

**JUNCTION CITY/GEARY COUNTY, KANSAS  
METROPOLITAN PLANNING COMMISSION  
BOARD OF ZONING APPEALS**

**MINUTES**

**September 8, 2011  
7:00 P.M.**

**Members  
(Present)**

Brandon Dibben  
Maureen Gustafson  
Ken Mortensen  
John Moyer  
Mike Ryan  
Mike Watson

**Members  
(Absent)**

Mike Steinfort

**Staff**

David Yearout  
Shari Lenhart

**1. CALL TO ORDER AND ROLL CALL**

Vice-Chair Gustafson called the meeting to order at 7:00 p.m. and noted a quorum present. Commissioner Mortensen left the meeting briefly, but returned at 7:05 p.m.

**2. APPROVAL OF MINUTES**

Commissioner Ryan moved to approve the minutes of the August 25, 2011, meeting as presented. Commissioner Moyer seconded the motion and it passed unanimously.

**3. OLD BUSINESS**

**Item No. 1 – Case No. SUP-07-02-11 – Reconsideration of the application for a Special Use Permit to install a communications tower at Highland Cemetery.**

Vice-Chair Gustafson opened the meeting for reconsideration of the application of Mike Douchant, Dolan Realty Advisors, agent for Verizon Wireless, lessee, on behalf of Highland Cemetery, owner, requesting a Special Use Permit to install a communications tower in the southeast corner of Highland Cemetery on Ash Street, Junction City, Kansas. This item was returned to the Metropolitan Planning Commission for reconsideration by the City Commission at its September 6, 2011, meeting.

Mr. Yearout stated the City Commission tabled this item at the August 23, 2011, Commission meeting in order to obtain additional information from Life Star. Following receipt of that information, the City Commission voted on a motion to approve the tower at the September 6, 2011, meeting, but that motion carried on a 3 to 2 vote. Since this was the first

appearance before the City Commission of the recommendation of denial by the MPC, state law required a 2/3 majority vote to overturn the recommendation. Three votes were not sufficient, so the City Commission unanimously voted to return the matter to the MPC for reconsideration.

Under state statutes, the MPC must reconsider at its next regular meeting, which is this meeting. The MPC can modify its original recommendation based on the information heard by the City Commission or can resubmit its original recommendation. Failure to act at this meeting automatically sends the case back to the City Commission with the original recommendation.

Mr. Yearout stated two locations other than in Highland Cemetery have been identified as potential sites for Verizon to install their equipment; the water tower at Spruce and Bunker Hill, and the northeast corner of South Park. Mr. Yearout stated the original site proposed by Verizon was in South Park, but further to the east; and recent communications with Verizon representatives indicate the potential of going on the water tower at Spruce and Bunker Hill. Life Star's communication to the City Commission addressed all three locations, with their first preference being the water tower because they already work around it as a known structure. South Park would be the second choice because it does not interfere with the flight path from the hospital. The Highland Cemetery location was not preferred. Regardless, the placement of any tower should be lit according to City standards even if not required by FAA.

Mr. Yearout reiterated that, in staff opinion, nothing has changed and based on the staff report and information presented at the hearing, staff believes this is not an appropriate land use within the cemetery. Staff still recommends denial.

Commissioner Watson asked if there was a protest petition the first time this was considered last winter. Mr. Yearout indicated yes.

Commissioner Mortensen reiterated his belief that installation of the tower would not affect surrounding property values, should not affect air traffic, would have minimal ground maintenance demands, and the ground structures were not that aesthetically displeasing. Commissioner Mortensen stated his opinion had not changed and he felt this was an appropriate location for the tower.

Commissioner Moyer indicated he had heard or read nothing in the information submitted by staff and the applicant that would change his position that this was not an appropriate location for the tower.

Commissioner Ryan stated he lived close to the hospital so he is very familiar with the flight patterns for Life Star. He was still of the opinion this is not an appropriate location for the tower.

Vice-Chair Gustafson acknowledged this would be an income for the cemetery. She asked if the City would reduce their financial support of the cemetery if the tower was approved.

Mr. Yearout indicated the City has provided financial support for the cemetery for many years. It's difficult to say whether a change in financial support would occur, although that matter has been discussed. However, money should not be a factor in making a

recommendation on this case. The decision is to be based on whether or not this is an appropriate land use and whether this location complies with the siting requirements of the regulations, which include the requirement for the applicant to confirm there are no other existing towers and/or structure that could provide a location for the proposed antennas.

Mr. Yearout reminded the MPC that prior to adoption of the amendment to the City's Zoning Regulations, communication towers were restricted to an industrial zone. The MPC and staff recognized the coming need for more locations for these facilities and, rather than have to decide whether a piece of property should be rezoned to industrial to allow a tower, the special use permit procedure was adopted. However, there are guidelines in place that must be met in order to have a special use permit approved. In staff's opinion the application does not meet the required criteria as outlined in the staff report.

Mr. Yearout stated it is staff's opinion the applicant has failed to meet the requirement of the Zoning Regulations to show that no other location is available for the proposed antennas. As such, staff believes the application for the Special Use Permit should be denied.

Commissioner Watson stated that since he had not heard the previous presentations he was not comfortable with voting on this issue and would abstain from voting.

Vice-Chair Gustafson asked if there was anyone in the audience wishing to speak on this matter.

Casey Gorham, representing Highland Cemetery, said the comment was made that this was not a proper land use. He indicated he did not understand why this was not a proper land use. The cemetery is hoping to get additional revenue and there are no plans for burials in the area of the proposed tower. He stated that South Park is a City park and did not understand a tower would be appropriate in a City park but not in the cemetery. He stated this tower will utilize land that otherwise will not be used by the cemetery.

Vice-Chair Gustafson asked if the cemetery had tried to sell the land to Verizon and put it under separate ownership. Mr. Gorham stated they had not.

Commissioner Dibben stated he thought the revenue would be good for the cemetery but he still believed this would be an inappropriate land use within the cemetery and there are other viable locations available.

There being no further appearances, Vice-Chair Gustafson called for a motion.

Commissioner Dibben moved to resubmit the MPC's original recommendation of denial for this Special Use Permit based on the findings in the staff report and as noted at the public hearings. Commissioner Moyer seconded the motion and it passed by 4-1-1 vote, with Commissioner Mortensen voting no and Commissioner Watson abstaining.

#### **4. NEW BUSINESS - None**

### **RECESS AS METROPOLITAN PLANNING COMMISSION AND CONVENE AS BOARD OF ZONING APPEALS**

Commissioner Mortensen moved to recess as the Metropolitan Planning Commission and convene as the Board of Zoning Appeals. Commissioner Moyer seconded the motion and it carried unanimously.

1. **OLD BUSINESS – None**
2. **NEW BUSINESS**

**Item No. 1 - Case No. BZACU-09-01-11 – Public hearing on the application for a Conditional Use Permit to establish a Day Care Home at 303 Arapahoe Court, Junction City, Kansas.**

Vice-Chair Gustafson opened the public hearing on the application of Lisa Thomas, owner, requesting a Conditional Use Permit to conduct a Day Care Home for not more than ten (10) children at 303 Arapahoe Court, Junction City, Kansas.

Mr. Yearout stated Mrs. Thomas was previously operating a daycare which was not to have more than 6 children. She is in the process of getting her KDHE License which will allow up to 10 children and wishes to pursue that option at the City level, which requires a Conditional Use Permit.

Mr. Yearout stated the staff report addresses each item the Board must take into consideration when making a determination. He explained that staff is recommending denial as outlined in the report; primarily because of the precedent it would set for Day Care Homes in residential areas. He stated that the Board has approved some in the past. If the Board determines this request should be approved, staff is recommending signage be limited to a non-illuminated wall sign of no more than one square foot in size, and limit the operating hours from 7:00 a.m. to 6:00 p.m.

Vice-Chair Gustafson opened the public hearing for comments from the public.

Lisa Thomas, 303 Arapahoe Court, handed out information concerning her operation; including a letter from a neighbor, breakdown of arrival time for the children, a calendar showing school closures when she has two additional children, and her personal vacation days when the day care would be closed. Mrs. Thomas stated she already cares for siblings of the two additional children when school is closed, so there would not be additional traffic. She then addressed her hours of operation, that her back yard is fenced by chain link and privacy fences, that she does not wish to have a sign, and that she wishes to continue with her daycare.

Kathy Goetsch, 318 Arapahoe, stated she lives across the street and that she would not have known Mrs. Thomas was operating a day care if she did not know her. The toys are always picked up and put away after play time. The staggered arrival/departure times pose no traffic issues. There is very little traffic in this area. She stated she feels that Mrs. Thomas should be allowed the requested permit.

Casey Goreham asked if the applicant would move whether the next occupant would have to seek approval again. Mr. Yearout stated the property would still be approved for a day care unless one of the conditions was to remove the right for a day care home if the Thomas' were to move.

There being no further audience comment, Vice-Chair Gustafson closed the public hearing.

Commissioners discussed issues regarding placement of permanent play equipment in the front yard, traffic impacts, hours of operation, and the conditions of this site in comparison to other locations previously considered.

Following discussion, Commissioner Watson moved that Case No. BZACU-09-01-11, the request of Lisa Thomas, owner, requesting a Conditional Use Permit to operate a Day Care Home for not more than ten (10) children at 303 Arapahoe Court, Junction City, Kansas, be approved with the conditions that no sign be allowed and no permanent play ground equipment be placed in the front yard. Commissioner Moyer seconded the motion and it passed unanimously.

**ADJOURN AS BOARD OF ZONING APPEALS AND RECONVENE AS METROPOLITAN PLANNING COMMISSION**

Commissioner Ryan moved to adjourn as the Board of Zoning Appeals and reconvene as the Metropolitan Planning Commission. Commissioner Watson seconded the motion and it passed unanimously.

**7. GENERAL DISCUSSION - None**

**8. ADJOURNMENT**

There being no further business, Commissioner Moyer moved the meeting be adjourned. Commissioner Mortensen seconded the motion and it carried unanimously. Vice-Chair Gustafson declared the meeting adjourned at 8:17 p.m.

**PASSED AND APPROVED this \_\_\_\_\_ day of October, 2011**

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**Mike Steinfert, Chairman**

**ATTEST:**

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**David L. Yearout, Secretary**