

CITY OF DEADWOOD

PLANNING AND ZONING COMMISSION

August 5, 2009

JOINT MEETING

The Joint Meeting of the Deadwood Planning and Zoning Commission was called to order by Chairperson Marie Farrier on Wednesday August 5, 2009 at 5:00 p.m. in the Deadwood City Hall Meeting Room located at 102 Sherman Street, Deadwood, SD 57732.

PRESENT PLANNING & ZONING: Marie Farrier, Larry Ryan & Mel Allen.

ABSENT PLANNING & ZONING: Sheree Green & Jim Shedd. Ms. Bernadette Williams, Zoning Administrator, was absent.

PRESENT BOARD OF ADJUSTMENT: Georgeann Silvernail, Joe Peterson & Lenny Schroeder.

ABSENT BOARD OF ADJUSTMENT: Francis Toscana & Mike Klamm.

APPROVAL OF MINUTES:

Mr. Allen moved to approve the minutes of the July 15 and 22, 2009 Meetings, as mailed. Mr. Ryan seconded and the motion carried.

All in favor - 3
Opposed - 0

SIGNS:

John & Patti Jackson - Belle Joli Winery - 594 Main Street - Request for 2 wall signs and one sandwich sign.

Mr. Keith Umenthum stated the applicant was requesting permission to install three signs for a wine tasting room at the vacant historic gas station at 594 Main Street.

The first sign is an existing 4'x8' or 32 square foot painted wood wall sign above the overhead doors on the garage building that will be painted with the applicant's name and logo. This is an existing sign that has been repainted three times with approvals from the Historic Preservation Commission for previous businesses at the location. It is considered an existing non-conforming sign. Staff recommends approval of the sign.

Mr. Allen moved to approve the 4'x 8' painted wall sign, as presented. Mr. Ryan seconded and the motion carried.

All in favor - 3
Opposed - 0

Mr. Umenthum stated that sign number two is a 6"x24" or 2 square foot painted wood wall sign above the gas station office building door. Staff recommends approval of the sign.

Mr. Ryan moved to approve a 6"x24" painted wood wall sign, as presented. Mr. Allen seconded and the motion carried.

All in favor - 3
Opposed - 0

Mr. Umenthum stated that sign number three is a 3'x4' or 12 square foot painted wood sandwich sign located at the front corner of the gas station garage. Mr. Umenthum noted sandwich board signs are allowed by ordinance on the condition that they are placed a

minimum 3' from the public right-of-way. It would be placed at the front corner of the gas station. Staff recommends approval of the sign. Mr. Umenthum stated that Mr. and Ms. John and Patti Jackson were present in the audience.

Mr. Allen questioned if the business was a permanent business. Ms. Jackson stated it was a permanent business.

Mr. Allen moved to approve 3'x4' or 12 square foot painted wood sandwich sign, as presented. Mr. Ryan seconded and the motion carried.

All in favor - 3
Opposed - 0

NEW BUSINESS:

CONDITIONAL USE PERMIT REQUEST I WIRELESS/SWS, LLC FOR STEALTH CELL TOWER

Ms. Farrier referred to the following Staff Report:

**DEADWOOD PLANNING AND ZONING COMMISSION
AUGUST 5, 2009 JOINT MEETING**

APPLICANT: i Wireless, by SWS, LLC

i WIRELESS PROJECT NAME: SD0238 - Deadwood

PROJECT DESCRIPTION: Construction of a new 60' stealth cell tower on McGovern Hill. The project involves the following: the installation of a new stealth cell phone tower with outdoor type BTS ground equipment installed on a concrete pad at tower base. The area will be enclosed with an 8' high cedar wood privacy fence with a 4' wide locked gate.

LEGAL DESCRIPTION OF PARENT PARCEL: Tract C, McGovern Hill Addition to the City of Deadwood, Located in Sections 22 and 27, T5N, R3E, B.H.M., as shown on the certain plat recorded in the Office of the Lawrence County Register of Deeds as Plat Document #2003-4122, said Tract C contains 3.24 Acres, more or less, City of Deadwood, Lawrence County, South Dakota

PROJECT INFORMATION:

A. Planning Area McGovern Hill Planning Unit

B. Existing General Plan Designation - Open Space

The open space category is intended to accommodate areas of land or water essentially unimproved and set aside, dedicated, designated, or reserved for public use or enjoyment.

C. Existing Zoning: PF – Park Forest District

D. Existing Land Use – City Water Tanks area/vacant lands

E. Adjacent Land Use Information:

	<u>Land Use</u>	<u>Zoning</u>	<u>General Plan Designation</u>
North	Pioneer Way 4 lane	C1 - Commercial	High Density commercial
South	Hillside Environs	PF – Park Forest	Open Space
East	Slime Plant	C1 – Commercial	High Density commercial
West	Hillside Environs	PF – Park Forest	Open Space

Project Description:

The applicant proposes a Conditional Use Permit to allow for the installation of a new stealth cell phone tower with outdoor BTS ground equipment mounted on a concrete pad at the base of the tower. Again, the area will be enclosed with an 8' high cedar wood privacy fence. The cell tower is to be located in the area of

the McGovern Hill City Water Tanks. Access to the site will extend across an existing 40' dedicated public right-of-way and also a 40' access easement for the benefit of Tract A and Tract C of McGovern Hill Addition. The owner of the subject property is the City of Deadwood. The City Commission has agreed to lease a site to the company to allow placement of the cell tower.

The site is unstaffed; however, personal may periodically visit the site for maintenance, equipment modification or repairs.

Surrounding Land Use:

The anticipated site is located within the PF – Park Forest District and the McGovern Hill water tanks are located on this parcel. The surrounding lands are currently vacant.

Aesthetic Resources:

In March of 2009, the Historic Preservation Commission addressed the aesthetics and visibility of the project. At that time, the commission stated the tower should not exceed 60' in height and be painted "Deadwood" green in order to blend in with the existing water tank. They also stipulated that there would be no banners or flags on the pole.

Cellular communications towers are utilities that are allowed in all zoning districts under the Conditional Use Permit process. The purpose for requiring the use under the Conditional Use Permit section is mainly due to the height and visibility. The use will assist the public by enhancing the area's communications infrastructure.

The conditional use permit does not interfere with the commercial or residential activities in the vicinity.

COMPLIANCE:

1. **The Zoning Officer provided notice identifying the applicant, describing the project and its location and giving the scheduled date of the public hearing in accordance with Section 17.96.020.D.2. Two inquiries were made to the zoning office. The first was from KDSJ asking if the tower would interfere with their signal. Staff could not answer that question; however, all cell sites need approval of the general placement, construction, and modification of towers, they cannot ban them outright. The second inquiry was from Les Karas and he was more interested in the visibility and the size of the tower. He did not object to the proposal.**
2. **A sign was posted on the property for which the requests were filed as required by Section 17.76.060.J.**
3. **Notice of the time and place was published in the designated newspaper of the City of Deadwood as required by Section 17.76.060.J.**

CONDITIONAL USE PERMIT

GENERAL USE STANDARDS FOR CONDITIONAL USE PERMITS:

In reviewing any application under the authority of this chapter and as a further guide to its decision upon the facts of the case, the Commission(s) shall consider, among other things, the following facts:

- A. **The proposed use shall be in harmony with the general purposes, goals, objectives, and standards to the City Policy Plan, the ordinance, the district in which it is located, or any other plan, program, map, or ordinance adopted, or under consideration pursuant to official notice by the City of Deadwood.**

ANSWER: The current zoning ordinance requires utilities to obtain a Conditional Use Permit. This gives the Commission's and adjacent landowners a chance to address any impacts and concerns. The proposed use is in harmony with the comprehensive plan and zoning code.

- B. **Whether or not a community need exists for the proposed use at the proposed location in light of existing and proposed uses of a similar nature in the area and of the need to provide or maintain a proper mix of uses both within the city and also within the immediate area of the proposed use: (a) the proposed use in the proposed location shall not result in either a detrimental over concentration of a particular use from previously permitted uses within the city or within the immediate area of the proposed use.**

ANSWER: The intended use in the subject location does not result in a detrimental over concentration of this particular use. There are other sites within the city limits; however, not in the vicinity of this site. A community need does exist for this type of the service in the hills. The City of Deadwood recognizes the importance of maintaining and fostering the growth of existing business and industry. The City must monitor the continuing needs of the community and be prepared to meet those needs. Cell phones are a way of life and technology needs to be maintained.

- C. The proposed use at the proposed location shall not result in a substantial or undue adverse effect on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvements, public sites, or rights-of-way.**

ANSWER: The cell site is located within an area that is sparsely populated. The McGovern Hill Water Tanks are in close proximity to the subject site.

The anticipated use would not result in a substantial or undue adverse effect on adjacent property or the character of the region and the use will not alter the character of the neighborhood. The area is surrounded by vacant lands on 3 sides and Pioneer Way, the state 4-lane highway on the underside.

- D. Whether or not the proposed use increases the proliferation of non-conforming uses as well as previously approved Conditional Use Permits which are still in use, when influenced by matters pertaining to the public health, safety, and general welfare, either as they now exist or as they may in the future be developed as a result of the implementation of provisions and policies of the Policy Plan, this ordinance, or any other plan, program, map or ordinance adopted, or under consideration pursuant to official notice, by the city or other governmental agency having jurisdiction to guide growth and development.**

For any conditional use, lot and performance standards shall be the same as similar type uses located in specific districts. The character and use of buildings and structures adjoining or near the property mentioned in the application shall be considered in their entirety

ANSWER: Whenever an application is submitted for a Conditional Use Permit, and it has been approved, it increases the number of conditional use permits in the area; however, in this instance, there are no other Conditional Use Permits within the vicinity for this type of use or any other use. The McGovern Hill Addition is in the vicinity of the subject site; however, the tower will not be visible to the residents in the subdivision.

- E. Whether or not the proposed use in the proposed area will be adequately served by and will not impose an undue burden on any of the improvements, facilities, utilities, and services specified in this section.**

ANSWER: The proposed use will not cause significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation or other services. This type of use does not demand a high level for services.

Existing communication facilities which are damaged or destroyed in the future due to any reason or cause may be repaired and restored to their former use, location and physical dimensions, subject to obtaining a building permit, but without otherwise having to comply with this ordinance. Any enlargements would require Planning and Zoning Commission approval.

CONDITIONS GOVERNING APPLICATIONS AND PROVISIONS:

- A.** Following the issuance of a conditional use permit pursuant to the provisions of this ordinance, such permit may be amended, varied, or altered only pursuant to the standards and procedures established by this section for its original approval.
- B.** The Board of Adjustment can revoke conditional use permits, once granted, for cause after a hearing is held before them. Complaints seeking the revocation of such permit shall be filed with the Zoning Administrator and may be initiated by the Planning and Zoning Commission OR any three (3) residents within three hundred (300) feet of the property lines of which the application has been filed. All such revocation hearings shall be conducted in the same manner as for the Conditional Use Permit application hearings.
- C.** The Planning and Zoning Commission shall have the authority to review Conditional Use Permits at any time and/or on an annual basis and place additional stipulations to mitigate a problem.
- D.** If the use permitted under the terms of a Conditional Use Permit has not been started within six (6) months of the date of issuance thereof, said permit shall expire and be canceled by the City Planning Department. Written notice thereof, shall be given to the person(s) affected, together

with notice that further use or work as described in the canceled permit shall not proceed, unless and until a new conditional use permit has been obtained.

- E. If the use permitted under the terms of a Conditional Use Permit, ceases, for whatever reason, for a period of twelve (12) months, said permit shall expire and be canceled by the City Planning Department. Written notice thereof, shall be given to the person(s) affected, together with notice that further use or work as described in the canceled permit shall not proceed, unless and until a new conditional use permit has been obtained.

Mr. Allen questioned who the owners were of the cell towers that have been proposed throughout the City of Deadwood. Ms. Silvernail stated they were different owners. Mr. Lenny Schroeder stated that the companies are Verizon, Alltel and SWS, the current applicant which is a small company.

Ms. Silvernail stated to her understanding is that it would look like a flag pole without a flag and be painted "Deadwood green" like the water tower.

Mr. Allen moved to approve the Conditional Use Permit for i Wireless/SWS, LLC for a Stealth Cell Tower. Mr. Ryan seconded and the motion carried.

All in favor - 3
Opposed - 0

Chairman Farrier adjourned the Planning and Zoning meeting and turned the meeting over to the Board of Adjustment.

DEADWOOD BOARD OF ADJUSTMENT

Commissioner Silvernail called the Board of Adjustment to order.

Mr. Schroeder moved to approve the Conditional Use Permit for i Wireless/SWS, LLC for a Stealth Cell Tower, as recommended by the Planning & Zoning Commission. Mr. Peterson seconded and the motion carried.

All in favor - 3
Opposed - 0

Commissioner Silvernail adjourned the Board of Adjustment and turned the meeting back over to the Planning and Zoning Commission.

FINDINGS OF FACT:

Conditional Use Permit for a Large Daycare - 2 Peck Street - Philip Hawki/Krystina Colvin

Mr. Allen moved for approval of the Findings of Fact Philip Hawki/Krystina Colvin at 2 Peck Street, request for a Large Daycare. Mr. Ryan seconded and the motion carried.

All in favor - 3
Opposed - 0

Chairman Farrier adjourned the Planning and Zoning meeting and turned the meeting over to the Board of Adjustment.

DEADWOOD BOARD OF ADJUSTMENT

Commissioner Silvernail called the Board of Adjustment to order.

Mr. Schroeder moved for approval of the Findings of Fact Philip Hawki/Krystina Colvin at 2 Peck Street, request for a Large Daycare, as recommended by the Planning & Zoning Commission. Mr. Peterson seconded and the motion carried.

All in favor - 3
Opposed - 0

Commissioner Silvernail adjourned the Board of Adjustment and turned the meeting back over to the Planning and Zoning Commission.

OPEN:

None.

ADJOURNMENT:

Mr. Ryan moved to adjourn the Joint Meeting of the Planning and Zoning Commission. Mr. Allen seconded and the motion carried.

All in favor - 3
Opposed - 0

There being no further business, the Planning & Zoning Commission adjourned at 5:10 p.m.

ATTEST:

Ms. Marie Farrier
Chairman (Acting)
Planning and Zoning

Ms. Sheree Green
Secretary (Acting)
Planning and Zoning