:

1. Place antennas and towers on public property (excluding prairie, conservation or wildlife areas).

2. Place antennas on appropriate existing structures, such as buildings, towers, water towers, and smokestacks in other zoned districts.

3. Place antennas and towers in districts zoned District AG, Agricultural District, District M-1, Limited Industrial District, and District M-2, General Industrial District, which do not adjoin or adversely impact residential neighborhoods.

4. Place antennas and towers in the Downtown Improvement and Parking District as defined in Section 3-1902 of the Kearney City Code, provided that such towers may be no more than forty (40) feet in height.

5. Place antennas and towers on other private non-residential property in districts zoned C-O, C-1, C-2, and C-3, Commercial Districts.

6. Place antennas and towers on multi-family residential structures exceeding thirty (30) feet in height in districts zoned R-3, and R-4.

7. Place antennas and towers in districts zoned R-1, R-2, and RM: (a) only if locations for which a need has been demonstrated are not available on existing structures or in non-residential districts; and (b) only on or in existing churches, parks, schools, utility facilities or other appropriate public facilities.

8. An applicant for a new antenna support structure to be located in a residential zoning district shall demonstrate that a diligent effort has been made to locate the proposed communications facilities on a government structure, a private institutional structure, or other appropriate existing structures within a non-residential zoning district, and that due to valid considerations including physical constraints, or technological feasibility, no appropriate location is available. The telecommunications company is required to demonstrate that it contacted the owners of structures in excess of thirty (30) feet within a one-quarter mile radius of the site proposed, asked for permission to install the antenna on those structures, and was denied for reasons other than economic ones. The information submitted by the applicant shall include a map of the area to be served by the tower, its relationship to other antenna sites in the applicant's network, and an evaluation of existing buildings taller than thirty (30) feet, towers and water tanks within one-quarter mile of the proposed tower.

G. Use of City Property

1. *Priority of Users*. Priority for the use of City-owned land for wireless telecommunication antennas and towers will be given to the following entities in descending order:

(a) City of Kearney;

(b) Public safety agencies, including law enforcement, fire, and ambulance services, which are not part of the City of Kearney and private entities with a public safety agreement with the City of Kearney;

(c) Other governmental agencies, for uses which are not related to public safety; and

(d) Entities providing licensed, and unlicensed (where permitted by law), commercial wireless telecommunication services, cellular, personal communication services (PCS), radio and television services, specialized mobilized radio (SMR), enhanced specialized mobilized radio (ESMR), data, Internet, paging, and similar services that are marketed to the general public.

2. *Minimum Requirements.* The placement of wireless telecommunication antennas or towers on City-owned property must comply with the following requirements:

(a) The antennas or tower will not interfere with the purpose for which the City-owned property is intended;

(b) The antennas or tower will have no significant adverse impact on surrounding private property;

(c) The applicant is willing to obtain adequate liability insurance and commit to a lease agreement, which includes equitable compensation for the use of public land and other necessary provisions and safeguards. The fees shall be established by the City Council after considering comparable rates in other cities, potential expenses, risks to the City, and other appropriate factors;

(d) The applicant will submit a letter of credit, performance bond, or other security acceptable to the City to cover the costs of antenna or tower removal;

(e) The antennas or tower will not interfere with other users who have a higher priority as discussed in Section 46-110.G;

(f) The applicant must reimburse the City for any costs, which it incurs because of the presence of the applicant's antennas or tower;

(g) The user must obtain all necessary land use approvals; and

(h) The applicant will cooperate with the City's objective to promote co-locations and thus limit the number of separate antenna sites requested.

3. *Special Requirements.* The use of certain City-owned property, such as water tower sites and parks, for wireless telecommunication antennas or towers brings with it special concerns due to the unique nature of these sites. The placement of wireless telecommunication antennas or towers on these special City-owned sites will be allowed only when the following additional requirements are met:

(a) *Water Tower or Reservoir Sites.* The City's water towers and reservoirs represent a large public investment in water pressure stabilization and peak capacity reserves. Protection of the quality of the City's water supply is of prime importance to the City. As access to the City's water storage systems increases, so too increased is the potential for contamination of the public water supply. For these reasons, the placement of wireless telecommunication antennas or towers on water tower or reservoir sites will be allowed only when the City is fully satisfied that the following additional requirements are met:

(1) The applicant's access to the facility will not increase the risks of contamination to the City's water supply;

(2) There is sufficient room on the structure and/or on the grounds to accommodate the applicant's facility;

(3) The presence of the facility will not increase the water tower or reservoir maintenance cost to the City; and

(4) The presence of the facility will not be harmful to the health of workers maintaining the water tower or reservoir.

(b) *Parks*: The presence of certain personal wireless service facilities, antennas or towers represent a potential conflict with the purpose of some parks. In no case shall towers or antennas be allowed in designated prairie or other conservation or wildlife area unless they are to be installed in areas, which currently contain tower facilities or antennas, and in no case shall towers or antennas be allowed in areas without road access to the base of the tower, antenna support structure or facilities. Personal wireless facilities, antenna support structure, antennas or towers will be considered only in the following parks after the recommendation of the Parks and Recreation Advisory Board, Planning Commission and approval of the City Council:

(1) Public parks of a sufficient scale and character that are adjacent to an existing commercial or industrial use;

(2) Commercial recreation areas and major play fields; and

(3) Park maintenance facilities.

H. Co-Location

1. To minimize adverse visual impacts associated with the proliferation of towers, co-location of antennas by more than one (1) carrier on existing or new towers and location of such antennas on public property shall take precedence over the construction of new single-use towers on public property as follows:

(a) Proposed antennas may, and are encouraged by the opportunity for expedited review as provided in this Section to, co-locate onto existing towers. Even where such co-location is accomplished in a manner consistent with the policy, site criteria, and landscape/screening provisions contained in this

Section, new or additional conditional use approval is required, and any other permit, license, lease, or franchise requirements also must be satisfied.

(b) The conditional use requirement for antennas may be expedited, upon the Director of Public Work's sole determination, to eliminate Planning Commission review and submit such application directly to City Council for its review, in nonresidential zones if the applicant locates the antenna on an existing structure including an existing tower and/or if the antenna is proposed to be located on suitable public property such as a water tower, government building, or other public tower or pole. Suitability of public property shall be determined in the City's sole discretion. The applicant must submit detailed plans to the Public Works Department for an administrative review to determine if the conditional use permit process and public hearing can be expedited, as provided herein. No building permit will be issued until the conditional use is granted.

(c) The City may deny the application to construct a new tower if the applicant has not shown by substantial evidence that it has made a good faith effort to mount the antenna on an existing structure and/or public property.

(d) In order to reduce the number of antenna support structures needed in the City in the future, any new proposed support structure shall be designed to accommodate antenna for more than one (1) user, unless the applicant demonstrates why such design is not feasible for economic, technical or physical reasons.

(e) Unless co-location has been demonstrated to be infeasible, the site plan shall delineate an area near the base of the tower to be used for the placement of additional equipment buildings for other users. The site plan for towers in excess of one hundred (100) feet must propose space for two (2) comparable tower users while the site plan for towers under one hundred (100) feet must propose space for one (1) comparable tower user.

(f) To provide further incentive for co-location as a primary option, an existing tower may be modified or reconstructed to accommodate the co-location of additional antenna, provided the additional antenna shall be consistent with the use and aesthetics as that on the existing tower. This is permitted by conditional use permit for existing towers in all zoning districts, subject to the following criteria being met:

(1) Height: An existing tower may be modified or rebuilt to a taller height, to accommodate the co-location of additional antenna, so long as it is done in accordance with (e) and (f), above.

(2) Onsite Location: A tower which is being rebuilt to accommodate the co-location of an additional antenna may be moved on-site within fifty (50) feet of its existing location so long as it remains within the same zone and complies with the other provisions of this Section. After the tower is rebuilt to accommodate co-location, only one (1) tower may remain on site.

(3) Signage Prohibited: Except as set forth in Section 46-110K2(c), no signs, banners or similar devices or materials may be attached to the towers, antenna support structure or antennas.

2. Subject to the priorities as set forth in Section 46-110.F, to minimize adverse visual impacts associated with the proliferation of towers, co-location of antennas by more than one (1) carrier on existing or new towers and location of such antennas on commercial, business, industrial or residential property shall take precedence over the construction of new single-use towers on commercial, business, industrial or residential property, as follows:

(a) Proposed antennas may, and are encouraged by the opportunity for expedited review as provided in this Section to, co-locate onto existing towers. Even where such co-location is accomplished in a manner consistent with the policy, site criteria, and landscape/screening provisions contained in this Section, new or additional conditional use approval is required, and any other permit, license, lease, or franchise requirements also must be satisfied.

(b) The conditional use requirement for antennas may be expedited, upon the Director of Public Works' sole determination, to eliminate Planning Commission review and submit such application directly to City Council for its review, in commercial, business, industrial and residential zones if the applicant locates the antenna on an existing structure including an existing tower and if the antenna is proposed to be located on suitable commercial, business, industrial or residential property. Suitability of commercial, business, industrial or residential property shall be determined in the City's sole discretion. The applicant must submit detailed plans to the Public Works Department for an administrative review to determine if the conditional use permit process and public hearing can be expedited, as provided herein. No building permit will be issued until the conditional use permit is granted.

(c) The City may deny the application to construct a new tower if the applicant has not shown by substantial evidence that it has made a good faith effort to mount the antenna on an existing structure.

(d) In order to reduce the number of antenna support structures needed in the City in the future, any new proposed support structure shall be designed to accommodate antenna for more than one (1) user, unless the applicant demonstrates why such design is not feasible for economic, technical or physical reasons.

(e) Unless co-location has been demonstrated to be infeasible, the site plan shall delineate an area near the base of the tower to be used for the placement of additional equipment buildings for other users. The site plan for towers in excess of one hundred (100) feet must propose space for two (2) comparable tower users while the site plan for towers under one hundred (100) feet must propose space for one (1) comparable tower user.

(f) To provide further incentive for co-location as a primary option, an existing tower may be modified or reconstructed to accommodate the co-location of additional antenna, provided the additional antenna shall be consistent with the use and aesthetics as that on the existing tower. This is permitted by conditional use permit for existing towers in all zoning districts, subject to the following criteria being met:

(1) Height: An existing tower may be modified or rebuilt to a taller height, to accommodate the co-location of additional antenna, so long as it is done in accordance with (e) and (e), above.

(2) Onsite Location: A tower which is being rebuilt to accommodate the co-location of an additional antenna may be moved onsite within fifty (50) feet of its existing location so long as it remains within the same zone and complies with the other provisions of this Section. After the tower is rebuilt to accommodate co-location, only one (1) tower may remain on site.

(3) Signage Prohibited: Except as set forth in Section 46-110K2(c), no signs, banners or similar devices or materials may be attached to the towers, antenna support structure or antennas.

l. Design Criteria

1. New towers and antenna support structure shall be designed to accommodate co-location for antenna for more than one (1) user throughout the City in zoning districts as permitted by this Section, unless the applicant demonstrates why such design is not feasible for economic, technical or physical reasons.

2. Facilities should be architecturally compatible with the surrounding buildings and land uses in the zoning district or otherwise integrated, through location and design, to blend in with the existing characteristics of the site to the extent practical.

(a) *Setback*: Tower setbacks shall be measured from the base of the tower to the property line of the parcel on which it is located. Unless there are unusual geographic limitations or other public policy considerations as determined in the City's sole discretion, in residential districts and residential land use areas, where permitted, towers shall be set back from all property lines a distance equal to three hundred percent (300%) of tower height as measured from ground level. Except as provided herein and except for unusual geographic limitations or other public policy considerations, as determined in the City's sole discretion, towers shall comply with the minimum setback requirements of the area in which they are located in all other zoning districts.

(b) *Color*: Towers shall have a color generally matching the surroundings or background that minimizes their visibility, unless a different color is required by the FCC or FAA.

(c) *Lights, Signals and Signs*: No signals, lights or signs shall be permitted on towers unless required by the FCC or the FAA. Should lighting be required, at the time of construction of the tower in cases where there are residential users located within a distance which is three hundred percent (300%) of the height of the tower from the tower, then dual mode lighting shall be requested from the FAA.

(d) *Equipment Structures*: Ground level equipment and buildings and the tower base shall be screened from public streets and residentially zoned properties. The standards for the equipment buildings are as follows:

(1) The maximum floor area is three hundred fifty (350) square feet per provider and the maximum height is twelve (12) feet. Depending upon the aesthetics and other issues, the City, in its sole discretion, may approve multiple equipment structures or one (1) or more larger structures.

(2) Ground level buildings shall be screened from adjacent properties by landscape plantings, fencing and other appropriate means, as specified herein or in the Kearney City Code.

(3) Equipment buildings mounted on a roof and other roof mounted equipment shall have a finish similar to the exterior building walls. Equipment for roof-mounted antenna may also be located within the building on which the antenna is mounted.

(4) In instances where equipment structures are located in residential zones or in close proximity to public rights-of-way, equipment structures shall comply with setback requirements and shall be designed so as to conform in appearance with nearby structures.

(e) Equipment buildings, antenna and related equipment shall occupy no more than twenty-five percent (25%) of the total roof area of a building, which may vary in the City's sole discretion if co-location and an adequate penthouse-type structure are used.

(f) Antenna or equipment buildings not meeting these standards require a special exception in addition to the conditional use permit. The special exception must be approved on a comprehensive sketch plan or final development plan, as applicable.

3. *Federal Requirements*: All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this Section shall bring such towers and antennas into compliance with such revised standards and regulations in accordance with the compliance deadlines/requirements of such standards and regulations. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owners' expense.

4. *Building Codes; Safety Standards*: To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable City building codes and the applicable standards for towers that are published by the Electronic Industries Association ("EIA"), as amended from time to time. If, upon inspection, the City concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards. If the owner fails to bring such tower into compliance within said thirty (30) days, the City may remove such tower at the owner's expense.

5. *Structural Design*: Towers shall be constructed to the EIA Standards, which may be amended from time to time, and all applicable construction/building codes. Further, any improvements and/or additions to existing towers shall require submission of site plans sealed and verified by a professional engineer which demonstrate compliance with the EIA Standards and all other good industry practices in effect at the time of said improvement or addition. Said plans shall be submitted to and reviewed at the time building permits are requested.

6. *Fencing*: A well-constructed masonry or stone wall, or chain link in an industrial zone, not less than eight (8) feet in height from finished grade shall be provided around each tower. Access to the tower and equipment structures shall be through a locked gate.

7. *Antenna height*: The applicant shall demonstrate that the antenna is the minimum height required to function satisfactorily. No antenna that is taller than this minimum height shall be approved.

8. *Antenna support structure safety*: The applicant shall demonstrate that the proposed antenna and support structure are safe and the surrounding areas also will not be negatively affected by interference. All support structures shall be fitted with anti-climbing devices, as approved by the manufacturers.

9. *Required parking*: If the cell site is fully automated, adequate parking shall be required for maintenance workers. If the site is not automated, arrangements for adequate off-street parking shall be made and documentation thereof provided to the City. Security fencing should be colored or should be of a design, which blends into the character of the existing environment.

10. *Antenna Criteria*: Antenna on or above a structure shall be subject to the following:

(a) The antenna must be architecturally compatible with the building and wall on which it is mounted and designed and located so as to minimize any adverse aesthetic impact.

(b) The antenna shall be mounted on a wall of an existing building in a configuration as flush to the wall as technically possible and shall not project above the wall on which it is mounted unless, for technical reasons, the antenna needs to project above the roof line. In no event shall an antenna project more than ten (10) feet above the roofline.

(c) The antenna shall be constructed, painted or fully screened to match as closely as possible the color and texture of the building and wall on which it is mounted.

(d) The antenna may be attached to an existing conforming mechanical equipment enclosure which projects above the roof of the building, but may not project any higher than the enclosure.

(e) If an accessory equipment shelter is present, it must blend with the surrounding buildings in architectural character and color.

(f) The antenna, facilities and accessory equipment shelter must be architecturally and visually (color, size, bulk) compatible with surrounding existing buildings, structures, vegetation and/or uses or those likely to exist under the terms of the underlying zoning. Such antenna, facilities and accessory equipment shelter will be considered architecturally and visually compatible if they are camouflaged to disguise the facility.

(g) Site location and development shall preserve the pre-existing character of the site as much as possible. Existing vegetation should be preserved or improved, and disturbance of the existing topography of the site should be minimized, unless such disturbance would result in less visual impact of the site on the surrounding area. The effectiveness of visual mitigation techniques must be evaluated by City, in City's sole discretion, taking into consideration the site as built.

(h) For installations on buildings greater than thirty (30) feet in height, see other applicable provisions of this Section. In addition to the other requirements of this Section, on buildings thirty (30) feet or less in height, the antenna may be mounted on the roof if the following additional criteria are satisfied:

(1) The City finds that it is not technically possible or aesthetically desirable to mount the antenna on a wall.

(2) No portion of the antenna or base station causes the height of the building to exceed the limitations set forth herein.

(3) The antenna or antennas and related base stations cover no more than an aggregate total of twenty-five percent (25%) of the roof area of a building, which may vary in the City's sole discretion, if co-location and an adequate penthouse-type structure are used.

(4) Roof-mounted antenna and related base stations must be appropriately camouflaged or substantially screened from view by materials that are consistent and compatible with the design, color, and materials of the building.

(5) No portion of the antenna may exceed ten (10) feet above the height of the existing building.

11. If a proposed antenna is located on a building or a lot subject to a site review, conditional use approval is still required prior to the issuance of a building permit.

12. No antenna shall be permitted on property designated as an individual landmark or as a part of a historic district, unless such antenna has been approved in accordance with the City Code.

13. No antenna owner or lessee or officer or employee thereof shall fail to cooperate in good faith to accommodate other competitors in their attempts to use the same tower or building for other antennas. If a dispute arises about the feasibility of accommodating another competitor, the City Manager may require a third party technical study, at the expense of either or both parties, to resolve the dispute.

14. No antenna owner or lessee shall fail to assure that the antenna complies at all times with the then current applicable EIA or FCC standards, or other applicable federal standards, whichever standard is more stringent. After installation, but prior to putting the antenna in service, each antenna owner shall provide a notarized statement signed by a qualified engineer to that effect.

15. No antenna shall cause localized interference with the reception of any other communications signals including, but not limited to, public safety signals, and television and radio broadcast signals.

16. No person shall locate an antenna or tower for wireless communications services upon any lot or parcel except as provided in this Section.

J. Other Permitted Uses

1. Applications for antenna for personal wireless communications services and associated unmanned equipment buildings may be reviewed in accordance with the use by special review process so long as the requirements of this Section and the following standards are met:

(a) In addition to the other requirements in this Section, where the antenna is attached to the roof or sides of a building, an existing tower, a water tank, or a similar structure;

(b) The following antennae are permitted under the provisions of this section:

(1) Omni directional or whip antenna no more than seven (7) inches in diameter and extending no more than ten (10) feet above the structure to which they are attached; or

(2) Panel or similar antenna no more than two (2) feet wide and six (6) feet long, extending above the structure to which they are attached by no more than ten (10) feet; or

(c) Antenna and antenna array not on publicly-owned property shall not extend more than ten (10) feet above the highest point of the structure on which it is mounted. The antenna, antenna array, and its support structure shall be mounted so as to blend with the structure to which the antenna is attached. The antenna and its support structure shall be designed to withstand a wind force of one hundred

(100) miles per hour without the use of supporting guy wires, in all zones. The antenna, antenna array, and its support structure shall be a color that blends with the structure on which they are mounted.

(d) *Setback from street*: Unless there are unusual geographic limitations or other public policy considerations, as determined in the City's sole discretion, no such antenna, antenna array, or its support structure shall be erected or maintained closer to any street than the minimum setback for the zone in which it is located.

(e) *Guy wires restricted*: No guy or other support wires shall be used in connection with such antenna, antenna array, or its support structure except upon approval of a conditional use permit.

K. Inspection Requirements

Each year after a facility becomes operational, the facility operator shall conduct a safety inspection in accordance with the EIA and FCC Standards and, within sixty (60) days of the inspection, file a report with the City Manager. Submission of a FCC required, and duly filed, safety inspection report, or the facility operator's maintenance reports for the prior twelve (12) months in the event no FCC report is required for such year, to the City Manager shall satisfy the requirements of this section.

L. Landscaping/Screening.

1. *Landscaping.* Landscaping, as described herein, shall be required to screen as much of the support structure as possible, the fence surrounding both the support structure and any other ground level features (such as a building), and in general soften the appearance of the cell site. The City may permit any combination of existing vegetation, topography, walls, decorative fences or other features instead of landscaping, if they achieve the same degree of screening as the required landscaping. If the antenna is mounted on an existing building, and other equipment is housed inside an existing structure, landscaping shall not be required.

2. *Screening.* The visual impacts of a tower shall be mitigated through landscaping or other screening materials at the base of the tower and ancillary structures. The following landscaping and buffering of towers shall be required around the perimeter of the tower and accessory structures, except that the standards may be waived by the City for those sides of the proposed tower that are located adjacent to undevelopable lands and lands not in public view. Landscaping shall be installed on the outside of fences. Further, existing vegetation shall be preserved to the maximum extent practicable and may be used as a substitute for or in supplement towards meeting landscaping requirements.

(a) A row of evergreen trees a minimum of ten (10) feet tall at planting a maximum of six (6) feet apart, or a row of deciduous or coniferous trees a minimum of ten (10) feet tall at planting a maximum of fifteen (15) to twenty-five (25) feet apart shall be planted around the perimeter of the fence; or

(b) A continuous hedge at least thirty-six (36) inches high, or a five (5)-gallon size shrub, at planting capable of growing to at least forty-eight (48) inches in height within eighteen (18) months shall be planted around the perimeter of the tower and accessory structures.

3. *Maintenance.* In the event that landscaping is not maintained at the required level, the City, after giving thirty (30) days advance written notice, may maintain or do the landscaping and bill both the owner and lessee for such costs until such costs are paid in full.

M. Non-Use/Abandonment

Abandonment: In the event the use of any tower or antenna has been discontinued for a period of sixty (60) consecutive days, the tower or antenna shall be deemed to be abandoned. Determination of the date of abandonment shall be made by the City, which shall have the right to request documentation and/or affidavits from the tower or antenna owner/operator regarding the issue of tower or antenna usage. Upon such abandonment, the owner/operator of the tower or antenna or the owner of property upon which such facility is located shall have an additional sixty (60) days within which to:

1. Reactivate the use of the tower or antenna or transfer the tower or antenna to another owner/operator who makes actual use of the tower or antenna; or

2. In the event that abandonment as defined in this Section occurs due to relocation of an antenna at a lower point on the antenna support structure, reduction in the affected radiated power of the antenna or reduction in the number of transmissions from the antennas, the operator of the tower shall have six (6) months from the date of effective abandonment to co-locate another service on the tower. If another service provider is not added to the tower, then the operator shall promptly dismantle and remove that portion of the tower, which exceeds the minimum height, required to function satisfactorily. Notwithstanding the foregoing, changes which are made to personal wireless facilities which do not diminish their essential role in providing a total system shall not constitute abandonment; however, in the event that there is a physical

reduction in height of substantially all of the providers' towers in the City, then all of such providers' towers within the City shall similarly be reduced in height.

3. Dismantle and remove the tower or antenna. If such tower or antenna is not removed within said sixty (60) days from the date of abandonment, the City may remove such tower or antenna, in accordance with applicable law, at the facility owner's and/or property owner's expense. If there are two (2) or more users of a single tower or antenna, then this provision shall not become effective until all users cease using the tower or antenna.

4. At the earlier of sixty (60) days from the date of abandonment without reactivation or upon completion of dismantling and removal, City approval for the tower or antenna shall automatically expire.

N. Application Requirements

In the course of reviewing any request for any approval required under this Section made by an applicant to provide personal wireless service or to install personal wireless service facilities, the Planning Commission or the City Council, as the case may be, shall act within a reasonable period of time after the request is duly filed with the City, taking into account the nature and scope of the request, and any decision to deny such a request shall be in writing and supported by substantial evidence contained in a written record. All applicants who wish to locate a wireless telecommunication antenna or tower in the City must submit to the City Manager a completed application and detailed plan that complies with the submittal requirements of this Section, the Unified Land Development Ordinance and other regulations and ordinances of the City along with other pertinent information requested by the City. Application submission for conditional use, variance, and building permit requests may utilize any combination of site plans, surveys, maps, technical reports or written narratives necessary to convey the following information:

1. A scaled site plan clearly indicating the location, type and height of the proposed tower, on-site land uses and zoning, adjacent land uses and zoning, adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower, and any other proposed structures;

2. A current map and aerial as provided by the County Surveyor's office showing the location of the proposed tower;

3. Legal description of the parcel, if applicable;

4. Approximate distance between the proposed tower and the nearest residential unit, platted residentially zoned properties, and unplatted residentially zoned properties;

5. A landscape plan showing specific landscape materials;

6. Method of fencing, and finished color and, if applicable, the method of camouflage and illumination;

7. A notarized letter signed by the applicant stating the tower will comply with all EIA Standards and all applicable federal and state laws and regulations and the City Code including specifically F.A.A. regulations;

8. A statement by the applicant as to whether construction of the tower will accommodate co-location of additional antenna for future users;

9. A notarized letter signed by the applicant stating that the antenna usage will not interfere with other adjacent or neighboring transmission or reception functions;

10. The telecommunications company must demonstrate that it is licensed by the F.C.C. if required to be licensed under F.C.C. regulations;

11. The applicant, if not the telecommunications service provider, shall submit proof of lease agreements with an F.C.C. licensed telecommunications provider if such telecommunications provider is required to be licensed by the F.C.C.;

12. A full site plan shall be required for all cell sites, showing the antenna, antenna support structure, building, fencing, buffering, access, and all other items required in this Section. The site plan shall not be required if the antenna is to be mounted on an existing structure;

13. At the time of site selection, the applicant should demonstrate how the proposed site fits into its overall network within the City;

14. This Section shall apply to all applications which were filed prior to the effective date hereof and which have not been approved by the City Council as of the effective date of this Ordinance, and to applications filed thereafter.

O. Third Party Review

The telecommunications providers use various methodologies and analysis tools, including geographically-based computer software, to determine the specific technical parameters of telecommunications services and facilities, such as expected coverage area, antenna configuration, topographic constraints that affect

signal paths, etc. In certain instances, there may be a need for expert review by a third party of the technical data submitted by the telecommunications provider. The City Council or the Planning Commission may require such a technical review, to be paid for by the applicant for the telecommunications services or facilities. The selection of the third party expert shall be by mutual agreement between the applicant and City, such agreement not to be unreasonably withheld by either party. The expert review is intended to be a site-specific review of technical aspects of the telecommunications services or facilities and other matters as described herein with respect to potential interference issues, and not a subjective review of the site selection. Such a review should address the accuracy and completeness of the technical data, whether the analysis techniques and methodologies are legitimate, the validity of the conclusions and any specific technical issues outlined by the City Council, Planning Commission, City Staff, or interested parties. Based on the results of the third party review, the City may require changes to the application for the telecommunications services, facilities and other matters as described herein that comply with the recommendations of the expert.

P. Conditional Use Permit Requirement

Notwithstanding anything to the contrary contained herein, in all instances a conditional use permit must be obtained with the affirmative vote of City Council before any radio, television, personal wireless services or facilities may be constructed or operated within the City.

Q. Termination

The City Council may, subject to applicable law, rescind any previously granted or pending City approval or lease necessary for the construction, installation or operation of telecommunications facilities if it determines that any one of the following conditions exist:

1. A potential user with a higher priority cannot find another adequate location and the potential use would be incompatible with the existing use;

2. A user's frequency broadcast unreasonably interferes with other users of higher priority of use as set forth in Section 46-110.H, regardless of whether or not this interference was adequately predicted in the technical analysis; or

3. A user violates any of the standards in this Section or the conditions of City approval, lease provisions with the City or other terms of authorization by the City.

Before taking action, the City will provide notice to the user of the intended termination and the reasons for it, and provide a reasonable opportunity for the user to either cure the alleged interference, violation or condition or address the City Council regarding the proposed action.

This procedure need not be followed in emergency situations.

Notwithstanding the above, the City Council reserves the right to deny, for any reason, the use of any or all City-owned property by any one or all applicants. Such denial shall be in writing and supported by substantial evidence contained in a written record.

R. Violations; Penalties; City Remedies

1. Any person who violates any of the provisions of this Section 46-110 shall be punished in accordance with the provisions of Section 1-111 of the Kearney City Code.

2. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation is committed, continued or permitted by any such person.

3. In addition to receiving any fines or other monetary remuneration, the City shall have the right to seek injunctive relief for any and all violations of this Section and all other remedies provided by law or in equity.

4. Before taking action, the City will provide notice to the user of the alleged violation, and provide a reasonable opportunity for the user to either cease or cure the alleged violation or address the City Council regarding such alleged violation. This procedure need not be followed in emergency situations.

S. Severability

Should any section, paragraph, sentence, clause, phrase or word of this Section be declared invalid or unconstitutional by a court or agency of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining sections, paragraphs, sentences, clauses, phrases or words of this Section, all of which will remain in full force and effect.

T. Conflict

To the extent that any provision or provisions of this Section are inconsistent or in conflict with any other provision of the City Code, the Unified Land Development Ordinance or any ordinance or regulation of the City, the provisions of this Section shall be deemed to control. When not inconsistent with the context,

words used in the plural number include the singular number, and words used in the singular number include the plural number.

ARTICLE 24
WIRELESS COMMUNICATIONS FACILITIES
Section
25-24-1 Intent and Purpose
25-24-2 Definitions
25-24-3 Zoning; Towers; Height Restrictions.
25-24-4 Conditional Use Permits
25-24-5 Preferred Areas
25-24-6 Tower Placement
25-24-7 Compliance With Zoning, FAA and FCC Regulations
25-24-8 Provider Cooperation
25-24-9 Tower and WCF Site Maintenance
25-24-10 Tower Inactivity

25-24-1. Intent and Purpose.

The purpose of the WCF regulations is to encourage and promote wireless communications coverage for all areas of the City while minimizing the visual, environmental and neighborhood impacts. The goals include providing personal wireless services throughout the City quickly, effectively and efficiently while ensuring that basic matters such as FAA, FCC and Airport Zoning requirements are met as well as addressing security, decommissioning and preferred locations.

More preferred locations include commercial, industrial and agricultural areas and less preferred locations include residential areas. More preferred locations in residential areas include public lands, proximity to existing overhead utility corridors and proximity or attachment to existing structures that might assist with screening.

25-24-2. Definitions.

For the purposes of this Article, certain terms and words are defined.

Antenna means any exterior device designed and intended for telephonic, radio, data, internet or television communications through the sending and/or receiving of electromagnetic waves. For purposes of this Article the term "antenna" shall not include an antenna used by an amateur radio operator nor an antenna or satellite dish used for the private or non-commercial reception of television or radio signals.

Antenna Height means the vertical distance from natural grade to the top of all appurtenances.

Antenna Support Structure means any building or structure other than a tower which can be used for location of telecommunications facilities.

FAA means the Federal Aviation Administration.

FCC means the Federal Communications Commission.

PWS means Personal Wireless Service Provider, which means a personal wireless service facility owner, operator, lessee or any officer or employee thereof.

Tower(s) means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers or monopole

towers.
Utility Sublot means a lot that may be smaller than the minimum allowed in a District or otherwise
out of standard compliance. A Utility Sublot must have legal vehicular access. Water may be allowed
for property maintenance, but there shall be no sewer service allowed.
WCF means Wireless Telecommunications Facility.
WCF Site means a tract or parcel of land that contains the personal wireless service facilities including any antenna, support structure, accessory building and parking, and may include other uses
associated with and ancillary to personal wireless services.

25-24-3. Zoning; Towers; Height Restrictions.

(a) Antennas in all Zoning Districts may be allowed after administrative review and approval of the
appropriate Planning and Building Official when attached to existing structure, including roof-tops,
building faces, water tower or existing utility structure provided the antenna does not exceed 12 feet
in height above the existing structure and blends in with said structure.
(b) This Article recognizes two types of Towers associated with PWS: those up to 75 feet in height,
which are constructed primarily for local distribution and reception of wireless signals; and those greater than 75 feet in height, which are constructed primarily for the concentration and transmission
of signals to and from other towers.
(c) Towers of any height shall be a conditionally permitted use by special review in A Agricultural
and AR Agricultural Residential zones.
(d) Except as noted in (e) and 25-24-7, Towers over 75 feet in height shall not be affected by the ordinances set forth in this Article.
(e) Towers no greater than 75 feet in height shall be a conditionally permitted use by special review
in all Zones, except where current zoning permits Towers as a use by right. However, allowances may be made to Towers exceeding 75 feet in height if such Towers must be extended due to local
circumstances or to accommodate co-location by other PWS. The conditions set forth in this Article
shall apply to Towers.

25-24-4. Conditional Use Permits.

Applications for Conditional Use Permits (CUP) shall include the following: The legal description
of the parcel upon which the PWS facilities are to be located; a survey of the parcel by a licensed surveyor; a scaled site plan clearly indicating the location, type and height of proposed Tower; adjacent land uses and zoning; adjacent roadways and proposed means of access. The site plan shall
indicate the antenna, antenna support structure, building, fencing, buffering and all other items

required in this Article.

25-24-5. Preferred Areas.

There are more preferred areas for Towers and less preferred areas for Towers. More preferred areas 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. Less preferred areas might include subdivisions that are wholly served by underground utilities.

25-24-6. Tower Placement.

(a) Towers, where possible, shall be constructed on existing utility easement and rights-of-ways, subject to existing utility restrictions, such as areas where underground utilities are required.

(b) Towers may be constructed on private land; as a permanent easement, as a land rental arrangement or on a lot owned by the PWS. Creation of utility-type sub-lots will not be subject to minimum lot size as set forth in Chapter 20 of the Municipal Code, but will be subject to access requirements and no water service.

(c) Required setbacks will be determined on individual site bases through review of each Conditional Use Permit. Collapsible Tower design may be required in certain instances.

(d) Towers may be built on municipal land subject to the conditional use permit process and subject to such legal and administrative contracts as deemed appropriate and necessary by the Planning and Development Official.

(e) Towers may be required to blend in and enhance comparability with adjacent land uses as reasonably feasible.

(f) Towers must be enclosed and secured by a chain-link fence or equivalent, of a minimum of six feet in height, however an appropriate privacy-type fence may be required to improve compatibility in residential neighborhoods. Anti-climb protection must be installed to prevent, to the extent possible, unauthorized access. The security fence must enclose all components of the site, including footings, guy wires (if present), cabinets, equipment building and back-up generator. No property line setbacks are automatically required for Towers in this category, however, the security fence enclosure must be adequate for the safe access and maintenance of the Tower and its equipment.

25-24-7. Compliance With Zoning, FAA and FCC Regulations.

PWS must provide evidence that proposed Towers have met all applicable regulations, including local Airport Zoning, prior to construction and be Compliant with E-911 Public Safety Access Point.

PWS must also submit an airport obstruction evaluation/airport airspace analysis (FAA Form 7460-1) aeronautical study to FAA for determination of Tower obstruction to aviation operations. An FAA

approved airspace analysis report shall be submitted to the Planning and Development Official prior
to any Tower construction commencing.

25-24-8. Provider Cooperation.

(a) No PWS shall act to exclude any other PWS from using the same facility, building, structure or
location. PWSs shall cooperate in good faith to achieve co-location of facilities and equipment with
other PWSs.

(b) Upon request by the City, a PWS shall provide evidence why co-location is not feasible.

25-24-9. Tower and WCF Site Maintenance.

(a) Any Tower approved in this Article must be maintained in a manner consistent with generally accepted industry practices. A tower may be inspected at any time, subject to approved access by the
service provider, to insure the safety of the general public. Any deficiencies in structure or operation
shall be promptly remedied.

(b) The property and WCF Site shall be maintained in a reasonable manner and be kept weed free;
options can include rock, mulch, landscaping and maintenance or any combination thereof.

25-24-10. Tower Inactivity.

A PWS or its successors or assigns shall promptly remove a Tower and return the WCF Site to its
pre-construction conditions, should a Tower be decommissioned or otherwise deemed unnecessary
or unusable.

City of Norfolk, 309 N. 5th Street, Norfolk, Nebraska

RESOLUTION NO. 2015-34

WHEREAS, Telebeep, Inc. has filed an application for a Conditional Use Permit seeking a permit for a communications tower on property which is legally described as follows:

Western Heights Fourth Platting Lot 16, Block 16 to the City of Norfolk, Madison County, Nebraska, addressed as 2208 Elmer's Lane; and

WHEREAS, the property described above is presently included in Zoning District R-1; and

WHEREAS, the Norfolk Planning Commission has conducted a public hearing on September 22, 2015 receiving input and data from the applicant and the general public concerning the Conditional Use Permit, said hearing having been duly noticed; and

WHEREAS, on October 6, 2015, the Planning Commission approved the Conditional Use Permit by a vote of 6 to 3; and

WHEREAS, on October 15, 2015, Ross and Maggie Stoffer filed with the City an appeal of the Planning Commission's approval of a Conditional Use Permit to the applicant; and

WHEREAS, pursuant to Norfolk City Code Section 27-56 the City Council may, following a public hearing, reverse, affirm or modify the decision of the Planning Commission; and

WHEREAS, a public hearing on the appeal filed by Ross and Maggie Stoffer was held before the City Council on November 2, 2015, said hearing having been duly noticed; and

WHEREAS, information and testimony both in favor of and in opposition to the application of Telebeep, Inc. were presented at said hearing.

NOW THEREFORE, in consideration of the foregoing recitals and based upon the evidence and testimony received at said public hearing, the Mayor and City Council of the City of Norfolk, Nebraska hereby adopt the following Resolution:

BE IT RESOLVED by the Mayor and City Council of the City of Norfolk, Nebraska that the determination of the Planning Commission in Resolution No. 2015PC-9 to approve

the application of Telebeep, Inc. for a Conditional Use Permit is hereby reversed and the application of Telebeep, Inc. is hereby denied.

PASSED AND APPROVED this _____ day of _____, 2015.

ATTEST:

_____ _____

Elizabeth A. Deck, City Clerk Sue Fuchtman, Mayor

Approved as to form: _____

Clint Schukei, City Attorney

Version B (Affirm)

City of Norfolk, 309 N. 5th Street, Norfolk, Nebraska

RESOLUTION NO. 2015-34

WHEREAS, Telebeep, Inc. has filed an application for a Conditional Use Permit seeking a permit for a communications tower on property which is legally described as follows:

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WHEREAS, pursuant to Norfolk City Code Section 27-56 the City Council may, following a public hearing, reverse, affirm or modify the decision of the Planning Commission; and

WHEREAS, a public hearing on the appeal filed by Ross and Maggie Stoffer was held before the City Council on November 2, 2015, said hearing having been duly noticed; and

WHEREAS, information and testimony both in favor of and in opposition to the application of Telebeep, Inc. were presented at said hearing.

NOW THEREFORE, in consideration of the foregoing recitals and based upon the evidence and testimony received at said public hearing, the Mayor and City Council of the City of Norfolk, Nebraska hereby adopt the following Resolution:

BE IT RESOLVED by the Mayor and City Council of the City of Norfolk, Nebraska that the determination of the Planning Commission in Resolution No. 2015PC-9 to approve the application of Telebeep, Inc. for a Conditional Use Permit is hereby affirmed.

PASSED AND APPROVED this _____ day of _____, 2015.

ATTEST:

_____ _____

Elizabeth A. Deck, City Clerk Sue Fuchtman, Mayor

Approved as to form: _____

Clint Schukei, City Attorney

Version C (Modify)

City of Norfolk, 309 N. 5th Street, Norfolk, Nebraska

RESOLUTION NO. 2015-34

WHEREAS, Telebeep, Inc. has filed an application for a Conditional Use Permit seeking a permit for a communications tower on property which is legally described as follows:

Western Heights Fourth Platting Lot 16, Block 16 to the City of Norfolk, Madison County, Nebraska, addressed as 2208 Elmer's Lane; and

WHEREAS, the property described above is presently included in Zoning District R-1; and

WHEREAS, the Norfolk Planning Commission has conducted a public hearing on September 22, 2015 receiving input and data from the applicant and the general public concerning the Conditional Use Permit, said hearing having been duly noticed; and

WHEREAS, on October 6, 2015, the Planning Commission approved the Conditional Use Permit by a vote of 6 to 3; and

WHEREAS, on October 15, 2015, Ross and Maggie Stoffer filed with the City an appeal of the Planning Commission's approval of a Conditional Use Permit to the applicant; and

WHEREAS, pursuant to Norfolk City Code Section 27-56 the City Council may, following a public hearing, reverse, affirm or modify the decision of the Planning Commission; and

WHEREAS, a public hearing on the appeal filed by Ross and Maggie Stoffer was held before the City Council on November 2, 2015, said hearing having been duly noticed; and

WHEREAS, information and testimony both in favor of and in opposition to the application of Telebeep, Inc. were presented at said hearing.

NOW THEREFORE, in consideration of the foregoing recitals and based upon the evidence and testimony received at said public hearing, the Mayor and City Council of the City of Norfolk, Nebraska hereby adopt the following Resolution:

BE IT RESOLVED by the Mayor and City Council of the City of Norfolk, Nebraska that the determination of the Planning Commission in Resolution No. 2015PC-9 to approve the application of Telebeep, Inc. for a Conditional Use Permit is modified and Telebeep,

Inc. is hereby granted a Conditional Use Permit for a communications tower at 2208 Elmer's Lane subject to the following terms and conditions:

(NOTE: The conditions listed in the original Conditional Use Permit appear below in blue text.)

(1) This permit shall be for the ten (10) year period from October 6, 2015 until October 6, 2025;

(2) The wood utility pole utilized as a communications tower shall be installed, maintained and safety inspected per US Dept. of Agriculture's Standard Specifications for Wood Poles, as they may be subsequently amended. In the event of a storm causing severe damage to the surrounding area, the utility pole shall be promptly reevaluated;

(3) Communications tower shall not have any climbing pegs installed for a minimum of 15' above the ground;

(4) The applicants shall meet all FAA and FCC requirements regarding uses;

(5) The minimum required setbacks and landscaping from adjacent property lines shall be 14';

(6) The maximum height of the communications tower shall be 75', including all attachments to the pole;

(7) Applicant shall pay the new communications tower building permit and electrical permit fees, times three, for installing the new communication tower prior to attaining the proper building and electrical permits;

(8) Applicant is responsible for acquiring written acknowledgement from Nebraska Public Power District (NPPD) that the electrical installation at the site is authorized by NPPD retail service rules and regulations. Said acknowledgement shall be sent to Norfolk Planning Commission Secretary at 309 N. 5th St., Norfolk, NE 68701;

(9) Should cessation of use continue for one (1) year, the tower shall be removed;

(10) All procedures and standards outlined in Section 27-56 of the Norfolk City Code pertaining to Conditional Use Permits shall be observed;

(11) The Conditional Use Permit granted herein shall be subject to the provisions of the Norfolk City Code that provide for an appeal to be taken within 15 days of the decision of the Planning Commission; and pursuant to the Norfolk City Code, shall be a personal privilege granted to the applicant and shall not be subject to transfer;

(12) There shall be compliance with any other applicable City, County, State or Federal regulations that may apply.

(13) _____
_____
_____.

(14) _____
_____
_____.

(15) _____
_____
_____.

PASSED AND APPROVED this _____ day of _____, 2015.

ATTEST:

_____ _____
Elizabeth A. Deck, City Clerk Sue Fuchtman, Mayor

Approved as to form: _____
Clint Schukei, City Attorney

APPEAL OF APPROVAL OF CONDITIONAL USE PERMIT TO TELEBEEP, INC. FOR COMMUNICATIONS TOWER AT 2208 ELMER'S LANE

Presented by Ross and Maggie Stoffer

I. Tower was illegally placed on property at 2208 Elmer's Lane in 2004 then illegally expanded in May, 2015.
   a. The issue involved is the construction of a tower not the installation of a "utility pole".
      i. Telebeep's application for a conditional use permit claims purpose of permit is to "Install Utility Pole to deliver Broadband" – Conditional Use Permit application Attachment #1
      ii. Telebeep is not a utility
      iii. Code Section 27-2 states: *Tower* shall mean a structure situated on a site that is intended for transmitting or receiving television, radio, or telephone communication.
      iv. Wi-Fi is radio transmitting and receiving.
      v. Telebeep's application is for a tower
      vi. Response to application question 9 asking for general character of the area is "Pole is currently located in the back of the residential property and is in the same proximity of other utility poles."
         1. Pole is there only because it was illegally placed there and permit should be considered as if pole is not there.
         2. As shown above, the tower is not a utility pole.
      vii. Response to question 3 on Conditional Use Permit Justification – Form B (page 2 of Attachment 1) asking about compatibility with adjacent properties states "It is a Utility pole and will meet all requirements." when actually it is a tower for a business purpose, much higher than the actual utility poles in the area (probably twice as high), located on a residential lot in a residential neighborhood and does not meet zoning requirements.
   b. Additional Incomplete or inaccurate information is given to the City on the Application for Conditional Use Permit.
      i. Question number 2 on the Conditional Use Permit Justification – Form B (page 2 of attachment #1) asks "Will it be necessary to build a new structure?" is left blank. Of course if the application had been filed properly - prior to the tower being put in place; that should have been answered "Yes".
      ii. Response to question number 6 on the Conditional Use Permit Justification – Form B (page 2 of attachment #1 asks if ingress and egress to the property is adequate to which the "Yes" box is checked. However, examination of the subdivision map (Attachment #2) and the aerial view of the area (Attachment #3) show that the only ingress and egress without crossing other private property is from the front yard of 2208 Elmers Lane. This was not the manner in which ingress was obtained when the tower was installed in May, 2015. Ingress and egress in May, 2015 was made across private property off of Hillcrest Circle (and across the back portion of my property without permission) to the tower location. Additional investigation needs to be made as to whether this same route will be available in the future and if not if adequate ingress and egress can be made from the front yard of 2208 Elmers Lane considering the house located there, trees, etc.
      iii. Question 10 on the same form addresses utilities and asserts that the utilities are property located but has been left blank with no explanation as to how the

Recd 10-28-15
8:00 a.m.

tower gets its utilities. Similarly it is asserted that no screening or buffering is required in question 5 of that form.

iv. As shown on the "Received" date stamp on the Application for Conditional Use Permit, it was filed on August 19, 2015 not July 6, 2015 as claimed in Telebeep Timeline presented at the Planning Commission Meeting (Attachment #4)

c. Telebeep knew or should have known requirements for building a tower when original tower was built in 2004 and when tower expanded in 2015 (See "Telebeep Wireless Utility Pole Timeline Overview" presented at Planning Commission Meeting, Attachment #4)

i. States in Attachment #4 concerning August 2004 "We were of the understanding that because a tower was not constructed . . . we were able to avoid any regulatory requirements." However a tower was constructed in 2004 (see definitions above) and he knew the regulations and requirements that applied to 2208 Elmers Lane tower since he also requested and obtained a conditional use permit for another tower at the same time – See attachment #5 conditional use permit to Tom Schommer passed and approved on May 18, 2004.

ii. Admits knowing that 2004 tower exceeded zoning height requirements (new tower 75 feet tall minus stated "only 8 to 10 feet taller" than 2004 tower equals 2004 tower 65 to 67 feet tall)

iii. Inaccurately states that mast pipe and antenna attached to already existing utility pole at 2208 Elmers Lane when in fact Telebeep installed both the tower and the mast pipe at the same time. (Even if there was an unused pole in the backyard of 2208 Elmers Lane which was not in the utility easement, it was the addition of the mast pipe and antenna that created a tower and that caused the tower to exceed the height restrictions and gave rise to the need for a conditional use permit.)

iv. Indicates there were no discussions with any City personnel prior to installing the 2208 Elmers Lane tower in 2004

v. Indicates there were no permits applied for in 2004 prior to installation of the tower – no building or electrical permits or any other permits that may be required when erecting a structure on property within the City.

vi. Admits to placing business use in a residential area.

vii. Business owner has a duty to know the laws that apply to his business and not to assume what he can do without his own investigation – ignorance of the law is no excuse.

viii. Claims of contact with city officials in late summer 2014 – if they did take place, Telebeep admits that incomplete information was provided to City personnel in those supposed discussions. If complete information had been provided it would have revealed that the tower sought to be replaced was already in violation of City zoning since there had never been compliance with a conditional use permit and that the tower could not be replaced without obtaining a conditional use permit. In addition, if inaccurate advice was given by City personnel that is not permission to violate the law. (For example, what if I had been told by City personnel that the appeal period was 30 days. If I filed my appeal after the 15 days but before the 30 days would it still be heard? Telebeep similarly has been on notice of the height and other requirements in City zoning areas throughout all of the times involved by the publication of the

City zoning code and could have determined those restrictions simply by examining the City code. For Telebeep to install the tower without making a thorough investigation of the City code is acting at their own risk.)

ix. References in Telebeep's Attachment #4 as to legitimate utility poles located throughout the City are irrelevant since those poles are indeed placed by a utility in the utility easements and carry authorized utilities where the tower located in the backyard of 2208 Elmers Lane is a tower. It is not a utility pole since it is not located in the utility easement, is not owned by a recognized utility, and is not providing a recognized utility. It is a tower constructed for the benefit of one business placed on private property without the proper permits that exceeds the height and other regulations of the Norfolk Zoning Code.

x. May, 2015 taller, wider tower with substantial structure at top installed, again in violation of City zoning and without any building, electrical or other permits and in violation of our property rights. See Attachment #6 Timeline of Telebeep Communication Tower at 2208 Elmers Lane presented by Ross Stoffer to Planning Commission.

xi. There has been no compliance with City Code Section 27-284 (Attachment #7) which places additional requirements on communication towers. All that exists at the present time is Telebeep's claims (which have not been independently investigated) that it meets these additional requirements. It is obvious from the language of this code section that more than just the tower owner's assurances that it meets the requirements is required. This is an investigation the City must do as many of the items in that section are beyond the knowledge of the average citizen; such as locations of existing towers, minimum height necessary for successful functioning, etc. Also, discussion should be had as to what is the meaning of "successful functioning"? Mr. Schommer stated at the Planning Commission meeting that the tower serves 12-15 customers. Discussions should be had about what alternate ways exist to serve those customers, whether exceptions to the code which infringe on others expectations to be protected by the code in order for one business to serve 12-15 people should be allowed, or as to the height necessary to continue serving those 12-15 customers, not the height or cheapest way for Telebeep to expand its service as far as possible. All of these discussions required by Section 27-284 have been preempted by the installation of the tower without obtaining the permit in advance of the installation.

xii. That all other conditional use permits issued by the Planning Commission since 2004 (all the further the City's website goes back) have required a 6-8 foot fence around the tower, including the conditional use permit granted to Tom Schommer, Attachment #5 and most have required that the tower is to be removed when the lease to the property expires and when the tower is removed the land is to be restored to its original condition within 90 days. (See Attachments #8-18).

d. The City on behalf of its citizens has a duty to investigate and demand compliance with its codes

i. City is given the power to enact and enforce codes to protect the health and safety of its citizens.

ii. By enacting codes the City is stating that the matters contained in the codes are important and are significant enough to require enforcement. Otherwise why does the City bother passing the codes?
iii. City cannot delegate these duties and require the citizens to initiate investigation and enforcement because to do so would require the citizens to be experts in every area regulated by City codes (building, plumbing, electrical, land use, etc.) and would put the disadvantaged or polite at the mercy of the those willing to push the limits of how much they can do before citizen(s) complain.
iv. Granting this conditional use permit would establish a precedent that one should ignore City codes (as was done in 2004), get permission without giving complete details (as was done in the Application for Conditional Use Permit and Justification Form B and also allegedly done in Fall, 2014), seek compliance only when someone complains (as has been done here and as Telebeep may still be doing with another tower see Attachment #19), and don't worry about the consequences if someone does complain because by then no one will make you undo what you have done nor will they give you a penalty that you haven't already collected in the operation of your illegal structure (as was done by the Planning Commission).
v. Granting this conditional use permit would send a message that the City will reward those who act in the way set forth in the previous section and will punish those who try to comply with the codes since those complying will be required to do more than those who don't comply and get away with it or have such a small penalty that it is worth taking the risk of getting caught.
vi. See Attachment #20 for a Norfolk Daily News article on how Madison County handled a similar situation.

II. The tower does not fit with the general character of the neighborhood and is a safety hazard and an eye sore.
   a. Attachment #21 shows how the communications tower dominates the view from our deck and screened in porch located just to the left of the deck in the picture and how out of place and much taller it is compared to other structures in the area. It also shows how easily it could fall on our shed or our house or hit someone in our yard.
   b. Attachment #22 shows how close the communications tower is to our property line, how it is not in the utility easement and how it towers over our home as seen from the entrance to Western Circle from Valli Hi Rd.

For all of the above reasons, the conditional use permit requested by Telebeep for a communications tower at 2208 Elmers Lane should be denied.

Thank you for your consideration.

Ross Stoffer and Maggie Stoffer
2200 Western Circle
Norfolk, NE 68701

Attachment #1

CONDITIONAL USE PERMIT
APPLICATION-FORM A

1. Applicant's name **Telebeep Wireless**
2. Applicant's address **2404 Taylor Avenue**
3. Telephone number (home) **402-841-2337 (Cell)**

   (business) **402-371-2337**
4. Present use of property **Residential**
5. Desired use of property **Install Utility Pole to deliver Broadband**
6. Request for Conditional Use Permit

   [x] Perpetual
   [ ] Be issued for _____ years
7. Legal Description of property:

   Street address and location **2208 Elmers Lane**

   Legal Description **Western Heights Fourth Platting Lot 16 Block 16**
8. Area of subject property (sq. feet or acres) **Approximately 4 square feet**
9. Describe the general character of the area.

   Pole is currently located in the back of the residential property and is in the same proximity of other utility poles.

Signature of owner: GARY Sudbeck

Signature of Authorized Agent:

RECEIVED
AUG 19 2015

Return Completed forms to: Norfolk Planning Commission, 701 Koenigstein, Norfolk, NE 68701

CONDITIONAL USE PERMIT

B

CONDITIONAL USE PERMIT
JUSTIFICATION-FORM B

1. What is the present zoning? **R-1 Residential**

2. For what specific use are you requesting the permit? **Delivery of Broadband**

   Will it be necessary to build a new structure? Yes☐ No☐

3. How is the proposed Conditional Use Permit compatible with adjacent properties?

   It is a Utility pole and will meet all requirements

4. Give some reasons showing a need for the proposed use in this area

   To provide wireless broadband services to NW and rural Norfolk

5. Is screening or buffering required? Yes☐ No☒

   If yes, explain the type _____

6. Is the ingress and egress to the property and proposed structure adequate? Yes☒ No☐

   If no, explain traffic flow solutions _____

7. Are off-street parking and loading areas required? Yes☐ No☒

   If yes, explain traffic flow _____

8. How will the use affect traffic through residential areas or on adjacent major streets?

   No Effect

9. Are any signs or exterior lighting required? Yes☐ No☒

   If yes, explain _____

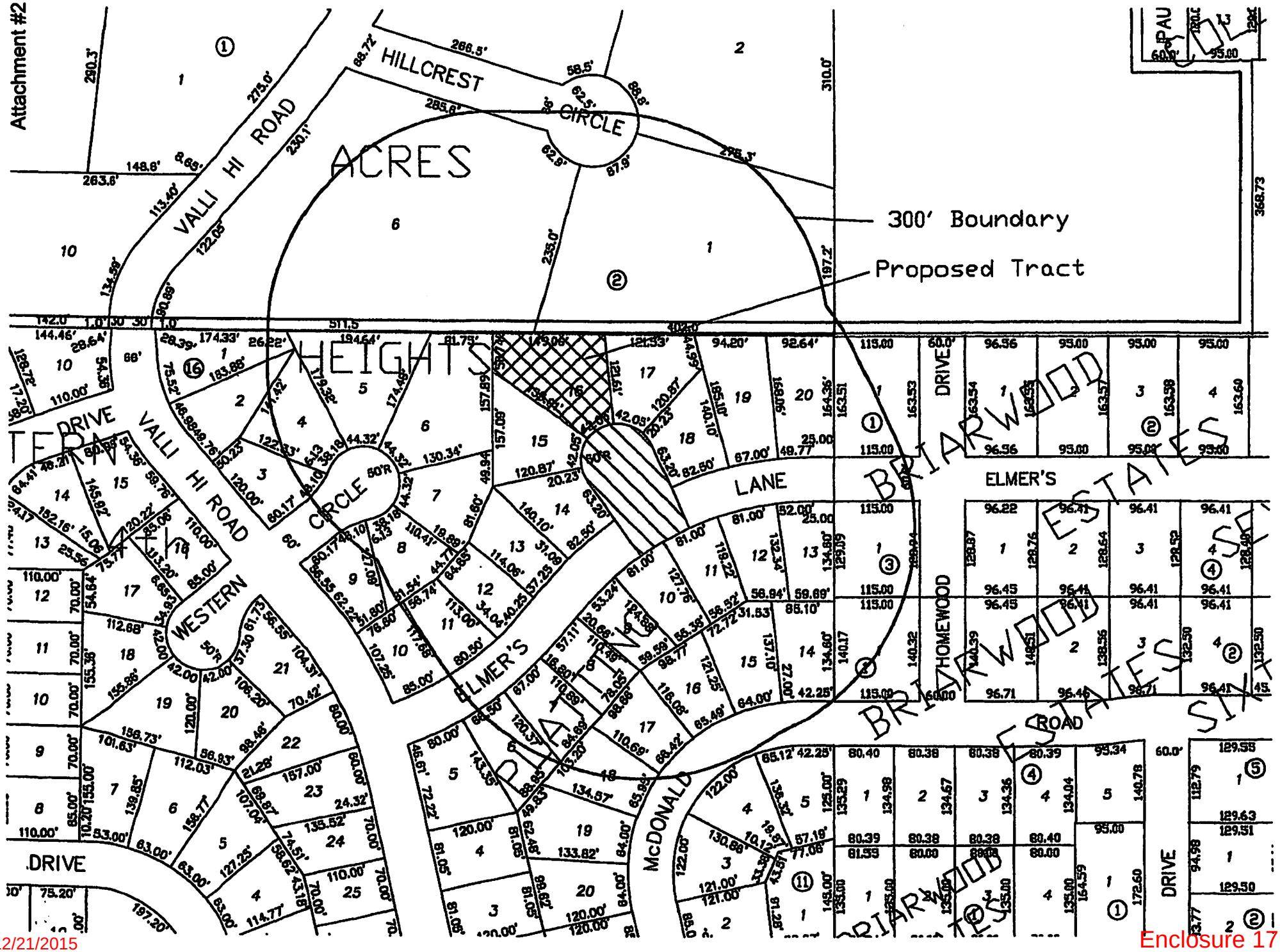
10. Are utilities property located? Yes☒ No☐

    Explain location and closest availability _____

11. Is adequate sewer and water available as needed? **N/A**

12. Will the required yards and other open spaces be observed with the permit?

    N/A


Attachment #2
HILLCREST
CIRCLE
ACRES
VALLI HI ROAD
300' Boundary
Proposed Tract
HEIGHTS
TERRACE DRIVE
VALLI HI ROAD
CIRCLE
WESTERN
ELMER'S
LANE
BRIARWOOD ESTATES
HOMEWOOD
ROAD
McDONALD
DRIVE

Attachment #3

City of Norfolk
NEBRASKA
innovation. right at home.

701 Koenigstein Avenue
Norfolk, NE 68701
P402-844-2050 F402-644-8748
www.ci.norfolk.ne.us

Trenton Howard
Zoning Official

thoward@ci.norfolk.ne.us

COPY

Attachment #4 - Presented by Telebeep to Planning Commission

Telebeep Wireless
Utility Pole Timeline Overview

- **Spring 2004**
  After over a year of receiving requests from residents of Western Heights to provide Wireless Broadband Service to them, we began to survey potential options to deliver the service.

  We considered several options, including erecting a tower, installing an antenna on a residential rooftop or utilizing an existing utility pole. If a tower were to be erected it would have preferably been somewhere in the 150 to 180 foot range. That would have required FAA approval due to its height and proximity to the airport.

  We felt that the most reasonable and aesthetically pleasing option would be to utilize the existing utility pole in the back yard of the property located at 2208 Elmers Lane. The Utility pole was located within just a few feet of the easement and was in amongst large trees as well as other utility poles carrying electrical transmission lines. Additionally, there was a wide open field adjoining it on the other side.

- **August 2004**
  The necessary equipment was installed to begin providing Wireless Broadband Service to the residents of Western Heights. This was accomplished by installing an antenna onto a 25 ft. mast pipe and attaching the mast pipe to the existing Utility pole. We were of the understanding that because a tower was not constructed, and the airport had no concerns with the overall height, we were able to avoid any regulatory requirements.

- **Late Summer 2014**
  In order to meet the increasing bandwidth requirements of today's subscribers, it became necessary to upgrade the equipment at the site. Doing so would require changing out the omnidirectional antenna and adding a four sector antenna at the top of the 25 foot mast pipe.

  From an engineering perspective, we did not want to add the additional weight and wind load of the four sector antennas to the top of the 25 foot mast pipe. For safety reasons we decided to replace the existing Utility pole and mast pipe with a new Utility pole that was only 8 to 10 feet taller than the overall height of the existing structure that had been in place since 2004. Considering the growth of the trees in the area, this new height would put the antennas back to at the same level above tree height as they were when originally installed in 2004.

  Before moving ahead with the purchase of the Utility pole, a call was made to the Codes Division at the City. It was discussed that we were planning on changing out a Utility Pole at one of our sites for another Utility pole that would change the overall height by only 8 -10 feet. The conclusion was that because it was a Utility pole and provided that it complied with any airport height restrictions that there was no problem with replacing the Utility pole. The City was very cordial and respectful of what we were trying to do. I did not specifically indicate where the site was located.

- **May 12, 2015**
  Nebraska Public Power District removed the old Class 4 Utility Pole and installed the New Class 2 Utility Pole in the same location. NPPD was contracted to insure the highest level of safety as it relates to the installation and long-term utilization of the Utility Pole.

The install was performed according to industry standards and in the same manner in which thousands of utility poles are currently installed throughout the City of Norfolk. Specs for the Class 2 Utility pole are included with this summary. The site was then upgraded to the new equipment as planned.

- **May 13, 2015**
  The owner of the property informed me that his neighbor had approached him in his back yard the night before and expressed concerns with some things that occurred during the installation of the Utility pole. I told the property owner that I would immediately reach out to his neighbor to see how we could best handle his concerns.

  I was able to reach the owner of the property's neighbor right away and visit with him about his concerns. During our conversation, he asked me if we had a permit for the Utility pole. I told him that we did not and wasn't certain that we needed one but I would check with the City to be certain.

  After talking with the neighbor, I called Codes and Permits to verify my understanding of our conversation we had back in the later part of the Summer 2014, regarding changing out the utility pole. We specifically talked about all of the tall utility poles along Benjamin and 25th Streets and the Utility pole was in that height category. After a short review of the codes, it was confirmed that the changing out of the utility pole was fine as long as we didn't violate airport height restrictions.

- **May 20, 2015**
  Shane Weidner stopped by my office and told me that he had a conversation with the property owners' neighbor regarding the issues relating to the changing out of the utility pole and its compliance with City Code. He asked me to tell him my perspective of what transpired and I did. He was pleased that both parties were telling the same story and that was a great starting point.

  He said he wasn't yet sure what direction he was going with this yet but would get back to me once he knew how he was going to handle it.

- **June 17, 2015**
  Shane stopped by my office again and told me that multiple staff meetings have taken place to determine the proper way to handle the situation. He informed me that a decision was made and he told me what would likely be the options but a letter from Trent Howard would be coming letting me know what options are available to me.

- **July 2, 2015**
  I received a letter from Trent Howard, City Zoning Official stating three options to correct the situation. The options were as follows:
  1. Remove the tower and associated equipment
  2. Bring the tower into conformance by lowering to a maximum height of 35' per R-1 Single Family Residential District.
  3. Apply for a conditional use permit to exceed the height restrictions allowable in the district.

- **July 6, 2015**
  A Conditional Use Permit was applied for to exceed the height restrictions allowable in the district.

City of Norfolk
121 N. 1st St.
Norfolk, NE 68701

Chg $5.50 No. 3588 Paged General Indexed

0497

STATE OF NEBRASKA
MADISON COUNTY

This instrument was filed for record this 3 day of June, 2004 at 8:30 o'clock A.M., and recorded in 2004-06 page 0497

Register of Deeds

Deputy

Attachment 5

CONDITIONAL USE PERMIT
RESOLUTION NO. PC2004-5

WHEREAS, Tom Schommer has filed an application for a Conditional Use Permit seeking a permit for a communications tower on property which is legally described as follows:

The West ½ of the Southeast ¼ of Section 8, Township 24 North, Range 1 West of the 6th P.M., Madison County, Nebraska, EXCLUDING the following described tract: Beginning at the South ¼ corner of said Section 8; thence East, on section line on an assumed bearing of South 89 degrees 59 minutes 45 seconds East 633.00 feet; thence North 00 degrees 00 minutes East 683.91 feet; thence North 89 degrees 59 minutes 45 seconds West 644.33 feet to a point on the ¼ line; thence South 00 degrees 56 minutes 55 seconds East, on the ¼ line, 684.00 feet to the point of beginning and containing 10.03 acres more or less

WHEREAS, the property described above is presently included in Zoning District A; and

WHEREAS, the Norfolk Planning Commission has conducted a public hearing on May 4, 2004 receiving input and data from the applicant and the general public concerning the Conditional Use Permit;

NOW THEREFORE, in consideration of the foregoing recitals, the Planning Commission of the City of Norfolk, Nebraska hereby adopts the following Resolution:

BE IT RESOLVED by the Planning Commission of the City of Norfolk, Nebraska that Tom Schommer is hereby granted a Conditional Use Permit for a communications tower at 915 E. Omaha Avenue above subject to the following terms and conditions:

(1) There shall be a 7' high chain-link fence with 3-strand barbwire outriggers surrounding the compound;

(2) This permit shall become null and void upon termination of the lease agreement between Telebeep and Bill and Bonnie Begeman and the tower removed and property restored to its original condition within ninety (90) days;

(3) The applicants shall receive final approval from the Federal Aviation Administration;

(4) The applicants shall encourage co-location of use on this tower;

(5) All procedures and standards outlined in Section 27-56 of the Norfolk City Code pertaining to Conditional Use Permits shall be observed;

(6) All procedures and standards outlined in Division 3 Airport Overlay District of the Norfolk City Code pertaining to Airport Overlay Districts shall be observed;

(7) The Conditional Use Permit granted herein shall be subject to the provisions of the Norfolk City Code that provide for an appeal to be taken within 15 days of the decision of the Planning Commission; and pursuant to the Norfolk City Code, shall be a personal privilege granted to the applicant and shall not be subject to transfer;

(8) There shall be compliance with any other applicable City, County or State regulations that may apply.

PASSED AND APPROVED this 18th day of May 2004

ATTEST:

Planning Commission Chairman

Planning Commission Secretary

Approved as to form: City Attorney

Subscribed and sworn to before me this 18 Day of May, 2004

Notary Public

GENERAL NOTARY - State of Nebraska
ELIZABETH A. DECK
My Comm. Exp. June 8, 2008

Attachment #6

TIMELINE OF TELEBEEP COMMUNICATION TOWER AT 2208 ELMERS LANE PRESENTED BY ROSS STOFFER

2004	When we returned from vacation the original tower had been installed without notice to anyone and without any proper permit. This was the installation of a new pole and was not adding an antenna to an "existing utility pole" as claimed in the timeline provided by Mr. Schommer. As indicated in the timeline previously provided by Mr. Schommer, he had no conversations with the City prior to installing this new pole and antenna structure into the residential neighborhood. Even though we had not been given a chance for input and were not happy with the tower being located so close to our property we tried to be good neighbors and did not address the tower being placed where it was since it was similar in height and diameter to existing utility poles.
May 12, 2015	The previously installed tower was removed and a much taller and wider tower was installed with a more substantial structure at the top of the tower. This was again done without notice and without the proper permit. It was discovered that during the process of installing the new tower that a trailer from 2208 Elmers Lane had been left on the property at 2200 Western Circle. It was also discovered that access to 2208 Elmers Lane had been gained by trespassing over 2200 Western Circle, again without notice or permission. Also it was discovered that electricity from 2200 Western Circle had been used during the tower's installation again without notice or permission. I questioned the owners of 2208 Elmers Lane about these matters and told them of the displeasure of the height and diameter of the new tower and the owners of 2208 Elmers Lane stated they had no idea the new tower was going to be that size either and they would notify Mr. Schommer of the complaint.
May 13, 2015	Mr. Schommer contacted me at my work and asked "what could be done to make the matter right". I told him the new tower could be removed and the old tower put back in its place. Mr. Schommer stated that was not going to happen. I asked Mr. Schommer if he had a permit to place the tower there and he stated he did not need a permit. As indicated in the timeline previously provided by Mr. Schommer, after I questioned him about having a permit, Mr. Schommer never advised me that he had had discussions with anyone at the City in late summer 2014 about installing this new tower nor that the City had advised him that there would be "no problem" with replacing the tower. After work that day I contacted the City and talked to John Kouba. He stated he had seen the new tower the previous day while on Sheridan Boulevard going home and wondered how long it had been there. He advised he would leave a message for someone else to call me.
May 14, 2015	I was contacted by Trent Howard at my work and I told Mr. Howard of the above. Mr. Howard stated he knew something wasn't right when he talked to Mr. Schommer the previous day. Contrary to the claims made in the timeline provided by Mr. Schommer, Mr. Howard said Mr. Schommer had not told him all of the above and Mr. Schommer had merely asked if he needed a permit to replace an existing utility pole with a new utility pole. Mr. Howard said he had told Mr.

	Schommer that since it would be a new pole replacing one that had been in use he felt it would be safer. Mr. Howard said that Mr. Schommer had not told him the new pole would be taller and larger than the previous pole or that there were complaints about the new pole. Mr. Howard also indicated that Mr. Schommer had not talked to him about installation of any towers prior to the previous day and Mr. Howard also stated he had a "gut feeling" that something wasn't right while talking to Mr. Schommer the previous day. I told Mr. Howard that he or anyone from the City was welcome to come onto my property to look at the situation to determine if there should have been a permit obtained prior to the tower's installation.
July 2, 2015	After investigation, the City determined that the tower was in violation of City zoning and a letter was sent to Mr. Schommer advising that he could 1) remove the tower, 2) reduce the height of the tower to be in compliance with zoning or 3) seek a conditional use permit.
August 19, 2015	Mr. Schommer applies for the conditional use permit as shown on the "Received" stamp on the permit application. The permit was not applied for on July 6, 2015 as claimed by Mr. Schommer in the timeline previously provided by Mr. Schommer.

Sec. 27-284. Communications, microwave, and cellular towers.

(a) In any district where radio, television, microwave, cellular, or other communication towers are allowed as a permitted or conditional uses, such towers are subject to the following additional requirements.

(1) It is the policy of the city to encourage collocation of new communications towers with existing towers or as part of suitable existing structures. All applications for approval of a communications tower location shall include evidence that all potential alternatives for location on existing towers have been explored and exhausted. Applicants may not be denied space on an existing tower within the city and its jurisdiction unless mechanical, structural, regulatory factors, or legitimate business expansion plans prohibit collocation.

(2) The applicant for a communications tower location is required to demonstrate as part of its application that the tower must be located on the proposed site in order to satisfy its function in the company's system. The applicant must also demonstrate that the proposed height is the minimum height necessary for the successful functioning of the tower.

(3) Freestanding towers shall be located so that the distance from the base of the tower to any adjoining property line or the supporting structure of a separate neighboring tower is a minimum of 100% of the tower height. The planning commission may reduce the set back with a conditional use permit if it determines that such reduction does not constitute a hazard to safety or property on adjacent properties or rights-of-way.

(4) The tower installation shall be designed to be aesthetically and architecturally compatible with the built environment of the city. The city encourages efforts to hide towers or restrict their visibility from public right-of-way or neighboring properties. Associated support buildings shall be designed with materials that are consistent with those in the surrounding neighborhood. Metal exteriors shall generally not be permitted for accessory support buildings.

(5) All tower installations shall maintain landscaped peripheral yards with a minimum depth of 35 feet from surrounding property lines. One tree consistent with the provisions of Sec. 27-309 shall be planted for every 500 square feet of required peripheral yard area.

(6) As part of its conditional use approval process, the planning commission may, after public notice and hearing, permit the tower to exceed the height restrictions otherwise allowable in the district.

Source: Ord. No. 4603, § 1, 9-16-02

City of Norfolk
1?? N. 1st Street
Norfolk, NE 6870?

Chg $18.00 No. 3500? Paged ...

STATE OF NEBRASKA
MADISON COUNTY

This instrument is hereby recorded this 3 day of June, 2004 at 8:30 o'clock AM, and recorded in 2004-06 page 0495

Register of Deeds

Linda Jue Stiles
Deputy

0495

Attachment 8

CONDITIONAL USE PERMIT
RESOLUTION NO. PC2004-3

WHEREAS, ALLTEL Communications of Nebraska, Inc., has filed an application for a Conditional Use Permit seeking a permit for a wireless telecommunications facility on property which is legally described as follows:

Blocks Three (3), Four (4), Five (5), Six (6), Seven (7) and Eight (8), Glen Park Addition to Norfolk, Madison County, Nebraska and the South Half of the Northwest Quarter of the Southeast Quarter (S1/2NW1/4SE1/4) in Section Sixteen (16) Township Twenty-four (24) North, Range One (1) West of the 6th P.M., Madison County, Nebraska

WHEREAS, the property described above is presently included in Zoning District R-1; and

WHEREAS, the Norfolk Planning Commission has conducted a public hearing on May 4, 2004 receiving input and data from the applicant and the general public concerning the Conditional Use Permit;

NOW THEREFORE, in consideration of the foregoing recitals, the Planning Commission of the City of Norfolk, Nebraska hereby adopts the following Resolution:

BE IT RESOLVED by the Planning Commission of the City of Norfolk, Nebraska that ALLTEL Communications of Nebraska, Inc. is hereby granted a Conditional Use Permit for a wireless telecommunications facility at 1800 Syracuse Avenue above subject to the following terms and conditions:

(1) There shall be a 7' high chain-link fence with 3-strand barbwire outriggers surrounding the compound;

(2) This permit shall become null and void upon termination of the lease agreement between ALLTEL Communications of Nebraska, Inc. and Nebraska Christian College and the tower removed and property restored to its original condition within ninety (90) days;

(3) Access to the tower site shall be hard-surfaced;

(4) The applicants shall receive final approval from the Federal Aviation Administration;

(5) The applicants shall encourage co-location of use on this tower;

(6) All procedures and standards outlined in Section 27-56 of the Norfolk City Code pertaining to Conditional Use Permits shall be observed;

(7) All procedures and standards outlined in Division 3 Airport Overlay District of the Norfolk City Code pertaining to Airport Overlay Districts shall be observed;

(8) The Conditional Use Permit granted herein shall be subject to the provisions of the Norfolk City Code that provide for an appeal to be taken within 15 days of the decision of the Planning Commission; and pursuant to the Norfolk City Code, shall be a personal privilege granted to the applicant and shall not be subject to transfer;

(9) There shall be compliance with any other applicable City, County or State regulations that may apply.

PASSED AND APPROVED this 18th day of May 2004

ATTEST:

Dave Fuchtman
Planning Commission Chairman

Planning Commission Secretary

Approved as to form: Clint Eckdahl
City Attorney

Subscribed and sworn to before me this 18 Day of May, 2004.

Elizabeth A. Deck
Notary Public

GENERAL NOTARY - State of Nebraska
ELIZABETH A. DECK
My Comm. Exp. June 8, 2006

City of Norfolk
309 N 1st St
Norfolk, NE 68701

Chg $5.50 No. 3587 Paged General Indexed

STATE OF NEBRASKA ss
MADISON COUNTY

This instrument was recorded this 3 day of June, 2004 at 8:30 o'clock A M, and recorded in 2004-06 page 0496

Register of Deeds

Deputy

0496

Attachment 9

CONDITIONAL USE PERMIT
RESOLUTION NO. PC2004-4

WHEREAS, ALLTEL Communications of Nebraska, Inc., has filed an application for a Conditional Use Permit seeking a permit for a wireless telecommunications facility on property which is legally described as follows:

Lot Two (2) of the Elkhorn River Plaza Subdivision to the City of Norfolk, Nebraska located in the Southeast Quarter (SE1/4) of Section Twenty-six (26), Township Twenty-four (24) North, Range One (1) West of the 6th P.M., Madison County, Nebraska

WHEREAS, the property described above is presently included in Zoning District I-1; and

WHEREAS, the Norfolk Planning Commission has conducted a public hearing on May 4, 2004 receiving input and data from the applicant and the general public concerning the Conditional Use Permit;

NOW THEREFORE, in consideration of the foregoing recitals, the Planning Commission of the City of Norfolk, Nebraska hereby adopts the following Resolution:

BE IT RESOLVED by the Planning Commission of the City of Norfolk, Nebraska that ALLTEL Communications of Nebraska, Inc. is hereby granted a Conditional Use Permit for a wireless telecommunications facility at 915 E. Omaha Avenue above subject to the following terms and conditions:

(1) There shall be a 7' high chain-link fence with 3-strand barbwire outriggers surrounding the compound;

(2) This permit shall become null and void upon termination of the lease agreement between ALLTEL Communications of Nebraska, Inc. and Edward F. Schrant, Lou Jean L. Schrant and Michael J. Schrant and the tower removed and property restored to its original condition within ninety (90) days;

(3) The applicants shall receive final approval from the Federal Aviation Administration;

(4) The applicants shall encourage co-location of use on this tower;

(5) All procedures and standards outlined in Section 27-66 of the Norfolk City Code pertaining to Conditional Use Permits shall be observed;

(6) All procedures and standards outlined in Division 3 Airport Overlay District of the Norfolk City Code pertaining to Airport Overlay Districts shall be observed;

(7) The Conditional Use Permit granted herein shall be subject to the provisions of the Norfolk City Code that provide for an appeal to be taken within 15 days of the decision of the Planning Commission; and pursuant to the Norfolk City Code, shall be a personal privilege granted to the applicant and shall not be subject to transfer;

(8) There shall be compliance with any other applicable City, County or State regulations that may apply.

PASSED AND APPROVED this 18th day of May 2004

ATTEST:

Planning Commission Chairman

Planning Commission Secretary

Approved as to form: _____
City Attorney

Subscribed and sworn to before me this 18 Day of May 2004

Notary Public

GENERAL NOTARY - State of Nebraska
ELIZABETH A. DECK
My Comm. Exp. June 8, 2008

City of Norfolk

Chg. $10.50 No. 0009 Paged General Indexed

1743

STATE OF NEBRASKA
MADISON COUNTY
This instrument filed for record this 22 day of October/2004 at 8:30 o'clock A.M. and recorded in 2004-10 page 1743-1744 Inc
Nancy J. Gross
Register of Deeds
Deputy

CONDITIONAL USE PERMIT
RESOLUTION NO. PC2004-8

Attachment 10

WHEREAS, Alltel Communications of Nebraska, Inc. has filed an application for a Conditional Use Permit seeking a permit for a wireless telecommunications facility on property which is legally described as follows:

All of Section 13, Township 24 North, Range 1 West of the Sixth Principal Meridian, Madison County, Nebraska, except for a tract of land, herein called Tract A, which is described as follows: Beginning at the West quarter corner of said section 13; thence south along the west line of section 13; 1949.54 feet; thence N89°03' E, 1361.90 feet; thence S0°54' E, 722.16 feet to a point on the south line of section 13; thence along said section line N89°50' E, 34.11 feet; thence N0°48' W, 952.09 feet; thence S88°40' E, 648.65 feet; thence S0°06' W, 313.37 feet; thence N86° 57' E, 239.22 feet; thence N17° 39' E, 509.76 feet; thence S85°15' W 393.69 feet; thence S0°06' W, 123.69 feet; thence N89°36' W, 649.09 feet; thence N0°48' W 358.74 feet; thence S88°26' E, 285.24 feet; thence N1°02' W, 1348.13 feet; thence S89°22' W342.35 feet; thence N4°22' E 497.29 feet; thence S89°43' W, 230.48 feet; thence 0°06' E 233.57 feet; thence S89°41' W, 533.49 feet; thence 1°00' E 655.39 feet; thence S89°46' W, 588.57 feet to a point on the West line of said section 13; thence along said section line, S0°03' W, 84.02 feet to the point of beginning or 78.12 +- acres. Said excluded acres contained in Tract A are approximately 78.12+- acres. Also excepted from this conveyance are two cemeteries marked in red as A and B on the map identified as Exhibit 1, attached hereto and made a part hereof. Also marked in red from point C to D is a thirty foot wide sewer easement which is reserved by the grantor. The grantor also excepts from this conveyance and reserves unto itself easements thirty foot in width for existing roads, sewage disposal and utilities which are not marked on Exhibit 1, along with the right of access to all of the property and easements excepted from this conveyance. The grantor also reserves an easement to construct, repair and maintain a water line in the West 100 feet of the SW1/4 of said Section 13. The property conveyed to the grantee consists of approximately 553.22 acres, more or less; and less that part deeded to The State of Nebraska, Department of Roads in M90-7, Page 605.

WHEREAS, the property described above is presently included in Zoning District A; and

WHEREAS, the Norfolk Planning Commission has conducted a public hearing on September 8, 2004 receiving input and data from the applicant and the general public concerning the Conditional Use Permit;

NOW THEREFORE, in consideration of the foregoing recitals, the Planning Commission of the City of Norfolk, Nebraska hereby adopts the following Resolution:

BE IT RESOLVED by the Planning Commission of the City of Norfolk, Nebraska that Alltel Communications of Nebraska, Inc. is hereby granted a Conditional Use Permit for a wireless telecommunications facility on property north of 1700 N. Victory Road subject to the following terms and conditions:

(1) There shall be a 7' high chain-link fence with 3-strand barbwire outriggers, surrounding the compound;

(2) This permit shall become null and void upon termination of the lease agreement between Alltel Communications of Nebraska, Inc. and Northeast College and the property restored to its original condition within ninety (90) days;

(3) The applicants shall receive final approval from the Federal Aviation Administration;

(4) The applicants shall encourage co-location of use on this tower;

(5) All procedures and standards outlined in Section 27-56 of the Norfolk City Code pertaining to Conditional Use Permits shall be observed;

(6) All procedures and standards outlined in Section 27-251 of the Norfolk City Code pertaining to Airport Overlay Districts shall be observed;

(7) All cables and wiring to the tower shall be internal;

(8) The Conditional Use Permit granted herein shall be subject to the provisions of the Norfolk City Code that provide for an appeal to be taken within 15 days of the decision of the Planning Commission; and pursuant to the Norfolk City Code, shall be a personal privilege granted to the applicant and shall not be subject to transfer;

(9) There shall be compliance with any other applicable City, County or State regulations that may apply.

PASSED AND APPROVED this 5th day of October 2004.

ATTEST:

Sue Fuchtman
Planning Commission Chairman

Faythe N. Petersen
Planning Commission Secretary

Approved as to form: Christ E. Hubka
City Attorney

The foregoing instrument was acknowledged before me this 5 day of October, 2004 by Sue Fuchtman, Planning Commission Chairperson of the City of Norfolk.

Faythe N. Petersen
Notary Public

GENERAL NOTARY - State of Nebraska
FAYTHE N. PETERSEN
My Comm. Exp. Sept. 17, 2007

City of Norfolk
12, N 1st St
Norfolk NE 68701

Chg. $5.50 No. 1365 Paged J General J Indexed / 0889

STATE OF NEBRASKA, MADISON COUNTY ss. This instrument filed for record this 14 day of March/2005 at 8:30 o'clock A M and recorded in 2005-03 page 0889
Nancy A. Ross
Register of Deeds — Deputy

Attachment 11

CONDITIONAL USE PERMIT
RESOLUTION NO. PC2005-4

WHEREAS, NE Colorado Cellular, Inc. has filed an application for a Conditional Use Permit seeking a permit for a telecommunications tower on property which is legally described as follows:

/City of Norfolk,
Lot 3, Block 3, Green Meadow Addition to Madison County, Nebraska

WHEREAS, the property described above is presently included in Zoning District C-3; and

WHEREAS, the Norfolk Planning Commission has conducted a public hearing on February 8, 2005 receiving input and data from the applicant and the general public concerning the Conditional Use Permit;

NOW THEREFORE, in consideration of the foregoing recitals, the Planning Commission of the City of Norfolk, Nebraska hereby adopts the following Resolution:

BE IT RESOLVED by the Planning Commission of the City of Norfolk, Nebraska that NE Colorado Cellular, Inc. is hereby granted a Conditional Use Permit for a wireless telecommunications facility on property north of 309 N. 31st Street subject to the following terms and conditions:

(1) There shall be a 8' high chain-link fence with 3-strand barbwire outriggers, surrounding the compound;

(2) This permit shall be perpetual and granted to the landowner;

(3) Access to the tower site shall be hard-surfaced;

(4) The applicants shall receive final approval from the Federal Aviation Administration;

(5) The applicants shall encourage co-location of use on this tower;

(6) The lighting of the tower shall be according to FAA Advisory Circular 70/7460-1 K Chg 1, Obstruction Marking and Lighting, a med-dual system-Chapters 4, 8 (M-Dual) & 12;

(7) All procedures and standards outlined in Section 27-56 of the Norfolk City Code pertaining to Conditional Use Permits shall be observed;

(8) All procedures and standards outlined in Section 27-251 of the Norfolk City Code pertaining to Airport Overlay Districts shall be observed;

(9) All cables and wiring to the tower shall be internal;

(10) The Conditional Use Permit granted herein shall be subject to the provisions of the Norfolk City Code that provide for an appeal to be taken within 15 days of the decision of the Planning Commission; and pursuant to the Norfolk City Code, shall be a personal privilege granted to the applicant and shall not be subject to transfer;

(11) There shall be compliance with any other applicable City, County or State regulations that may apply.

PASSED AND APPROVED this 23rd day of February 2005.

Planning Commission Co-Chairman

ATTEST:

Planning Commission Secretary

Approved as to form: _____
City Attorney

The foregoing instrument was acknowledged before me this 23 day of February, 2005 by Maynard Ohl, Planning Commission Co-Chairperson of the City of Norfolk.

GENERAL NOTARY - State of Nebraska
FAYTHE N. PETERSEN
My Comm. Exp. Sept. 17, 2007

Notary Public

Attachment 12

CONDITIONAL USE PERMIT
RESOLUTION NO. PC2006-9

WHEREAS, NE Colorado Cellular, Inc. dba Viaero Wireless has filed an application for a Conditional Use Permit seeking a permit for a telecommunications tower on property which is legally described as follows:

Lot 4 Pilger's Addition to the City of Norfolk, Madison County, Nebraska

WHEREAS, the property described above is presently included in Zoning District C-2; and

WHEREAS, the Norfolk Planning Commission has conducted a public hearing on October 17, 2006 receiving input and data from the applicant and the general public concerning the Conditional Use Permit;

NOW THEREFORE, in consideration of the foregoing recitals, the Planning Commission of the City of Norfolk, Nebraska hereby adopts the following Resolution:

BE IT RESOLVED by the Planning Commission of the City of Norfolk, Nebraska that NE Colorado Cellular, Inc. is hereby granted a Conditional Use Permit for a wireless telecommunications facility on property at 413 Norfolk Avenue Street subject to the following terms and conditions:

(1) There shall be an 8' high chain-link fence surrounding the tower;

(2) This permit shall be for twenty (20) years and granted to the landowner. If the property is sold, the new owner shall make application for a new Conditional Use Permit or the property shall be restored to its original condition within ninety (90) days;

(3) The applicants shall receive final approval from the Federal Aviation Administration;

(4) The applicants shall encourage co-location of use on this tower;

(5) Street curbing shall be installed surrounding the tower base;

(6) All procedures and standards outlined in Section 27-56 of the Norfolk City Code pertaining to Conditional Use Permits shall be observed;

(7) The Conditional Use Permit granted herein shall be subject to the provisions of the Norfolk City Code that provide for an appeal to be taken within 15 days of the decision of the Planning

Commission; and pursuant to the Norfolk City Code, shall be a personal privilege granted to the applicant and shall not be subject to transfer;

(8) There shall be compliance with any other applicable City, County, State or Federal regulations that may apply.

PASSED AND APPROVED this 7th day of November 2006.

ATTEST:

Planning Commission Chairman

Planning Commission Secretary

Approved as to form: _____
City Attorney

The foregoing instrument was acknowledged before me this 7 day of November, 2006 by Sue Fuchtman, Planning Commission Chairperson of the City of Norfolk.

Faythe Petersen Notary Public

GENERAL NOTARY - State of Nebraska
FAYTHE N. PETERSEN
My Comm. Exp. Sept. 17, 2007

City of Norfolk
127 N 1st St
Norfolk NE 68701

Chg $10.50 No 3600 Paged_ General_ Indexed_

0570

STATE OF NEBRASKA ss
MADISON COUNTY

This instrument filed for record this 11 day of July 2007 at 8:30 o'clock A.M., and recorded in 2007-07 page 0570 - 0571 Incl.

Nancy A. Hugo
Register of Deeds

Deputy

CONDITIONAL USE PERMIT
RESOLUTION NO. PC2007-1

Attachment 13

WHEREAS,USCOC Nebraska/Kansas LLC, a Delaware limited liability company has filed an application for a Conditional Use Permit seeking a permit for a telecommunications tower on property which is legally described as follows:

The Northeast ¼ of Section 18, Township 24 North, Range 1 West of the 6th P.M. Madison County, Nebraska excluding therefrom the following described tract: Beginning at the North ¼ corner of said Section 18; thence East on section line on an assumed bearing of North 89 degrees 06 minutes 50 seconds East 1475.1 feet to the Northeast corner of a tract of land previously owned by Lloyd Bear; thence South 02 degrees 02 minutes 30 seconds West, on the East line of the Lloyd Bear tract, said line makes a deflection angle of 92 degrees 55 minutes 40 seconds right (previously recorded as 92 degrees 15 minutes 40 seconds), a distance of 673.8 feet to the Southeast corner of the Lloyd Bear tract; thence South 89 degrees 00 minutes West on the South line of the Lloyd Bear tract, 491.9 feet to the Southwest corner of said tract; thence South 89 degrees 02 minutes West 69.1 feet following the property line of a tract owned by Robert Hauser; thence South 00 degrees 00 minutes West, on the East line of the Robert Hauser tract 1981.97 feet to a point on the ¼ section line; thence West on the ¼ section line, on a bearing of South 88 degrees 50 minutes 40 seconds West 902.0 feet to the center ¼ corner of said Section 18; thence North on the ¼ section line, on a bearing of North 00 degrees 15 minutes 30 seconds East 2660.4 feet to the point of beginning.

WHEREAS, the property described above is presently included in Zoning District A; and

WHEREAS, the Norfolk Planning Commission has conducted a public hearing on June 5, 2007 receiving input and data from the applicant and the general public concerning the Conditional Use Permit;

NOW THEREFORE, in consideration of the foregoing recitals, the Planning Commission of the City of Norfolk, Nebraska hereby adopts the following Resolution:

BE IT RESOLVED by the Planning Commission of the City of Norfolk, Nebraska that USCOC Nebraska/Kansas LLC is hereby granted a Conditional Use Permit for a wireless telecommunications facility on property 3901 W. Eisenhower Avenue subject to the following terms and conditions:

(1) There shall be an 8' high chain-link fence surrounding the tower;

(2) This permit shall become null and void upon termination of the lease agreement between Jeffrey R. Walmsley and Lynnette R.Walmsley, the property owner, and USCOC Nebraska/Kansas LLC and the tower removed and property restored to its original condition within ninety (90) days;

(3) When the tower is removed, all underground equipment and construction shall be removed to three feet below grade;

(4) The terms of this permit shall run with the lease of the property;

(5) All cables and wiring to the tower shall be internal;

(6) The lighting of the tower shall be a stay burn red from sunset to daybreak as per FAA lighting guidelines;

(7) The applicants shall receive final approval from the Federal Aviation Administration;

(8) The applicants shall encourage co-location of use on this tower;

(9) As development occurs in the area, landscaping, buffering or tower modifications may be required;

(10) All procedures and standards outlined in Section 27-56 of the Norfolk City Code pertaining to Conditional Use Permits shall be observed;

(11) The Conditional Use Permit granted herein shall be subject to the provisions of the Norfolk City Code that provide for an appeal to be taken within 15 days of the decision of the Planning Commission; and pursuant to the Norfolk City Code, shall be a personal privilege granted to the applicant and shall not be subject to transfer;

(12) There shall be compliance with any other applicable City, County, State or Federal regulations that may apply.

PASSED AND APPROVED this 19th day of June 2007

Planning Commission Co-Chairman

ATTEST:

Planning Commission Secretary

Approved as to form: _____
City Attorney

The foregoing instrument was acknowledged before me this 19 day of June, 2007 by Maynard Ohl, Planning Commission Co-Chairperson of the City of Norfolk.

Faythe Petersen Notary Public

GENERAL NOTARY - State of Nebraska
FAYTHE N. PETERSEN
My Comm. Exp. Sept. 17, 2007

City of Norfolk
127 N 1st St
Norfolk NE 68701

Chg $10.50 No. 5295 Paged General Indexed

STATE OF NEBRASKA
MADISON COUNTY

This instrument filed and record this 12 day of October, 200
8:30 o'clock A.M., and recorded in 2007-10 page 0629-0630

Nancy J. Grass
Register of Deeds Deputy

0629

CONDITIONAL USE PERMIT
RESOLUTION NO. PC2007-3

Attachment 14

WHEREAS,NE Colorado Cellular, Inc. dba Viaero Wireless has filed an application for a Conditional Use Permit seeking a permit for a telecommunications tower on property which is legally described as follows:

A tract of land lying wholly in the NE 1/4 of Section 14, Township 24 North, Range 1 West of the 6th P.M., Madison County, Nebraska. Said tract of land is more particularly described as follows:

Referring to the Northeast Corner of said Section 14; thence proceeding South, along the East line of said Section 14 on an assumed bearing of South 01 degrees 20 minutes 59 seconds West, 953.93 ft.; thence North 88 degrees 39 minutes 01 seconds West, 58.00 ft. to a point on a line which is 58.00 ft. West of, and parallel to the East line of said Section 14 which point is the point of beginning; thence continuing North 88 degrees 39 minutes 01 seconds West, 225.00 ft.; thence South 01 degrees 20 minutes 59 seconds East, 150.00 ft.; thence South 88 degrees 39 minutes 01 seconds East, 225.00 ft. to a point on a line which is 58.00 ft. West of, and parallel to the East line of said Section 14; thence North 01 degrees 20 minutes 59 seconds East, 150.00 ft. to the point of beginning. Said tract of land contains 33,750 sq. ft., more or less.

WHEREAS, the property described above is presently included in Zoning District A; and

WHEREAS, the Norfolk Planning Commission has conducted a public hearing on September 5, 2007 receiving input and data from the applicant and the general public concerning the Conditional Use Permit;

NOW THEREFORE, in consideration of the foregoing recitals, the Planning Commission of the City of Norfolk, Nebraska hereby adopts the following Resolution:

BE IT RESOLVED by the Planning Commission of the City of Norfolk, Nebraska that NE Colorado Cellular, Inc. dba Viaero Wireless LLC is hereby granted a Conditional Use Permit for a wireless telecommunications facility on property at 2301 N. Victory Road subject to the following terms and conditions:

(1) There shall be an 8' high chain-link fence surrounding the tower;

(2) When the tower is removed, all underground equipment and construction shall be removed to three feet below grade;

(3) All cables and wiring to the tower shall be internal;

(4) The applicants shall receive final approval from the Federal Aviation Administration;

(5) The applicants shall encourage co-location of use on this tower;

(6) As development occurs in the area, landscaping, buffering or tower modifications may be required;

(7) If there is a cessation of use of the tower for more than one year, the applicant is responsible for its removal;

108

(8) All procedures and standards outlined in Section 27-56 of the Norfolk City Code pertaining to Conditional Use Permits shall be observed;

(9) The Conditional Use Permit granted herein shall be subject to the provisions of the Norfolk City Code that provide for an appeal to be taken within 15 days of the decision of the Planning Commission; and pursuant to the Norfolk City Code, shall be a personal privilege granted to the applicant and shall not be subject to transfer;

(10) There shall be compliance with any other applicable City, County, State or Federal regulations that may apply.

PASSED AND APPROVED this 18th day of September 2007.

ATTEST:

Sue Fuchtman
Planning Commission Chairman

Planning Commission Secretary

Approved as to form: Clark Echols
City Attorney

The foregoing instrument was acknowledged before me this 9 day of October, 2007 by Sue Fuchtman, Planning Commission Chairperson of the City of Norfolk.

Faythe Petersen Notary Public

FAYTHE N. PETERSEN
MY COMMISSION EXPIRES
September 17, 2011

City of Norfolk
127 N 1st St.
Norfolk, NE
68701

Chg $10.50 No 0122 Paged General Indexed

STATE OF NEBRASKA
MADISON COUNTY
This instrument filed for rec. this 9 day of January 2008 at 8:30 o'clock A.M., and recorded in 2008-01 page 0416 - 0417 Incl.

Nancy J. Gross
Register of Deeds

Deputy

0416

CONDITIONAL USE PERMIT
CORRECTIVE RESOLUTION NO. PC2007-5

Attachment 15

WHEREAS, NE Colorado Cellular, Inc. d/b/a Viaero Wireless has filed an application for a Conditional Use Permit seeking a permit for a telecommunications tower on property which is legally described as follows:

A tract of land lying wholly in the NE 1/4 of Section 14, Township 24 North, Range 1 West of the 6th P.M., Madison County, Nebraska. Said tract of land is more particularly described as follows:

Referring to the Northeast Corner of said Section 14; thence proceeding South, along the East line of said Section 14 on an assumed bearing of South 01 degrees 20 minutes 59 seconds West, 953.93 ft.; thence North 88 degrees 39 minutes 01 seconds West, 58.00 ft. to a point on a line which is 58.00 ft. West of, and parallel to the East line of said Section 14 which point is the point of beginning; thence continuing North 88 degrees 39 minutes 01 seconds West, 225.00 ft.; thence South 01 degrees 20 minutes 59 seconds East, 150.00 ft.; thence South 88 degrees 39 minutes 01 seconds East, 225.00 ft. to a point on a line which is 58.00 ft. West of, and parallel to the East line of said Section 14; thence North 01 degrees 20 minutes 59 seconds East, 150.00 ft. to the point of beginning. Said tract of land contains 33,750 sq. ft., more or less; and

WHEREAS, the property described above is presently included in Zoning District I-3; and

WHEREAS, the Norfolk Planning Commission has conducted a public hearing on September 5, 2007 receiving input and data from the applicant and the general public concerning the Conditional Use Permit; and

WHEREAS, the Norfolk Planning Commission granted the Conditional Use Permit by its approval of Resolution No. PC2007-3 on September 18, 2007; and

WHEREAS, Resolution No. PC2007-3 mistakenly referenced the zoning district within which the subject property lies as Zoning District A; and

WHEREAS, the correct zoning district within which the subject property lies is Zoning District I-3; and

WHEREAS, the Norfolk Planning Commission desires to correct the erroneous zoning district contained in the initial Resolution by passage of this Corrective Resolution.

NOW, THEREFORE, in consideration of the foregoing recitals, the Planning Commission of the City of Norfolk, Nebraska, hereby adopts the following Resolution:

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BE IT RESOLVED by the Planning Commission of the City of Norfolk, Nebraska that NE Colorado Cellular, Inc. dba Viaero Wireless LLC is hereby granted a Conditional Use Permit for a wireless telecommunications facility on property at 2301 N. Victory Road subject to the following terms and conditions:

(1) There shall be an 8' high chain-link fence surrounding the tower;

(2) When the tower is removed, all underground equipment and construction shall be removed to three feet below grade;

(3) All cables and wiring to the tower shall be internal;

(4) The applicants shall receive final approval from the Federal Aviation Administration;

(5) The applicants shall encourage co-location of use on this tower;

(6) As development occurs in the area, landscaping, buffering or tower modifications may be required;

(7) If there is a cessation of use of the tower for more than one year, the applicant is responsible for its removal;

(8) All procedures and standards outlined in Section 27-56 of the Norfolk City Code pertaining to Conditional Use Permits shall be observed;

(9) The Conditional Use Permit granted herein shall be subject to the provisions of the Norfolk City Code that provide for an appeal to be taken within 15 days of the decision of the Planning Commission; and pursuant to the Norfolk City Code, shall be a personal privilege granted to the applicant and shall not be subject to transfer;

(10) There shall be compliance with any other applicable City, County, State or Federal regulations that may apply.

PASSED AND APPROVED this 18 day of December, 2007.

ATTEST:

Faythe N. Petersen
Planning Commission Secretary

Rue Fuchtman
Planning Commission Chairman

(SEAL)

FAYTHE N. PETERSEN
MY COMMISSION EXPIRES
September 17, 2011

Approved as to form: Clint Schuler
City Attorney

City of Norfolk
127 North 1st St
Norfolk

Chg $10.50 No. 3592 Paged General Indexed

STATE OF NEBRASKA ss
MADISON COUNTY

This instrument was filed for record this 8 day of July, 2008 at 8:30 o'clock A M, and recorded in 2008-07 page 0408-0409

Register of Deeds

Deputy

0408

CONDITIONAL USE PERMIT
RESOLUTION NO. PC2008-3

Attachment 16

WHEREAS, NE Colorado Cellular, Inc. dba Viaero Wireless has filed an application for a Conditional Use Permit seeking a permit for a telecommunications tower on property which is legally described as follows:

A tract of land lying wholly in Lot 2, Roman's Fourth Addition to the City of Norfolk, Madison County, Nebraska, Being a Subdivision of Parts of Lots 5 and 6, Roman's Third Addition, a Replat Of Part of Lot 5, Roman's Second Addition, a Replat of Lot 2, Roman's Addition to the City of Norfolk, Madison County, Nebraska. Said tract of land is more particularly described as follows:
Beginning at the Southwest Corner of said Lot 2; thence proceeding North, along the West line of said Lot 2, on an assumed bearing of North 00 degrees 50 minutes 07 seconds East, 243.15 ft.; thence North 89 degrees 56 minutes 46 seconds East, 100.00 ft.; thence South 00 degrees 50 minutes 07 seconds West, 243.23 ft. to a point on the South line of said Lot 2; thence South 90 degrees 00 minutes 00 seconds West, 100.00 ft. to the point of beginning. Said tract of land contains 0.56 acres, more or less.

Said tract of land is ~~to be~~ platted as Lot 1 of Roman's Fifth Addition to the City of Norfolk, Madison County, Nebraska.

WHEREAS, the property described above is presently included in Zoning District I-2; and

WHEREAS, the Norfolk Planning Commission has conducted a public hearing on June 3, 2008 receiving input and data from the applicant and the general public concerning the Conditional Use Permit;

NOW THEREFORE, in consideration of the foregoing recitals, the Planning Commission of the City of Norfolk, Nebraska hereby adopts the following Resolution:

BE IT RESOLVED by the Planning Commission of the City of Norfolk, Nebraska that NE Colorado Cellular, Inc. dba Viaero Wireless LLC is hereby granted a Conditional Use Permit for a wireless telecommunications facility on property at 1205 W. Monroe Avenue subject to the following terms and conditions:

(1) There shall be an 8' high chain-link fence surrounding the tower;

(2) When the tower is removed, all underground equipment and construction shall be removed to three feet below grade;

(3) The lighting of the tower shall be a stay burn red from sunset to daybreak as per FAA lighting guidelines;

(4) The applicants shall receive final approval from the Federal Aviation Administration;

(5) The applicants shall encourage co-location of use on this tower;

(6) If there is a cessation of use of the tower for more than one year, the applicant is responsible for its removal;

(7) All procedures and standards outlined in Section 27-56 of the Norfolk City Code pertaining to Conditional Use Permits shall be observed;

(8) The Conditional Use Permit granted herein shall be subject to the provisions of the Norfolk City Code that provide for an appeal to be taken within 15 days of the decision of the Planning Commission; and pursuant to the Norfolk City Code, shall be a personal privilege granted to the applicant and shall not be subject to transfer;

(9) There shall be compliance with any other applicable City, County, State or Federal regulations that may apply.

PASSED AND APPROVED this 17th day of June 2008.

ATTEST:

Planning Commission

Planning Commission Secretary

Approved as to form: City Attorney

The foregoing instrument was acknowledged before me this 17 day of June, 2008 by Maynard Ohl, Planning Commission Co-Chair of the City of Norfolk.

Faythe Petersen Notary Public

FAYTHE N. PETERSEN
MY COMMISSION EXPIRES
September 17, 2011

City of Norfolk

Chg. $10.50 No. 4835 Paged ✓ General ✓ Indexed ✓ 0638

STATE OF NEBRASKA ss
MADISON COUNTY

This instrument filed for record this 11 day of Sept./2008 at 8:30 o'clock A.M. and recorded in 2008-09 page 0638-0639

Nancy J. Roos
Register of Deeds

Deputy

CONDITIONAL USE PERMIT
RESOLUTION NO. PC2008-6

Attachment 17

WHEREAS, NE Colorado Cellular, Inc. dba Viaero Wireless has filed an application for a Conditional Use Permit seeking a permit for a telecommunications tower on property which is legally described as follows:

A tract of land lying wholly in the NE 1/4 of Section 16, Township 24 North, Range 1 West of the 6th P.M., Madison County, Nebraska. Said tract of land is more particularly described as follows:

Referring to the Northeast Corner of said Section 16; thence proceeding West, along the North line of said Section 16 on an assumed bearing of South 89 degrees 45 minutes 45 seconds West, 512.69 ft.; thence South 15 degrees 43 minutes 13 seconds East, 846.61 ft.; thence South 89 degrees 45 minutes 14 seconds West, 437.88 ft.; thence South 13 degrees 05 minutes 10 seconds East, 221.81 ft. to the point of beginning; thence South 00 degrees 36 minutes 38 seconds East, 100.00 ft.; thence North 89 degrees 57 minutes 37 seconds East, 272.02 ft.; thence North 37 degrees 49 minutes 26 seconds West, 127.33 ft.; thence South 89 degrees 46 minutes 25 seconds West, 195.00 ft. to the point of beginning. Said tract of land contains 0.54 acres, more or less.

WHEREAS, the property described above is presently included in Zoning District O-D; and

WHEREAS, the Norfolk Planning Commission has conducted a public hearing on August 5, 2008 receiving input and data from the applicant and the general public concerning the Conditional Use Permit;

NOW THEREFORE, in consideration of the foregoing recitals, the Planning Commission of the City of Norfolk, Nebraska hereby adopts the following Resolution:

BE IT RESOLVED by the Planning Commission of the City of Norfolk, Nebraska that NE Colorado Cellular, Inc. dba Viaero Wireless LLC is hereby granted a Conditional Use Permit for a wireless telecommunications facility on property on the west side of the 2100 block of N. 13th Street subject to the following terms and conditions:

(1) There shall be an 8' high chain-link fence surrounding the tower;

(2) When the tower is removed, all underground equipment and construction shall be removed to three feet below grade;

(3) If lighting of the tower is required, it shall be a stay burn red from sunset to daybreak as per FAA lighting guidelines;

(4) The applicants shall receive final approval from the Federal Aviation Administration;

(5) The applicants shall encourage co-location of use on this tower by offering a lease at fair market value;

(6) If there is a cessation of use of the tower for more than one year, the applicant is responsible for its removal;

(7) If an approved conditional use permit is not begun within a period of 12 months following approval, the conditional use permit shall become null and void;

(8) A building permit shall not be issued until the appropriate subdivision creating this lot is approved and filed;

(9) All procedures and standards outlined in Section 27-56 of the Norfolk City Code pertaining to Conditional Use Permits shall be observed;

(10) The Conditional Use Permit granted herein shall be subject to the provisions of the Norfolk City Code that provide for an appeal to be taken within 15 days of the decision of the Planning Commission; and pursuant to the Norfolk City Code, shall be a personal privilege granted to the applicant and shall not be subject to transfer;

(11) There shall be compliance with any other applicable City, County, State or Federal regulations that may apply.

PASSED AND APPROVED this 19th day of August 2008.

ATTEST:

Sue Fuchtman
Planning Commission

Planning Commission Secretary

Approved as to form:
City Attorney

The foregoing instrument was acknowledged before me this 19 day of August, 2008 by Sue Fuchtman, Planning Commission Chair of the City of Norfolk.

FAYTHE N. PETERSEN
MY COMMISSION EXPIRES
September 17, 2011

Faythe Petersen Notary Public

9:45

Attachment 18

04980

No 04980	#Pages 6
Doc Tax $	
Fee $ 40.00	F&M $ 5.00
Fees Pd $	Gen Fee $ 35.00
Ck#	
Refund	Due 40.00

THE STATE OF NEBRASKA } ss.
MADISON COUNTY

This instrument filed for record the 21 day of November 2014 at 9:45 A.M. and recorded in Book 2014 Page 04980

Nancy J. Rhoe
Register of Deeds

By

By the City of Norfolk, Madison County, Nebraska

CONDITIONAL USE PERMIT
RESOLUTION NO. PC2014-6

WHEREAS, Verizon Wireless has filed an application for a Conditional Use Permit seeking a permit for a telecommunications tower on property which is legally described as follows:

Commencing at a point 33 feet south and 563 feet west of the Northeast corner of the NE ¼ of the SE ¼ of Section 21, Township 24 North, Range 1 West of the 6th P.M., Norfolk, Madison County, Nebraska, which is the place of beginning; thence 417 feet west, then 417 feet south, thence 417 feet east, thence 417 feet north to the place of beginning.

WHEREAS, the property described above is presently included in Zoning District R-1; and

WHEREAS, the Norfolk Planning Commission has conducted a public hearing on September 16, 2014 receiving input and data from the applicant and the general public concerning the Conditional Use Permit;

NOW THEREFORE, in consideration of the foregoing recitals, the Planning Commission of the City of Norfolk, Nebraska hereby adopts the following Resolution:

BE IT RESOLVED by the Planning Commission of the City of Norfolk, Nebraska that Verizon Wireless is hereby granted a Conditional Use Permit for a wireless telecommunications facility at 1337 W. Maple Avenue subject to the following terms and conditions:

(1) There shall be a 6' high chain-link fence with 3-strand barbwire outriggers surrounding the tower;

(2) This permit shall be for the twenty five (25) year period from October 7, 2014 until October 7, 2039;

(3) The applicants shall encourage co-location of use on this tower by offering a lease at fair market value;

(4) The applicants shall receive final approval from the Federal Aviation

Administration;

(5) The existing tower shall be removed ninety (90) days after the erection of the new monopole tower;

(6) Verizon Wireless shall work to control the track out from trucks, heavy equipment and vehicles exiting the property on to Maple Avenue. Sand, gravel, mud or sediment track out generated from the tower installation and maintenance shall be controlled by installation and maintenance of appropriate best management practices (BMPs). At a minimum, there shall be a 50' by 12' concrete apron poured from the Maple Avenue paving onto the property;

(7) If an approved conditional use permit is not begun within a period of 12 months following approval, the conditional use permit shall become null and void;

(8) Tower lighting shall be compatible for an urban residential area equal or equivalent to FAA Advisory Circular 70/7460-1K CHG 2, Obstruction Marking and Lighting, a medium-dual lighting system, which consists of red lights for nighttime and medium intensity flashing white lights for daytime.

(9) All procedures and standards outlined in Section 27-56 of the Norfolk City Code pertaining to Conditional Use Permits shall be observed;

(10) The Conditional Use Permit granted herein shall be subject to the provisions of the Norfolk City Code that provide for an appeal to be taken within 15 days of the decision of the Planning Commission; and pursuant to the Norfolk City Code, shall be a personal privilege granted to the applicant and shall not be subject to transfer;

(11) There shall be compliance with any other applicable City, County, State or Federal regulations that may apply.

PASSED AND APPROVED this 7th day of October 2014.

ATTEST:

Planning Commission

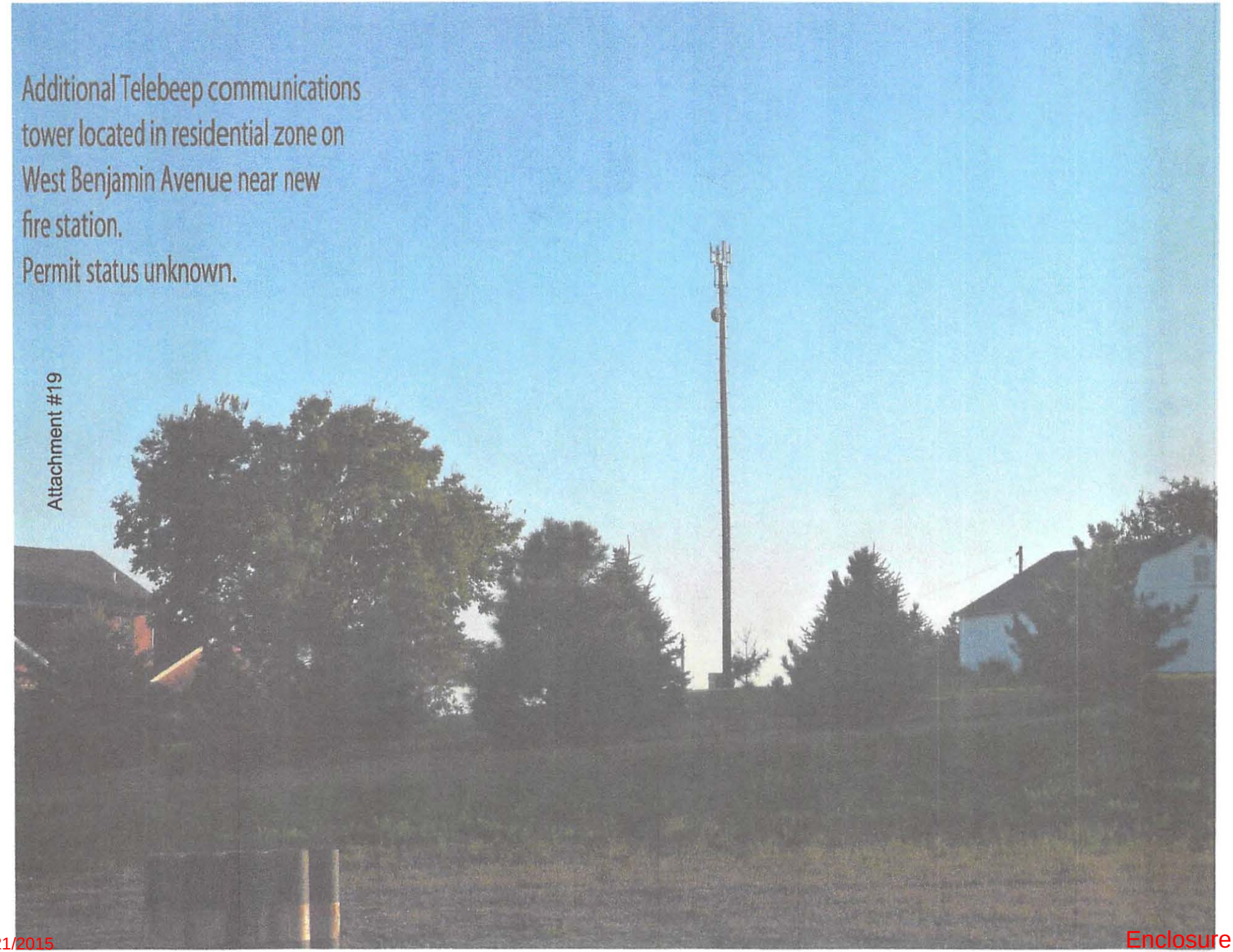
Planning Commission Secretary

Approved as to form: City Attorney

The foregoing instrument was acknowledged before me this 1 day of October 2014 by Brian Lundy, Planning Commission Vice Chair of the City of Norfolk.

General Notary - State of Nebraska
FAYTHE N. PETERSEN
My Comm. Exp. Sept. 17, 2015

Faythe Petersen, Notary Public


Additional Telebeep communications
tower located in residential zone on
West Benjamin Avenue near new
fire station.
Permit status unknown.
Attachment #19

Zoning change denied for bin located too close to county road

By MICHAEL AVOK

mavok@norfolkdailynews.com | Posted: Friday, January 30, 2015 8:53 am

Two Platte County farmers do not meet the criteria needed to gain a zoning variance for a grain bin they built in Madison County, officials decided Thursday night.

Brothers Chad and Adam Hemmer, acting as Hemmer Land LLC, were seeking a zoning change from the Madison County Board of Adjustment that would allow them to leave, as is, a bin that sits roughly 13.5 feet too close to a gravel road right of way.

The Hemmers have tried for nearly 18 months to prove that undue hardship, such as land slope and soil composition, existed and, as a result, affected the placement of the bin.

County representatives have countered that the men should have researched zoning regulations before building and, in fact, began building without a proper permit.

Madison County officials on Thursday voted 5-0 to deny the Hemmers' variance request, effectively requiring them to move the bin at a cost estimated by the Hemmers as just more than $40,000.

Thursday's decision, however, will likely not be the end to the issue. The Hemmers have 15 days to appeal, and a lawsuit over the matter is slated for district court in April.

The two-hour board of adjustment meeting included more than 90 minutes of testimony from the Hemmers and their legal council.

No one from the public spoke against the variance request, but land-use officials were allowed to describe criteria needed to gain the zoning change. They also rebutted and clarified any of the Hemmers' testimony that they felt was misleading or needed further explanation.

In previous hearings, county officials noted that the Hemmers began building without the proper permits. They eventually did get the permits and paid the appropriate fees, but they did not follow zoning rules in locating the bin.

Chad Hemmer said Thursday that he has had construction done in Platte County, which does not have zoning rules, and he relied on his contractor to make sure the Madison bin was compliant.

"We are pretty much just farmers," Chad Hemmer said. "We didn't do anything with the construction of the bin."

The Hemmers presented photos and documents they said showed that the bin poses no safety

problems for vehicles and that hardship did indeed exist because the land slopes steeply in two directions.

The current location was the only logical spot for the bin, he said.

"The land, the further you go, continues to taper in two directions," Chad Hemmer said. "It is unique. There is a hardship, and a variance will not harm (the enforcement of) zoning regulations."

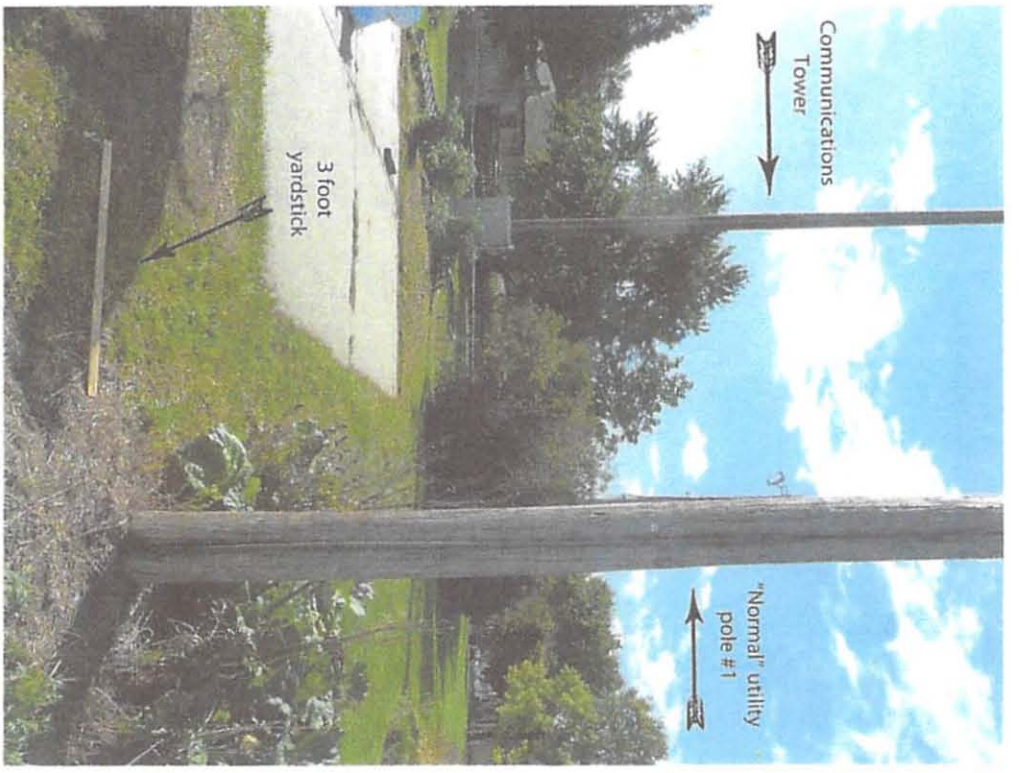
Officials disputed the statement that the slope was steep and presented documents that showed a slight slope. Another document showed that the soil type on the land is not commonly known for significant erosion.

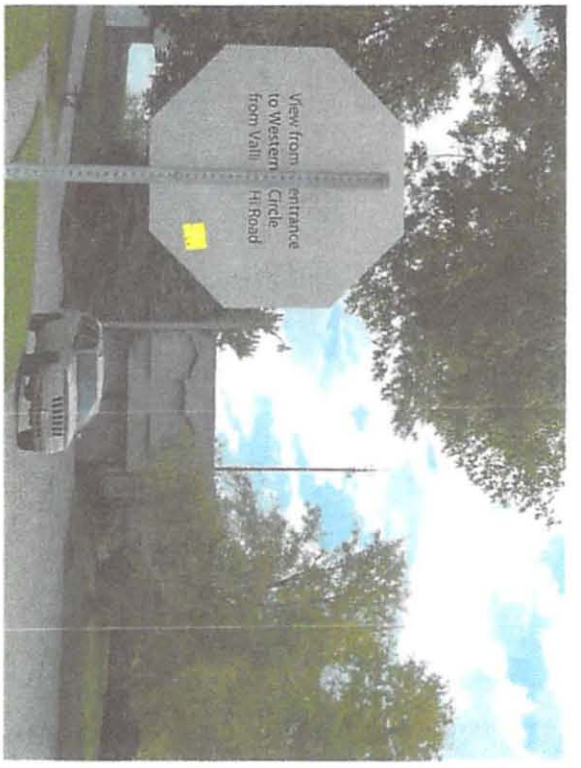
Following the hearing, the board of adjustment spent fewer than 10 minutes to make a decision.

It unanimously ruled that hardship was not demonstrated and the variance request by the Hemmers was denied.

Attachment #21

Attachment #22





October 23, 2015

RE: Ross & Maggie Stoffer 11-2-15 Appeal of Telebeep, Inc. Conditional Use Permit at 2208 Elmers Lane

Dear Mayor and City Council Members:

I was very disappointed in the discussion by some Planning Commission members and the outcome of the Planning Commission hearing on September 22. There is a process in place in Norfolk whereby permits can be applied for and a follow through review done of the background and reasons for the requested permit. It's also disappointing to know that if someone "forgets" to use the permitting process, it is treated by the Commission as "we can't do anything now" after the "expense and effort" has been put into the placement of the tower and because "so many customers would be affected". I wonder how many times in the future this might happen because of the decision the Planning Commission made and now the decision the City Council has before them on Nov. 2.

Mr. Schommer stated he has been a business owner in Norfolk for 30 years. He is very well aware of the permitting requirements and probably knows better than most of the general public. In my opinion, because of the length of time Mr. Schommer has been in the business, he did know to ask about permits back in 2004 when the original pole was installed. He again had the opportunity to obtain a permit last spring when a much larger replacement pole was installed, but chose not to until he was confronted by a neighboring property owner of where the new pole was placed.

Mr. Schommer's permit application states ingress and egress to the property is adequate. Has this been verified? No alley or street access is available to the tower. Private property is the only access for the large trucks that have been seen at the tower site.

After hearing Mr. Schommer say he gets electricity to the pole through an underground line from the house on the property, I also wonder if the electrical line was installed in accordance to code at the time the pole was placed on the property. Mr. Schommer said it was installed underground, but I assume there are specifications in City Code regulating that type of electrical installation that apparently was never inspected.

I understand there are citizens in the community commenting regarding the recent placement of the tower. People in College View Addition and as far north as Eisenhauer Avenue have wondered what such a tall pole is for. The fact that it is a large wooden pole and not a normal metal communications tower does not make it any more acceptable or less visible. Something of this type does not belong in the middle of a residential area, especially so close to homes. It absolutely does not look like the regular power poles in the neighborhood and is for business use in a residential neighborhood.

I hope many, if not all of you, have or will drive up into the east Western Circle, and take a look into the back yard of 2200 Western Circle to see firsthand how unsightly and potentially dangerous this pole is due to its size for a residential area. See for yourself that this is not the same thing as seeing towers along the horizon from your residence, or even seeing them a mile or so from your home.

Please think about the precedent you are setting and the infringement of a business purpose in a residential area. In addition, the fact that it was done without following the permitting process. Now is the time to put a stop to action being taken AFTER an installation requiring a permit has been done.

Sincerely,

Mark Johnson

Rec'd 10-26-15

Mark Johnson
2203 Western Circle
Norfolk, NE 68701

Telebeep Wireless
Utility Pole Timeline Overview
Updated 11-2-15

- **Spring 2004**
  After over a year of receiving requests from residents of Western Heights to provide Wireless Broadband Service to them, we began to survey potential options to deliver the service.

  We considered several options, including erecting a tower, installing an antenna on a residential rooftop or utilizing an existing utility pole. If a tower were to be erected it would have preferably been somewhere in the 150 to 180 foot range. That would have required FAA approval due to its height and proximity to the airport.

  We felt that the most reasonable and aesthetically pleasing option would be to install a utility pole in the back yard of the property located at 2208 Elmers Lane. The Utility pole would be located within just a few feet of the easement and was in amongst large trees as well as other utility poles carrying electrical transmission lines. Additionally, there was a wide open field adjoining it on the other side. *Please note that the above statement has been corrected to reflect the installation of a new utility pole in amongst existing utility poles already at the property in 2004 and not the use of an existing utility pole.

- **August 2004**
  The necessary equipment was installed to begin providing Wireless Broadband Service to the residents of Western Heights. This was accomplished by installing an antenna onto a 25 ft. mast pipe and attaching the mast pipe to the Utility pole. We were of the understanding that because a tower was not constructed, and the airport had no concerns with the overall height, we were able to avoid any regulatory requirements.

- **Late Summer 2014**
  In order to meet the increasing bandwidth requirements of today's subscribers, it became necessary to upgrade the equipment at the site. Doing so would require changing out the omnidirectional antenna and adding a four sector antenna at the top of the 25 foot mast pipe.

  From an engineering perspective, we did not want to add the additional weight and wind load of the four sector antennas to the top of the 25 foot mast pipe. For safety reasons we decided to replace the existing Utility pole and mast pipe with a new Utility pole that was only 8 to 10 feet taller than the overall height of the existing structure that had been in place since 2004. Considering the growth of the trees in the area, this new height would put the antennas back to at the same level above tree height as they were when originally installed in 2004.

Before moving ahead with the purchase of the Utility pole, a call was made to the Codes Division at the City. It was discussed that we were planning on changing out a Utility Pole at one of our sites for another Utility pole that would change the overall height by only 8 -10 feet. The conclusion was that because it was a Utility pole and provided that it complied with any airport height restrictions that there was no problem with replacing the Utility pole. The City was very cordial and respectful of what we were trying to do. I did not specifically indicate where the site was located.

- **May 12, 2015**
  Nebraska Public Power District removed the old Class 4 Utility Pole and installed the New Class 2 Utility Pole in the same location. NPPD was contracted to insure the highest level of safety as it relates to the installation and long-term utilization of the Utility Pole.

  The install was performed according to industry standards and in the same manner in which thousands of utility poles are currently installed throughout the City of Norfolk. Specs for the Class 2 Utility pole are included with this summary. The site was then upgraded to the new equipment as planned.

- **May 13, 2015**
  The owner of the property informed me that his neighbor had approached him in his back yard the night before and expressed concerns with some things that occurred during the installation of the Utility pole. I told the property owner that I would immediately reach out to his neighbor to see how we could best handle his concerns.

  I was able to reach the owner of the property's neighbor right away and visit with him about his concerns. During our conversation, he asked me if we had a permit for the Utility pole. I told him that we did not and wasn't certain that we needed one but I would check with the City to be certain.

  After talking with the neighbor, I called Codes and Permits to verify my understanding of our conversation we had back in the later part of the Summer 2014, regarding changing out the utility pole. We specifically talked about all of the tall utility poles along Benjamin and 25th Streets and the Utility pole was in that height category. After a short review of the codes, it was confirmed that the changing out of the utility pole was fine as long as we didn't violate airport height restrictions.

- **May 20, 2015**
  Shane Weidner stopped by my office and told me that he had a conversation with the property owners' neighbor regarding the issues relating to the changing out of the utility pole and its compliance with City Code. He asked me to tell him my perspective of what transpired and I did. He was pleased that both parties were telling the same story and that was a great starting point. He said he wasn't yet sure what direction he was going with this yet but would get back to me once he knew how he was going to handle it.

- **June 17, 2015**
  Shane stopped by my office again and told me that multiple staff meetings have taken place to determine the proper way to handle the situation. He informed me that a decision was made and he told me what would likely be the options but a letter from Trent Howard would be coming letting me know what options are available to me.

- **July 2, 2015**
  I received a letter from Trent Howard, City Zoning Official stating three options to correct the situation. The options were as follows:
  1. Remove the tower and associated equipment
  2. Bring the tower into conformance by lowering to a maximum height of 35' per R-1 Single Family Residential District.
  3. Apply for a conditional use permit to exceed the height restrictions allowable in the district.

- **July 6, 2015**
  A Conditional Use Permit was applied for to exceed the height restrictions allowable in the district.

- **September 22, 2015**
  A Public Hearing was held before the Norfolk Planning Commission for a Conditional Use Permit to exceed the height restrictions allowable in the district. The item was tabled while various conditions were considered and drafted.

- **October 6, 2015**
  The Norfolk Planning Commission approved a Conditional Use Permit (Resolution No. 2015PC-9) for Telebeep to operate a telecommunications tower at 2208 Elmers Lane.

- **October 26, 2015**
  Telebeep receives a notice of a hearing to be held by the City Council on Monday, November 2, 2015 at 5:30 pm. The hearing is in response to the appeal requested by Ross & Maggie Stoffer.

STANDARD SPECIFICATIONS FOR WOOD POLES

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Abstract

This paper describes the standards for wood poles prepared by the American National Standards Institute (ANSI) Committee 05 and the Committee's activities in maintaining the standards. The three standards form the basis for purchasing and designing most wood utility structures in the United States. The round pole standard, ANSI 05.1, includes specifications, dimensions, and fiber stress values for design. The other two standards, ANSI 05.2 and 05.3, also address important issues for specifying material properties and deriving fiber stress. The ANSI 05 Committee meets once a year to provide an open forum for discussing concerns related to these standards.

Introduction

Round timbers have been used as structural members for centuries. At the turn of the present century, the development of electric power distribution systems and telegraph and telephone communications prompted a great demand for poles. As more people became involved in converting trees to utility structures, a need arose for a common basis of understanding related to form and quality requirements of utility poles. Pole producers and users met to discuss concerns related to harvesting, processing, and designing pole structures and to reach some agreement on acceptable limits related to form and processing of utility poles. This discussion led to the formation of the American Standards Association Committee 05, which later became the American National Standards Institute (ANSI) Committee 05 as efforts were made to establish national standards. The product of this continuing effort is a nationally recognized standard that provides the basis for material specifications, classification, and engineering properties for wood utility poles. The ANSI 05 Committee provides a forum for pole producers and users that enables them to address changing market issues and maintain a needed supply of utility poles. This committee meets on an annual basis to review and update its standards.

The objective of this paper is to describe the standards for wood poles and other wood products used in utility structures as well as the ongoing activities of ANSI Committee 05 in maintaining the three standards for wood products used in utility structures. The paper reviews other pole-related standards, but it places special emphasis on the role of the ANSI 05.1 wood pole standard specifications. Discussion of topics covered by this standard provides insight to variables considered in the production and design of utility poles as well as some perspective on the influence of the standard.

Development of Wood Pole Standards

Standards written specifically for the structural applications of poles include those currently maintained by ANSI (2-5), the American Society for Testing and Materials (ASTM) (7-10), the American Society of Agricultural Engineers (ASAE) (6), and the Rural Electrification Administration (REA) (15). The ASAE and REA standards reference ANSI and/or ASTM as the basis for selecting and assigning allowable stresses to wood poles. The ASTM standard provides a method for deriving allowable stresses for round timbers used as construction poles, piles, and marine structures. The ANSI standard for wood poles applies to transmission and distribution-line applications.

History

Among the first nationally recognized standards for round timbers were ASTM standard 1915 Specifications for Round Timber Piles) and the American Standards Association (ASA) standard 05, 1924 (Wood Pole Specifications and Dimensions). These standards documented the characteristics that

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best defined "minimally acceptable" as it relates to pile and/or pole applications and laid the foundation for most current standards related to structural use of round timbers.

Engineering properties of wood poles (ANSI 05.1) and piles (ASTM D2899) are set as a function of species and are considered applicable to all poles that meet the minimum quality specifications. In 1941, the American Association of State Highway Officials assigned allowable bearing stresses for three primary species of timber piles: Southern Pine, Douglas-fir, and oak. Thirty years later, ASTM adopted standard procedures for deriving engineering properties for U.S. pole species (ASTM D2899). These procedures are similar to those used for stress-graded lumber, but they recognize no within-species quality gradations. Rated poles simply meet or exceed minimum quality specifications. At about the same time, the ASA also adopted engineering property values for poles on the basis of information from extensive tests (19,20), while recognizing established precedents. Additional data developed within the past 20 years have expanded the knowledge of pole strength and are being considered by the ANSI 05 Committee as a basis for developing a reliability-based load-resistance-factor design approach to the design of utility-pole structural systems (14,15).

Future Trends

The primary use of wood poles in the future will be in maintenance of existing transmission and distribution systems. The use of poles to support telephone and local utility distribution lines is slowly diminishing. In addition to expanding the practice of burying local distribution lines, telephone companies are expanding the use of high-frequency, electromagnetic wave technologies to transmit signals over long distances.

Over the past decade, pole production has remained steady at 3 million poles per year. It has been estimated that about 100 million poles are in use today. As new U.S. markets decline, future pole production will focus primarily on maintaining existing lines unless foreign markets are developed. Growing concern for more efficient use of the Nation's timber resources as well as the reliability of utility transmission and distribution systems is leading to a number of innovations that will affect the wood pole industry. Competing materials (steel, aluminum, concrete, and fiberglass) are being used in place of wood. There is also increased interest in extending the life of existing poles through careful inspection, in-place treatment, or repair. Techniques that can accurately determine the residual capacity of existing structures will be in high demand, and these same methods can be used to determine more accurately the properties of new poles, thus providing a basis for more efficient design and use through alternative methods of assigning engineering properties (13).

ANSI Wood Pole Specifications

The ANSI 05.1 standard covers the specifications and dimensions for untreated poles loaded as simple cantilevers subject to transverse load only. Specifications for preservative-treated wood utility poles are to be given by the purchaser on the basis of requirements detailed in other standards (i.e., AWPA C4 (12) or ASTM D4064 (9)).

The ANSI 05.1 standard includes requirements related to species, acceptance criteria, manufacturing requirements, length and class, and code marking. This standard lists 25 species native to the United States that are considered to exhibit the physical and mechanical properties appropriate for use as poles. Fiber stress values and pole size and shape values are given for each of these species. However, four species have been dropped from the AWPA C4 standard for preservative treatment of poles because they are seldom used; six other species are noted by the ANSI 05.1 standard as not commonly used. Six of the remaining 15 species account for 90% of poles produced and used in the United States. These six species include the four species of Southern Pine that are grouped and marketed together, Douglas-fir, and western redcedar (Fig. 1).

Surveys taken over the past 10 years have indicated that Southern Pine is by far the most widely used pole species in the United States (17). Of an estimated 3.7 million poles produced in the United States in 1990, 75% were Southern Pine, 9% 'Douglas-fir, and 6% western redcedar (Fig. 1). The species designated "other" in Figure 1 include a mix of pines, spruce, larch, and hemlock. The large number of Southern Pine poles is due in part to extensive use of smaller Southern Pine poles in distribution classes. In the larger transmission (class H) poles, Douglas-fir and western redcedar would make up a larger percentage of the total.

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An important consideration in the use of different species for poles is availability. Availability means more than just the number of trees that are currently growing. To be used for poles, trees must have certain growth characteristics such as appropriate size, straightness, few large branches, and generally straight grain. Many of these properties are determined by the environment in which the tree grows rather than by genetics. Trees grown in tight stands normally grow straight and tall with few large branches, as a result of the competition for sunlight. Softwoods do much better at growing in tight single-species stands than do hardwoods and thus are likely to yield a higher percentage of "pole trees" in a given stand. Another factor that plays an important role in the acceptability of a species for structural pole applications is its ability to accept and retain chemical preservatives.

There are currently no provisions in the ANSI standards for specifying foreign species in pole classes. A task committee on foreign species within the ANSI 05 Committee developed a proposed set of requirements and procedures that were verbally approved at the Committee's 1997 meeting. This procedure is presently in the balloting process and, if approved, could become a mandatory appendix to ANSI 05.1. Proposed requirements include an evaluation of pole strength using the ASTM D1036 Static Test of Wood Poles (11) or an equivalent method. As the data are reviewed and species are approved, other species may be added to the ANSI 05.1 standard.

Grading

The ANSI specification provides criteria for pole acceptance in four basic categories: pole shape, growth characteristics, naturally occurring defects, and processing defects. Unlike the standards for many other wood products, only one stress-graded standard is provided for poles. To qualify for the ANSI 05 designated stress classification, all poles must meet the minimum set of acceptance criteria.

Pole shape considerations include pole sweep and crook (Fig. 2). Sweep in one plane and one direction is limited to 1 inch from a straight line for every 10 A of length surveyed (see Table 1 for SI conversion factors). For short poles (<50 ft), 10% in a given lot may have a sweep deviation from a straight line of 1 inch in 6 ft; for long poles (≥55 ft), 25% in a given lot may have this sweep deviation. For sweep in two directions and one plane (reverse sweep) or two planes (double sweep), a straight line joining the center of the pole at groundline with the center of the top is not allowed to pass through the outer surface of the pole at any intermediate point.

Growth characteristics include knots, slope of grain, rate of growth, and compression wood. To set knot size limitations, poles are separated into length categories of ≤ 45 ft and ≥50 ft. Individual knot size limits also vary within a single pole. As one might expect, larger poles are permitted to have larger knots. What might not be quite so intuitive is the fact that a larger single knot is permitted in the upper half of the pole. Average wood strength and cross-section decrease with height in a tree. In the cantilever applications characteristic of most pole structures, the stress in the pole drops off more rapidly than the combined effects of wood strength and section property. With no change in section property, the stress at midheight would be expected to be half that at the groundline. Pole taper, however, is normally so small that at midheight the stress rarely exceeds 60% of that at the butt. If we assume a linear reduction in ultimate fiber stress to the point that tip fibers are half as strong as groundline fibers, midheight wood strength would be 75% of that at groundline. This suggests that at midheight, the pole strength/stress ratio is 25% greater than that at groundline.

For many pole species, knots occur in "clusters" or "whirls." For these cases, limits are set on the sum of diameters as measured perpendicular to the axis of the pole. The allowable sum of knots is calculated as one-third the average pole circumference at the cluster location, with the overriding limit that the circumference fall between 8 and 12 inches for poles ≤45 ft long and between 10 and 14 inches for poles ≥50 ft.

Spiral grain is limited to one complete revolution in 10, 16, or 20 ft for poles ≥30 ft, 35 to 45 ft, and ≥ 50 ft long, respectively. for average growth, the growth rate must be at least six rings per inch in the outer 2- or 3-inches of the pole diameter; four rings per inch is acceptable if growth rings have ≥50% latewood. Compression wood is not permitted in the outer 1-inch of the pole diameter as viewed from either end of the pole.

Naturally occurring defects include bark inclusions, insect and decay damage, and shake. Any defects that significantly reduce the effective section properties in

the outer 2- to 3-inches of the pole diameter could significantly affect bending strength and are therefore limited. Defects permitted by the ANSI standard include bark inclusions <2 inches deep; insect damage consisting of holes < 1/16 inch in diameter, surface scoring, or channeling; firm red heart not accompanied by decay; and hollowing in the butt (if < 10% of the butt cross-section) caused by splinter pulling when the tree is felled. Shake is permitted within limits considered to have minimal impact on strength; however, if shake occurs at the top of the pole, the 05.1 standard requires treatment of the full length of the pole. Decay is generally permitted only in very specific instances, such as hollow pith centers in poles to be treated full length. Any holes, hollow portions, or dead streaks indicative of incipient decay are prohibited.

Processing defects include splits, checks, and mechanical damage caused by mishandling. Splits and checks are an unavoidable consequence of drying round timbers. These defects rarely have a significant effect on the strength of the pole, but they do provide openings for decay and insect access to poorly treated heartwood. Splits can also cause problems for hardware connections. Generally, the ANSI 05.1 standard limits the length of splits to 12 inches when they extend from the pole top and 24 inches when extended upward from the butt. Visible damage, such as 1/4-inch-deep indentations resulting from handling slings or forklift tines, indicates that the damage may be more than superficial surface scarring and is also limited by the ANSI 05.1 acceptance criteria. Surface cuts caused by a chainsaw may be tolerated provided the reduced section still meets the required circumference for the pole class.

Manufacturing requirements are established to minimize any strength loss during the tree-to-pole conversion process and to maximize effectiveness of subsequent preservative treatment to extend the expected service life. Aspects of the manufacturing process covered by ANSI include whole tree processing, conditioning, brand marking, and storage.

Whole-tree processing involves a number of steps that affect the grading and service life of the pole. Poles must be cut to length so that they can be measured easily and properly classified. Bark removal/shaving should remove all inner bark but leave sufficient sapwood to obtain the customer's minimum requirement for preservative penetration. Finally, proper trimming of branch stubs and overgrown knots that rise >1 inch from the surface facilitates handling.

Conditioning

Proper conditioning is important for both the strength and handling of wood poles. In many cases, however, conditioning involves exposure of the pole to high temperatures for purposes of drying, sterilization, and preservative treatment. Because of differences in drying characteristics of different species and the fact that high-temperature exposure for extended periods results in wood strength loss, conditioning methods involving high temperatures cannot be applied generically. The ANSI 05.1 standard lists species by treatment group (Table 2) with designated limitations on pre- and post-treatment conditioning to address these differences. The standard includes requirements for air seasoning, Boulton drying, and kiln drying to facilitate handling and improve durability at minimal cost to pole strength. These requirements generally correspond to those given in the American Wood Preservers' Association (AWPA) standard C4.

Air seasoning is required for treatment group A (Table 2) and is permitted for all species except ponderosa pine. Pre or post-steaming is permitted for up to 4 h at 240°F. For ponderosa pine with <25% moisture content 2.5 inches from the surface, steaming may continue for 6 h.

Boulton drying is to be used with coastal Douglas-fir and western larch (treatment group B). This method should not exceed 220°F in any pretreatment process. After treatment, the poles may be steamed at temperatures not to exceed 240°F for 4 h.

Kiln drying of poles is a topic of some controversy. Some kiln operators feel increasing dry-bulb temperatures, wet-bulb depression, and airflow allows poles to tolerate faster drying. At present, dry-bulb temperature is limited to 170°F for ponderosa pine, red pine, and jack pine, and to 160°F for western redcedar. At these temperatures, ANSI recommends that the wet-bulb depression not exceed 50°F.

For Southern Pine, lodgepole pine, Douglas-fir, and larch, ANSI permits dry-bulb temperatures $\leq$ 230°F. For temperatures > 200°F, wet-bulb depression is required to exceed 50°F. The philosophy behind acceptance of higher temperature with a greater wet-

bulb depression is that the total time at the high temperature will be reduced, lessening the chance for high-temperature strength reduction. There is some question, however, as to the effect of faster drying on the quality of the pole and the strength of surface fibers that are subject to these higher temperatures.

Steam conditioning is primarily used for southern pines (Table 3, treatment group C). Temperatures during this process should be kept below 245°F and steaming time held to under 17 h for poles with a circumference 137.5 inches at 6 ft from the butt. For a circumference > 37.5 inches at this distance from the butt, the steaming limit is 20 h. When Douglas-fir and western larch poles are to be treated with waterborne preservative and have not been Boulton dried, ANSI permits steam conditioning at temperatures not to exceed 240°F for 0 h provided that the initial moisture content does not exceed 25% at 2 inches from the surface. This is a slight deviation from the AWPA C4 standard, which limits steaming temperature to 225°F for 15 h.

Marking

Identification markings are used by utilities for maintenance and life-cycle cost records. The ANSI standard requires that these markings include the following information:

- supplier's code or trademark
- plant and year of treatment
- pole species and preservative used
- circumference class and length

In addition to this information, the standard requires that the poles be marked at a set distance from the butt to ensure that the marking can be read easily after the pole is placed in service. Marking on poles ≤50 ft long must be located 10 ft ± 2 inches from the butt end. For poles ≥55 ft, the marking is located 14 ft ± 2 inches from the butt end.

Storage

Pole suppliers will normally maintain an inventory of poles in the more popular sizes, and pole users often keep a supply of poles for emergency use. It is important to store these poles properly to prevent any deterioration prior to use. The ANSI standard specifies adequate structural support above ground and provides guidelines for handling to minimize mechanical damage.

Classification

The ANSI 05.1 classification system is based on pole load capacity. This system treats all poles that meet the acceptance criteria as a single grade in which strength varies only with species. Poles are classified only by the size needed to meet preset load capacity requirements for the target pole class.

Fiber stresses listed by ANSI for domestic species vary from 4,000 to 8,400 lb/in². Table 2 lists ANSI values for the more popular pole species. These fiber stress values approximate average pole strength and are much higher than the design values that engineers use for buildings and bridges. These fiber stress values are used to determine pole class sizes for each species; and they are intended to be used with recommendations included in the ANSI C2 standard (National Electric Safety Code (NESC)) for the design of utility pole structures. Table 3 lists the 15 ANSI pole classes and their respective required load capacity, length range, and minimum tip circumference.

Minimum circumference 6 ft from the butt listed in the ANSI 05.1 standard is derived to assure that each pole has the groundline bending moment capacity required to carry its pole class load. As groundline distances vary with pole length, required circumferences are translated to a location 6 ft from the butt to facilitate pole classification. The translation from "groundline" to 6 ft assumes a linear circumference taper (Table 2).

The ANSI minimum tip circumference measurement has been a topic of discussion because of some possible confusion in interpreting the standard. The standard allows pole length to vary: poles <50 ft long can be shorter by 3 inches or longer by 6 inches; poles ≥50 ft long can be 3 inches shorter or 12 inches longer. The top dimension requirement has been interpreted as being applicable to the "minimum length permitted" which is at a location either 3 or 6 inches less than the nominal length. This means that for a long (≥50 ft) pole that is 12 inches longer than the specified length, the minimum tip circumference for the pole class may be measured as far as 10 inches below the

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actual top of the pole. As a result of the combined effects of in-service drying and pole taper, the reduction in size from required minimum (measured in green condition) to actual tip circumference could be as much as 1.25 inches, which is equivalent to about 0.4 inch in diameter. This is important in that tip diameter is used as the basis for the design of utility hardware. However, since such hardware can tolerate a 0.5-inch variation in pole diameter, this interpretation should not cause a design problem.

Other Pole Standards

As mentioned earlier, a number of committees maintain standards that are specifically focused on the structural use of round timbers. These include ASTM, ASAE, and REA standards.

ASTM Standard: Three ASTM standards are related to wood poles. The main standard, designated D3200 (8), refers to two other standards: ASTM D25, Specifications for Round Timber Piles (10) and ASTM D2899, Establishing Design Stresses for Round Timber Piles (7). Specifications for round timber piles also apply to poles with the exception that poles are selected on the basis of butt circumference, whereas the table in ASTM D25 is set up to specify a minimum tip circumference for piles. ASTM D3200 provides a table of specified tip Circumference values for corresponding minimum butt circumference values. ASTM D2899 provides equations for deriving design stresses for poles or piles on the basis of clear wood strength and material variability.

ASAE Standard: The ASAE standard EP388 (6) references ANSI 05.1, AWPA, and ASTM standards. Material manufacturing and pole dimension requirements reference the ANSI standard, and the derivation of design stresses follows ASTM recommendations. The ASAE standard provides a basis for specifying and using poles in agricultural pole-frame buildings. This standard is currently under revision. Once approved, a new standard will be issued as EP560, which will no longer include glued- and mechanically laminated posts, but concentrate only on roundwood construction poles.

REA Standard: The REA specifications for wood poles, stubs, and anchor logs (18) describe the minimum acceptable quality of poles purchased by REA borrowers. Material requirements designated by this standard are extracted from ANSI 05. The primary differences between this standard and the ANSI standard are the pole framing details and the designation of treating time and temperatures.

ANSI 05 Wood Pole Committee

The American National Standards Institute's Wood Pole Committee (ANSI 05) was originally organized in 1924. The committee is currently under the sponsorship of the Alliance for Telecommunications Industry Solutions (ATIS), and it consists of about 30 voting members, representing a balance of pole users, producers, and general interests to provide some assurance that all interests are considered. Members meet annually to review and update the following three standards of interest to the utility pole industry: ANSI 05.1–Wood Poles, Specifications and Dimensions (2), ANSI 05.2–Structural Glued Laminated Timber for Utility Structures (5), ANSI 05.3–Solid Sawn Wood Crossarms and Braces (4).

The ANSI 05 Committee meetings are open to anyone who wishes to express a concern related to the content or application of the standards. Discussion items are generally referred to one of six subcommittees (Table 4). The subcommittees on material requirements, fiber stress, and classification relate to the 05.1 standard. The structural composite lumber subcommittee is developing a new standard. Non-voting members may express concerns at meetings or by contacting the appropriate subcommittee chairman (Table 4).

Related Activities

In addition to the standard specification on wood poles, the ANSI 05 committee is responsible for standards in glulam timber and wood crossarms. The ANSI standard on glued-laminated (glulam) utility structures (05.2) covers requirements for manufacturing and quality control of structural glulam timber of Douglas-fir and Southern Pine for electric power and communication structures. The latest edition of this standard includes a procedure for obtaining fiber stress values for glulam members based on design values published by the glulam industry

The ANSI standard for solid-sawn wood crossarms and braces (05.3) includes material specifications for

Douglas-fir and Southern Pine. This specification includes crossarm manufacturing, seasoning, quality limitations, treatment, marking, and storage. The latest edition includes a fiber stress value for Douglas-fir crossarms (Table5). Effortsareunderwaytoobtaindata on Southern Pine crossarms as well.

Both ANSI 05.2 and 05.3 include procedures for determining fiber stress values for crossarms based on testing of the product. This permits the use of crossarms of various species of either solid-sawn or glulam timber. An ANSI 05 subcommittee has also been considering the technical feasibility of incorporating nondestructive evaluation (NDE) methods in the pole stress grading process. The major challenge in applying this concept is determining how it would be compatible with established utility pole markets.

Metric Units Policy

The ANSI policy on metric units is that "units of the International Systems of Units (SI) are the preferred units of measurement in American National Standards." Other standards-writing organizations such as ASTM are making concerted efforts to produce future standards in metric units and to produce dual metric/English units for existing standards. Kressbach et al. (16) have proposed several significant changes leading to metric conversion of ANSI 05.1. These changes include reducing the number of ANSI classes from 15 to 10 as well as a number of simplifications for the derivation of pole sizes. The ANSI 05 committee considered this proposal but voted not to make any changes at this time. The preferred method expressed by the Committee is to include metric equivalents in the text of the standards and include separate tables with metric units to accompany the present tables.

Technology Transfer

The ANSI 05 committee is trying to make it easier for people to communicate their concerns about the production and use of wood poles. The material requirements subcommittee is compiling a manual that depicts permitted as well as restricted wood pole characteristics. This manual will provide color photographs that should be helpful in explaining characteristics described with jargon such as bark inclusions, cat face, juvenile wood, firm red heart, and dead streaks. The Committee sponsor, ATIS, has also developed a World Wide Web page that includes meetingschedulesandminutesoftheannual meetings. The Web address is

http//www.atis.org/atis/05/05hom.htm

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Table 1. SI conversion factors.

English unit	Conversion factor	SI unit
inch	25.4	millimeters (mm)
foot (ft)	0.3048	meter (m)
pound (lb)	0.454	kilogram (kg)
pound per square inch (lb/in^2)	6.894	Pascal (Pa)
temperature (°F)	$(T_F - 32)/1.8$	°C

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Table 2. ANSI pole species by treatment group and corresponding fiber stress and taper values.

Treatment group	Fiber stress (lb/in²)	Circumference taper (inch/ft)
Group A (air seasoning)		
Cedar, western red	6,000	0.38
Cedar, yellow	7,400	0.20
Pine, ponderosa	6,000	0.29
Pine, jack	6,600	0.30
Pine, lodgepole	6,600	0.30
Pine, red	6,600	0.30
Douglas-fir (interior north)	8,000	0.21
Group B (Boulton drying)		
Douglas-fir, coast	8,000	0.21
larch, western	8,400	0.21
Group C (steam conditioning)		
Southern Pine[a]	8,000	0.25

[a] loblolly, longleaf, shortleaf, and slash pines.

Table 3. ANSI classification of wood poles

Pole class	Horizontal load (lb)	length range (ft)	Minimum tip circumference (inch)
H5	10,000	45-125	37
H4	8,700	40-125	35
H3	7,500	40-125	33
H2	6,400	35-125	31
H1	5,400	35-125	29
1	4,500	35-125	27
2	3,700	20-125	25
3	3,000	20-90	23
4	2,400	20-70	21
5	1,900	20-50	19
6	1,500	20-45	17
7	1,200	20-35	15
9	740	20-30	15
10	370	20-25	12

Table 4. ANSI 05 Committee on wood poles.

Committee	Officer	Affiliation
Main committee	Russ Moody, Chair	USDA Forest Service, Forest Products Laboratory
	Alvin Lai, Secretary	Alliance for Telecommunications Industry Solutions
Subcommittee		
Material requirements	Colin McGowan, Chair	Thomasson Lumber Company
Fiber stress	Robert Kluge, Chair	Wisconsin Power and Light
Classification	Richard Leinfelder, Chair	McFarland Cascade
Crossarms	Robert Lash, Chair	Rural Utilities Services
Glulam	Steve Smith, Chair	Hughes Bros. Inc.
Structural composite lumber.	Bruce Craig, Chair	Trus-Joist McMillan

Table 5. Fiber stress for glulam and Douglas-fir solid-sawn crossarms

Product	Fiber stress (lb/in²)
Glulam	
2.5/8 to 6-3/4 inches wide, 3 to 15 inches deep	K = 2.9[a]
Larger	K = 2.7[a]
Douglas-fir, solid sawn	
ANSI 05.3 limitations, table 1	7,800
ANSI 05.3 limitations, table 2	7,400

[a]Fiber stress values obtained by multiplying design values in bending from AITC 117 (1) by this K factor.

Telebeep Wireless
Response to Appeal Statements

Response Submitted by: Tom Schommer
November 2, 2015

In Response To:
APPEAL OF APPROVAL OF CONDITIONAL USE PERMIT TO TELEBEEP, INC.
FOR COMMUNICATIOS TOWER AT 2208 ELMER'S LANE
By Ross and Maggie Stoffer

Mr. Stoffers' Statements are in black text. Telebeep responses are in red text and titled "Response"

I. Tower was illegally placed on property at 2208 Elmer's Lane in 2004 then illegally expanded in May, 2015.
   a. The issue involved is the construction of a tower not the installation of a "utility pole".

RESPONSE #1

A utility pole was in fact used as indicated in the Conditional Use Permit Application.

- According to City Code Sec. 27-2 defining "Tower", a tower is defined as a structure.

  City Code Sec. 27-2: **Tower** shall mean a structure situated on a site that is intended for transmitting or receiving television, radio or telephone communication

- According to City Code 27-2 defining a "Structure", a utility pole is not considered a structure.

  City Code Sec. 27-2: **Structure** shall mean anything constructed or erected which requires permanent location on the ground or which is attached to something having permanent location on the ground, but not including driveways, sidewalks or other surfacing, or public items such as utility poles, street lights, and street signs, or minor landscape features such as bird fountains, clotheslines, landscape lighting, and sculptures.

- If a **tower** is defined by City Code as a "Structure" and a utility pole, according to City Code is not considered a "Structure" then how can a utility pole be considered a **tower**?

   i. Telebeep's application for a conditional use permit claims purpose of permit is to "Install Utility Pole to deliver Broadband" – Conditional Use Permit application Attachment #1
   ii. Telebeep is not a utility

RESPONSE #2

- On a Local Level, by definition in city code, Telebeep would be considered a utility in that we are subject to regulation by an agency of the Federal Government. Telebeep is heavily regulated by the FCC as well as the FAA.

  City Code Section 27-2: ***Public utility*** shall mean any business which furnishes the general public telephone service, telegraph service, electricity, natural gas, water and sewer, or any other business so affecting the public interest as to be subject to the supervision or regulation by an agency of the state or federal government.

- On a Federal Level, Telebeep would be considered a utility following recent action by the FCC which reclassifies broadband Internet access as telecommunications services under Title II of the Communications Act. This reclassification now makes broadband Internet services a Utility which also ensures fair access to utility poles under Section 224.

iii. Code Section 27-2 states: *Tower* shall mean a structure situated on a site that is intended for transmitting or receiving television, radio or telephone communication.

RESPONSE #3

A Utility pole by definition in City Code Sec. 27-2 is not considered a "Structure" therefore cannot be considered a tower.

- City Code Sec. 27-2: **Structure** shall mean anything constructed or erected which requires permanent location on the ground or which is attached to something having permanent location on the ground, but not including driveways, sidewalks or other surfacing, or public items such as utility poles, street lights, and street signs, or minor landscape features such as bird fountains, clotheslines, landscape lighting, and sculptures.

iv. Wi-Fi is radio transmitting and receiving.

v. Telebeep's application is for a tower.

RESPONSE #4

The application is in fact for the use of a Utility Pole to deliver Broadband as indicated on the Conditional Use Permit Application.

vi. Response to application question 9 asking for general character of the area is "Pole is currently located in the back of the residential property and is in the same proximity of other utility poles"

1. Pole is there only because it was illegally placed there and permit should be considered as if pole is not there.
2. As shown above, the tower is not a utility pole.

RESPONSE #5

By definition, it is a Utility Pole

vii. Response to question 3 on Conditional Use Permit Justification – Form B (page 2 of Attachment 1) asking about compatibility with adjacent properties states "it is a Utility pole and will meet all requirements". When actually it is a tower for business purpose, much higher than the actual utility poles in the area (probably twice as high), located on a residential lot in a residential neighborhood and does not meet zoning requirements.

RESPONSE #6

It is a Utility Pole delivering Broadband Internet Access, classified by the FCC as Telecommunications service which is a utility service and will meet all requirements (Conditions) included in the Conditional Use Permit.

b. Additional Incomplete or inaccurate information is given to the City on the Application for Conditional Use Permit.

i. Question number 2 on the Conditional Use Permit Justification-Form B (page 2 of attachment #1) asks "Will it be necessary to build a new structure?" is left blank. Of course if the application had been filed properly – prior to the tower being put in place; that should have been answered "Yes".

ii. Response to question number 6 on the Conditional Use Permit Justification – Form B (page 2 of attachment #1 asks if ingress and egress to the property is adequate to which the "Yes" box is checked. However, examination of the subdivision map (Attachment #2) and the aerial view of the area (Attachment #3) show that the only ingress and egress without crossing other private property is from the front yard of 2208 Elmer's Lane. This was not the manner in which ingress was obtained when the tower was installed in May, 2015.

RESPONSE #7

The installation of the Utility Pole in May of 2015 was contracted out to Nebraska Public Power District.

Ingress and egress in May, 2015 was made across private property off of Hillcrest Circle (and across the back portion of my property without permission) to the tower location. Additional investigation needs to be made as to whether this same route will be available in the future and if not if adequate ingress and egress can be made from the front yard of 2208 Elmer's Lane considering the house located there, trees, etc.

RESPONSE #8

Ingress and Egress to service the site is adequate. Due to the design, all service to the site is by foot traffic. With an estimated lifespan of a Utility pole to be between 40 and 60 years, barring a tornado, there will be no need for any ingress or egress to the site other than foot traffic.

iii. Question 10 on the same form addresses utilities and asserts that utilities are properly located but has been left blank with no explanation as to how the tower gets its utilities. Similarly it is asserted that no screening or buffering is required in question 5 of that form.

RESPONSE #9

Utilities are properly located and were installed underground by a licensed electrician. The line was left blank because we understood that to mean that if they were not properly located to explain what it would take to get utilities to the site.

Natural screening and buffering already exist at the site as shown below:

iv. As shown on the "Received" date stamp on the Application for Conditional Use Permit, it was filed on August 19, 2015 not July 6, 2015 as claimed in Telebeep Timeline presented at the Planning Commission Meeting (Attachment #4)

RESPONSE #10

The Application Process began on July 6, 2015 as is indicated by the Notarized signature on the Consent Statement of the Conditional Use Permit Application. Due to schedules, it did understandably take some time to get the 300' map generated by city staff and then taken to a certified abstractor to determine all of the property owners within the 300' area. Once that was determined, the public hearing process was able to begin.

c. Telebeep knew or should have known requirements for building a tower when original tower was built in 2004 and when tower was expanded in 2015 (See" Telebeep Wireless Utility Pole Timeline Overview" presented at Planning Commission Meeting, Attachment #4)

i. States in Attachment #4 concerning August 2004 "We were of the understanding that because a tower was not constructed… we were able to avoid any regulatory requirements." However a tower was constructed in 2004 (see definitions above)

RESPONSE #11

My statement that "We were of the understanding that because a tower was not constructed and the Airport had no concerns with the overall height, we were able to avoid any regulatory requirements is accurate.

…. and he knew the regulations and requirements that applied to 2208 Elmer's Lane tower since he also requested and obtained a conditional use permit for another tower at the same time – See attachment #5 conditional use permit to Tom Schommer passed and approved on May 18, 2004.

RESPONSE #12

Attachment #5 is a Conditional Use Permit granted to Tom Schommer in May of 2004 for the "construction" of an actual COMMUNICATIONS TOWER as indicated on the Conditional Use Permit. It was NOT for the installation of a Utility Pole. There is a significant difference in the two.

The COMMUNICATIONS TOWER was constructed with the use of a crane and is a 110 foot tall "Super Structure" requiring 52 cubic yards of concrete at the base, proper engineering as well as FAA and local Airport Authorization.

I did not know at the time and still do not believe that the regulatory requirements that applied to the Conditional Use Permit granted for the COMMUNICATIONS TOWER apply to the drilling of a hole and installation of a Utility Pole. Best efforts to understand city code as well as discussions with elected officials and city staff all played a part in coming to such conclusion.

ii. Admits knowing that 2004 tower exceeded zoning height requirements (new tower 75 feet tall minus stated "only 8-10 feet taller" than 2004 tower equals 2004 tower 65-67 feet tall)

RESPONSE #13

FALSE STATEMENT:

I did not admit to knowing because I did not know.

iii. Inaccurately states that mast pipe and antenna attached to already existing utility pole at 2208 Elmer's Lane when in fact Telebeep installed both the tower and past pipe at the same time. (Even if there was an unused pole in the backyard of 2208 Elmer's Lane which was not in the utility easement, it was the addition of the mast pipe and antenna that created a tower and that caused the tower to exceed the height restrictions and gave rise to the need for a conditional use permit.)

RESPONSE #14

After hearing Mr. Stoffer question the accuracy of my statement regarding the use of an existing pole vs. the installation of a new pole in 2004, I went back to the office to confirm the accuracy of my statement. I discovered that the statement was in fact inaccurate and immediately notified City Codes staff as well as members of the planning commission that I could immediately reach. The updated timeline handed out tonight, indicates such correction.

iv. Indicates there were no discussions with City personnel prior to installing the 2208 Elmer's Lane tower in 2004

RESPONSE #15

I have not indicated that there were no discussions with City Personnel prior to the 2208 Elmer's Lane Utility Pole installation in 2004.

I did have discussions with staff, elected officials as well as the airport authority. The discussions were had during the same time I was working through the Conditional Use Permit (referred to by Mr. Stoffer as Attachment #5) for the COMMUNICATIONS TOWER out on Eisenhower Avenue.

v. Indicates there were no permits applied for in 2004 prior to installation of the tower – no building or electrical permits or any other permits that may be required when erecting a structure on property within City.

vi. Admits to placing business in residential area.

RESPONSE #16

I did not admit to placing a business in a residential area. I have not placed a business in a residential area. We do not conduct business at the site. It is simply a point of presence.

Installing a utility pole in order to deliver service to customers is no more placing a business in a residential area than is having a garbage can in a driveway, in order to provide garbage service placing a garbage business in a residential area. Both are simply necessary to conduct business.

vii. Business owner has a duty to know the laws that apply to his business and not to assume that he can do without his own investigation – ignorance of the law is no excuse.

viii. Claims of contact with city officials in late summer 2014- if they did take place,

RESPONSE #17

By stating "*...if they did take place*" Mr. Stoffer is implying that City Officials and I are both lying about this because both parties testified during the Planning Commission meeting, to the fact that we did make contact and had discussions in late summer 2014.

Telebeep admits that incomplete information was provided to City personnel in those supposed discussions. If complete information had been provided it would have revealed that tower sought to be replaced was already in violation of City zoning since there had never been compliance with a conditional use permit and that the tower could not be replaced without obtaining a conditional use permit.

RESPONSE #18

Telebeep did not admit that incomplete information was provided to City personnel. By stating "*in those supposed discussions*", Mr. Stoffer is once again, implying that both City Staff and I are not telling the truth about having these discussions.

In addition, if inaccurate advice was given by City personnel that is not permission to violate the law. (For example, what if I had been told by City personnel that the appeal period was 30 days. If I filed my appeal after the 15 days but before the 30 days would it still be heard? Telebeep similarly has been on notice of the height and other requirements in City coning areas throughout all of the times involved by the publication of City zoning code and could have determined those restrictions simply by examining City code. For Telebeep to install the tower without making thorough investigation of City code is acting at their own risk.)

RESPONSE #19

A good faith effort was made but nonetheless, this is exactly why we are here today.

ix. References in Telebeep's Attachment #4 as to legitimate utility poles located throughout the City are irrelevant since those poles are indeed placed by a utility in utility easements and carry authorized utilities where the tower located in the backyard of 2208 Elmer's Lane is a tower.

RESPONSE #20

The references made in Attachment #4, is in to demonstrate NPPD's as well as the City's confidence in the safety of Utility Poles.

It is not a utility pole since it is not located in a utility easement, and is not owned by a recognized utility, and is not providing a recognized utility. It is a tower constructed for the benefit of one business placed on private property without the proper permits that exceeds the height and other regulations of the Norfolk Zoning Code.

RESPONSE #21

It is a Utility Pole owned by a recognized Utility and it is delivering Broadband Internet Access which is defined by the FCC as a Utility.

x. May, 2015 taller, wider tower with substantial structure at top installed, again in violation of City zoning and without any building, electrical or other permits and in violation of our property rights. See Attachment #6 Timeline of Telebeep Communication Tower at 2208 Elmer's Lane presented by Ross Stoffer to Planning Commission.

xi. There has been no compliance with City Code Section 27-284 (Attachment#7) which places additional requirements on communication towers.

RESPONSE #22

This claim is inaccurate.

Items contained in City Code 27-284 were addressed in detail on an individual bases as requested by the Planning Commission Subcommittee. The document was provided to the Planning Commission and discussed at the October 6, 2015 meeting.

All that exists at the present time is Telebeep's claims (which have not been independently investigated) that it meets these additional requirements.

RESPONSE #23

Does the City typically launch an all-out independent investigation to determine if statements made by a local business are accurate with regard to meeting additional requirements of a Conditional Use Permit? In my opinion, that seems to be a bit extreme and a tremendous resource burden to City Staff. At some point we need to be able to trust written statements of a local business.

It is obvious from the language of this code section that more than just the tower owner's assurances that it meets the requirements is required. This is an investigation the City must do as many of these items in that section are beyond the knowledge of the average citizen; such as locations of existing towers, minimum height necessary for successful functioning, etc. Also, discussion should be had as to what is the meaning of "successful functioning".

RESPONSE #24

All of this language was in fact addressed in the document provided to the Planning Commission during their meeting on October 6, 2015, as requested by the Planning Commission subcommittee.

Mr. Schommer stated at the Planning Commission meeting that the tower serves 12-15 customers.

RESPONSE #25

This claim is inaccurate.

I did not state at the Planning Commission meeting that the site serves 12-15 customers. I stated that the site served several dozens of customers.

Discussions should be had about what alternate ways exist to serve those customers, whether exceptions to the code which infringe on others expectations to be protected by the code in order for one business to serve 12-15 people should be allowed, or as to the height necessary to continue serving those 12-15 customers, not the height or cheapest way for Telebeep to expand its service as far as possible.

All of these discussions required by Section 27-284 have been preempted by the installation of the tower without obtaining the permit in advance of the installation.

xii. That all other conditional use permits issued by the Planning Commission since 2004 (all the further the City's website goes back) have required 6-8 foot fence around the tower, including the conditional use permit granted to Tom Schommer, Attachment #5 and most have required that the tower is to be removed when the lease to the property expires and when tower is removed the land is to be restored to its original condition within 90 days (See Attachment #8-18).

RESPONSE #26

It is very appropriate and responsible to install a 6-8 foot fence around a real communications tower site that has cable ladders, a climbable base, buildings air-conditioning units, back-up generators and other mechanical components. It would be a bit extreme however to require a 6-8 foot fence to be built around every Utility Pole in the City of Norfolk. Safety concerns have been adequately met within the conditions of the Conditional Use Permit.

d. The City on behalf of its citizens has a duty to investigate and demand compliance with its codes

i. City is given the power to enact and enforce codes to protect the health and safety of its citizens.

ii. By enacting codes the City is stating that the matters contained in the codes are important and are significant enough to require enforcement. Otherwise why does the City bother passing codes?

iii. City cannot delegate these duties and require citizens to initiate investigation and enforcement because to do so would require the citizens to be experts in every area regulated by City codes (building, plumbing, electrical, land use, etc.) and would put the disadvantaged or polite at the mercy of those willing to push the limits of how much they can do before citizen(s) complain.

RESPONSE #27

City did not delegate these duties as evidenced by conversations I had with city officials about city code in 2004 and again in both 2014 and 2015.

iv. Granting this conditional use permit would establish a precedent that one should ignore City codes (as was done in 2004), get permission without giving complete details (as was done in the Application for Conditional Use Permit and Justification Form B and also allegedly done in Fall 2014),

RESPONSE #28

City Code was not ignored in 2004.

I did have discussions with staff, elected officials as well as the airport authority. The discussions were had during the same time I was working through the Conditional Use Permit (referred to by Mr. Stoffer as Attachment #5) for the COMMUNICATIONS TOWER out on Eisenhower Avenue.

seek compliance only when someone complains (as has been done here and as Telebeep may still be doing with another tower see Attachment #19),

RESPONSE #29

The moment the site on 2208 Elmer's Lane was determined to require a Conditional Use Permit, I mentioned to the Codes Division that we had another site that we will need to address and would fully cooperate with bringing it up to code as well.

and don't worry about the consequences if someone does complain because by then no one will make you undo what you have done nor will they give you a penalty that you haven't already collected in the operation of your illegal structure (as was done by the Planning Commission).

v. Granting this conditional use permit would send a message that the City will reward those who act in the way set forth in the previous section and will punish those who try to comply with codes since those complying will be required to do more than those who don't comply and get away with it or have such small penalty that it is worth taking the risk of getting caught.
vi. See Attachment #20 for a Norfolk Daily News article on how Madison County handled a similar situation.

II. The tower does not fit with the general character of the neighborhood and is clearly a safety hazard and an eye sore.

RESPONSE #30

Being a utility pole in amongst other utility poles, regardless of its height does fit in with the general character of the neighborhood.

The Spec sheets provided by NPPD, clearly indicates that the pole is not a safety hazard. According to public power district personnel themselves, the other utility poles in the back yard that carry electrical transmission lines pose a much greater danger than the free-standing pole without any electrical transmission lines suspended from it. They also state that because the pole is in fact a taller pole, the design is much stronger than the others that are currently in the back yard.

a. Attachment #21 shows how the communications tower dominates the view from our deck and screened in porch located just to the left of the deck in the picture and how out of place and much taller it is compared to other structures in the area. It also shows how easily it could fall on our shed or our house or hit someone in our yard.

RESPONSE #31

The Utility Pole is not "out of place". It is actually very similar to the other Utility poles already there.
Attachment #21 shows how the Utility pole while taller, is actually less cluttered and distracting as the two other Utility Poles with all of their electrical wires, lights, and crossbars.
The utility cannot fall on the house.

b. Attachment #22 shows how close the communications tower is to our property line, how it is not in the utility easement and how it towers over our home as seen from the entrance to Western Circle from Valli Hi Rd.

CHANGE ORDER
NO. 1
DATED: December 21, 2015

PROJECT: Concrete Improvements 2015-1

OWNER: CITY OF NORFOLK

CONTRACTOR: Elkhorn Paving Construction

TO: Elkhorn Paving Construction

You are directed to make the changes noted below in the subject contract:

OWNER: City of Norfolk, Nebraska

BY:

DATE:

NATURE OF THE CHANGE:

East Pasewalk Avenue (1st Street East 630')

Increase:	1. Build 6" Concrete Paving w/Integral Curb	61.8 S.Y.	$38.25	+	$2,363.85
	2. Remove 6" Concrete	51.2 S.Y.	$4.50	+	$230.40
	3. Build 6" Concrete Driveway & Alley Returns	81.8 S.Y.	$39.75	+	$3,251.55
	4. Remove 6" Concrete Driveway & Alley Returns	81.8 S.Y.	$4.50	+	$368.10
	5. Build 6" Trail	29.3 S.Y.	$39.75	+	$1,164.68
	6. Build 4" Sidewalk	3.6 S.Y.	$39.75	+	$143.10
	8. Remove 6" Trail	29.3 S.Y.	$4.50	+	$131.85
	10. Saw 6" Concrete (full depth)	27.1 L.F.	$3.50	+	$94.85
	15. Install 18" R.C.P.	6 L.F.	$46.52	+	$279.12
	17. Build Junction Box (Sta 6+00 Rt) (4' x4' Inside Dimension)	3 Each	$3,825.00	+	$11,475.00
	24. Build 6" Ramp (SE corner 1st & Pasewalk)	2.4 S.Y.	$59.50	+	$142.80
	26. Place Geogrid Fabric BXG11	62 S.Y.	$3.45	+	$213.90

CHANGE ORDER
NO. 1
DATED: December 21, 2015

PROJECT: Concrete Improvements 2015-1

OWNER: CITY OF NORFOLK

CONTRACTOR: Elkhorn Paving Construction

	27. Place 1' Rock	62 S.Y.	$12.00	+	$744.00
	28. Sod	8770 S.F.	$1.55	+	$13,593.50
	29. Adjust Manhole to Grade	1 Each	$300.00	+	$300.00
	30. Adjust Water Valves	2 Each	$250.00	+	$500.00
Delete:	18. Build Junction Box (Sta 11+14 Rt) (4' x 8' Inside Dimension)	1 Each	$4,955.00	-	($4,955.00)
	21. Silt Fence	56 L.F.	$10.00	-	($560.00)
Add:	1. Reinforced Concrete on Pasewalk to Logan	1 L.S.	$1,500.00	+	$1,500.00
	2. Steel Plate on Manhole: Cost Due to Pipe Change	1 L.S.	$348.00	+	$348.00
	3. Excavator Rental	1 L.S.	$1,610.00	+	$1,610.00
	4. Additional Sprinkler Work	1 L.S.	$1,376.00	+	$1,376.00
	Subtotal for East Pasewalk Avenue			+	$34,315.70
	Krenzien Avenue (Michigan Avenue to the Northwest)				
Increase:	1. Build 6" Concrete Paving w/Integral Curb	39.3 S.Y.	$37.95	+	$1,491.43
	2. Remove 6" Concrete	39.3 S.Y.	$4.50	+	$176.85
	3. Build 6" Concrete Driveway	10 S.Y.	$39.75	+	$397.50
	4. Remove 6" Concrete Driveway	10 S.Y.	$4.50	+	$45.00
	9. Saw 6" Concrete (Full Depth)	30 L.F.	$3.50	+	$105.00
Decrease:	7. Adjust Water Valve Box	1 Each	$250.00	-	($250.00)
	Subtotal for Krenzien Avenue (Northwest)			+	$1,965.78

CHANGE ORDER
NO. 1
DATED: December 21, 2015

PROJECT: Concrete Improvements 2015-1

OWNER: CITY OF NORFOLK

CONTRACTOR: Elkhorn Paving Construction

	Krenzien Avenue (Michigan Avenue to the Southeast)				
Increase:	1. Build 6" Concrete Paving w/Integral Curb	65.6 S.Y.	$40.15	+	$2,633.84
	2. Remove 6" Concrete	65.6 S.Y.	$4.50	+	$295.20
	3. Build 6" Concrete Driveway	65.5 S.Y.	$39.75	+	$2,603.62
	4. Remove 6" Concrete Driveway	65.5 S.Y.	$4.50	+	$294.75
	12. Place Geogrid	149.6 S.Y.	$3.45	+	$516.12
	13. Place 1' Rock	74.6 S.Y.	$12.00	+	$895.20
	14. Build 6" Concrete Ditch Liner w/Curb	15.9 S.Y.	$54.15	+	$860.98
	Subtotal for Krenzien Avenue (Southeast)			+	$8,099.71
Total of this change order:				+	$44,381.19

The changes result in the following adjustment of Contract Price:			
Contract price prior to this change order:			$523,717.15
Net resulting from this change order:		+	$44,381.19
Current contract price including this change order:			$568,098.34

The above changes are approved: Elkhorn Paving Construction

BY: [signature]

DATE: 12-14-15

The above changes are accepted: CITY ENGINEER'S OFFICE

BY: [signature]

DATE: 12-14-15