

CITY OF DEADWOOD

PLANNING AND ZONING COMMISSION

November 5, 2008

JOINT MEETING

The Joint Meeting of the Deadwood Planning and Zoning Commission was called to order by Chairperson Marie Farrier on Wednesday November 5, 2008 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, Jim Shedd, Mel Allen, Larry Ryan and Sheree Green.

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

ABSENT BOARD OF ADJUSTMENT: Mike Klamm.

APPROVAL OF MINUTES:

Mr. Ryan moved to approve the minutes of the October 15, 2008 Regular Meeting, as mailed. Mr. Shedd seconded and the motion carried.

<u>All in favor</u>	<u>-</u>	<u>5</u>
<u>Opposed</u>	<u>-</u>	<u>0</u>

SIGN PERMITS:

Deadwood Gulches of Fun - 225 Cliff Street

Mr. Keith Umenthum, Deadwood Building Inspector, reviewed his staff report with the Commission members. Mr. Umenthum stated the applicant was requesting to move the existing Gulches of Fun sign off of the South Dakota Department of Transportation Right-of-Way. He noted the sign will be moved six feet toward the building and he recommended approval.

Ms. Green moved to approve the relocation of the sign at 225 Cliff Street. Mr. Allen seconded and the motion carried.

<u>All in favor</u>	<u>-</u>	<u>5</u>
<u>Opposed</u>	<u>-</u>	<u>0</u>

Super 8 Lodge - 196 Cliff Street - Sign Changes - 8 Signs

Mr. Keith Umenthum, Deadwood Building Inspector, reviewed his staff report with the Commission members. Mr. Umenthum stated the applicant was requesting sign changes to several existing signs and each would need a separate motion.

The applicant proposed changing the logo on the face of the free standing sign and also replacing the sign structure to a single pole in front of the building. Mr. Umenthum stated the sign would be moved out of the South Dakota Department of Transportation Right-of-Way. Staff recommended approval of the sign with the following stipulations: 1) the size and height of the sign would not be greater than the existing signs; 2) the material be approved by staff; and, 3) permit the relocation of the sign out of the DOT right-of-way.

Mr. Island stated that a plastic sign had stood in the spot since 1976; therefore it is grandfathered in.

Mr. Allen moved to approve the free standing sign with the following conditions: 1) the size and height will not be greater than the existing signs; 2) the material remain the same as the existing sign; and, 3) allow relocation of the sign out of the DOT right-of-way. Mr. Ryan seconded and the motion carried.

All in favor - 5
Opposed - 0

The applicant proposes changing the logo on the face of the sign on the free standing sign in parking lot. Staff recommends approval.

Mr. Shedd moved to approve the sign changes for the free standing sign in the parking lot. Mr. Allen seconded and the motion carried.

All in favor - 5
Opposed - 0

The applicant proposed changes to the logo on the face of the sign on the wall sign located at the end of the building. The applicant proposed using a polycarbonate to construct the sign, which was not allowed by the sign ordinance. Staff recommended the sign be constructed out of sand blasted redwood like the existing sign or be made of high density urethane, sign board or metal.

Mr. Island stated the price difference between the redwood and the polycarbonate was very different; where, the redwood cost more. Mr. Umenthum stated the Historic Preservation had allowed the high density urethane for construction of signs.

Staff recommends approval of the sign with the condition that it be constructed out of high density urethane or redwood or other allowable materials according to the sign ordinance.

Mr. Allen moved to approve the sign with the condition that it be constructed out of high density urethane or redwood or other allowable materials according to the sign ordinance. Mr. Shedd seconded and the motion carried.

All in favor - 5
Opposed - 0

The applicant proposed changing the logo on the face of the sign on the wall sign on storage building in the parking. Staff recommends approval.

Mr. Shedd moved to approve the sign changes for the free standing sign in the parking lot. Mr. Ryan seconded and the motion carried.

All in favor - 5
Opposed - 0

The applicant proposed changing the logo on the face of the sign on two wall signs on the front of the Super 8 building. Staff recommended approval with the condition that the signs be constructed out of high density urethane or redwood or other allowable materials according to the sign ordinance.

Mr. Shedd moved to approve the sign the condition that it be constructed out of high density urethane or redwood or other allowable materials according to the sign ordinance. Mr. Allen seconded and the motion carried.

All in favor - 5
Opposed - 0

NEW BUSINESS:

CONDITIONAL USE PERMIT - CONSTRUCTION OF A 120' MONOPOLE WITH LIGHTING ROD EXTENDING TO A HEIGHT OF 129' AND PLACEMENT OF 11'5"x28' EQUIPMENT SHELTER WITHIN A 50'X50' FENCED COMPOUND BEHIND THE EXISTING WATER TANK ACROSS FROM THE TATANKA COMPLEX.

Ms. Williams reviewed the following staff report:

**DEADWOOD PLANNING AND ZONING COMMISSION
NOVEMBER 5, 2008 JOINT MEETING**

APPLICANT: Alltel Communications, Inc., by Faulk & Foster

ALLTEL PROJECT NAME: SD01_Deadwood North

PROJECT DESCRIPTION: Construction of a 120' monopole with lighting rod extending to a height of 129' and placement of 11'5"x28' equipment shelter within a 50'x50' fenced compound behind the existing water tank across from the Tatanka complex.

LEGAL DESCRIPTION: Located in part of Government Lot 15, Section 14, T5N, R3E, B.H.M., City of Deadwood, Lawrence County, South Dakota

PROJECT INFORMATION:

A. Planning Area Pine Crest/Hillside Environs

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 Tank area/vacant lands

E. Adjacent Land Use Information:

	<u>Land Use</u>	<u>Zoning</u>	<u>General Plan Designation</u>
North	Vacant	PF – Park Forest	Open Space
South	Hillside Environs	PF – Park Forest	Open Space
East	Deadwood Resort	CH – Commercial Highway District	Tourist Service
West	Hillside Environs	PF – Park Forest	Open Space

Project Description:

The proposed Conditional Use Permit is to allow for the construction of a 120' monopole with a lighting rod extending to a height of 129' and placement of an 11'5"x28' equipment shelter within a 50'x50' (2,500 sq. ft.) fenced compound behind the existing water tank and located across Highway 85 from the Tatanka Complex. Access to the site will extend across an existing easement to the water tower; however, another easement will be required from the water tower area to the proposed site. A copy of the Communications Site Lease Agreement is attached for your review. The owner of the subject property is The Dunbar, Inc.

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 Deadwood Hill Water Tank is located on this parcel. The Deadwood Resort property is located below the subject site. The majority of the parcel consists of vacant lands.

Aesthetic Resources:

The Historic Preservation Commission will address the aesthetics and visibility of the project.

Cellular communications towers are utilities that are allowed in all zoning districts under the Conditional Use Permit process. The use will assist the public health and safety by enhancing the area's communications infrastructure.

The use permit does not interfere with the commercial or residential activities in the vicinity. A building permit will be required for the equipment shelter.

Telecommunications Act

The Telecommunications Act of 1996 established guidance for local municipalities to regulate telecommunications facilities. While the industry sought to exempt themselves from local regulation, the Act affirms the authority of local municipalities to regulate.

There are basically five conditions set forth in the act that affect local zoning authority:

1. "Local zoning requirements may not unreasonably discriminate among wireless telecommunications providers that compete against one another."
2. "Local zoning requirements may not prohibit or have the effect of prohibiting the provision of wireless telecommunications service."
3. "A local government must act within a reasonable period of time on requests for permission to place or construct wireless telecommunications facilities."
4. "Any city or county council or zoning board decision denying a request for permission to install or construct wireless telecommunications facilities must be in writing and must be based on evidence in a written record before the council or board."
5. "If a wireless telecommunications facility meets technical emissions standards set by the FCC, it is presumed safe. A local government may not deny a request to construct a facility on grounds that its radiofrequency emissions would be harmful to the environment or the health of residents if those emissions meet FCC standards."

[In its comprehensive Telecommunications Act of 1996, Congress authorized a new form of wireless ``personal communication system," essentially a digital form of competition for cellular phones, but, with the use of digital technology, one that offers such enhanced features as built-in paging. Accurately anticipating significant local opposition to the proliferation of antennas to serve this new market, Congress preempted much of the authority of local governments to limit the installation of these towers.](#)

In the last few years of the twentieth century, disputes over these towers, which are typically about 150 feet tall, and which are numerous, with each tower serving only a small ``cell" within the community, was one of the busiest forms of land-use litigation.

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.
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 the issues. The current zoning ordinance does not directly set forth guidelines for cell towers. The standards under Conditional Use Permits are used as a guide for approval or denial.

Due to the height of the tower, it could possibly require flashing lights atop of the Tower. Staff assumes that lighting is controlled and addressed by the Federal Aviation Administration (FAA) Regulations for all towers.

- 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 proposed 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.

- 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 subject property is located within an area that is sparsely populated. The Deadwood Hill Water Tank is near the subject site and Deadwood Resort is located below the site.

The proposed 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.

- 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.

- 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 complying 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.

The Conditional Use Permit runs with the applicants in the residential areas of Deadwood; therefore, should the Nelson's sell there property, the Conditional Use Permit will be voided.

Ms. Williams stated Mr. Tom Forshee was in the audience to answer any questions. Mr. Forshee stated the purpose of the new tower was to fill in gaps in service through Highway 14A. Mr. Forshee explained a new tower to the east side of 14A through Boulder Canyon would provide seamless service through the area.

Mr. Allen questioned the power situation for the tower. Mr. Forshee stated they had a lease agreement with Dunbar Inc.

Mr. Allen questioned the ownership of the lot. Ms. Williams explained that the Dunbar had acquired the land through a land swap with the US Forest Service.

Mr. Ryan moved to approve the Conditional Use Permit for the construction of a 120' monopole with lighting rod extending to a height of 129' and placement of 11'5"x28' equipment shelter within a 50'x50' fenced compound behind the existing water tank across from the Tatanka complex. Mr. Allen seconded and the motion carried.

All in favor - 5
Opposed - 0

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

DEADWOOD BOARD OF ADJUSTMENT

Mayor Toscana called the Board of Adjustment to order.

Mr. Peterson moved to approve the Conditional Use Permit for the construction of a 120' monopole with lighting rod extending to a height of 129' and placement of 11'5"x28' equipment shelter within a 50'x50' fenced compound behind the existing water tank across

from the Tatanka complex, as recommended by the Planning & Zoning Commission. Ms. Silvernail seconded.

Mr. Toscana questioned if the request would be forwarded to the Historic Preservation Commission. Ms. Williams stated that it would.

The motion carried

All in favor - 5
Opposed - 0

Mayor Toscana adjourned the Board of Adjustment and turned the meeting back over to the Planning and Zoning Commission.

PLANNING AND ZONING

Chairperson Farrier called the Planning and Zoning meeting back to order.

PLAT - DON AND ANITA HANSON - PLAT OF LOTS E-1A AND E-1B OF TRACT E-1 REVISED OF CRAWFORD ADDITION II, LOCATED IN THE NE 1/4 OF SECTION 27, T5N, R3E, B.H.M., CITY OF DEADWOOD, LAWRENCE COUNTY, SOUTH DAKOTA

Ms. Williams reviewed the following staff report:

**STAFF REPORT
PLANNING AND ZONING
NOVEMBER 5, 2008 JOINT MEETING**

APPLICANT: Donald and Anita Hanson

PURPOSE: To split an existing into two (2) lots in order to obtain proper financing.

GENERAL LOCATION: 306-308 McGovern Hill Road

LEGAL DESCRIPTION: Plat of Lots E-1A & E-1B of Tract E-1 Revised of Crawford Addition II, Located in the NE 1/4 of Section 27, T5N, R3E, B.H.M., City of Deadwood, Lawrence County, South Dakota

ZONING: R1 – Residential District

FILE STATUS: All legal obligations have been completed.

CITIZENS RESPONSE: FOR: NA AGAINST: NA

STAFF FINDINGS:

<u>Surrounding Zoning:</u>	<u>Surrounding Land Uses</u>
North: PF – Park Forest District	Vacant land
South: R1 – Residential District	Single-family Residential
East: R1/PF Districts	Vacant lands
West: R1 - Residential District	Single-family Residential

SUMMARY OF REQUEST

The purpose of the plat is to divide Tract E-1 Revised into two (2) lots. Mr. Hanson is splitting the lot off in order to secure financing for their new home which will set on E-1A. The subject lot has changed form several times since 1996. **FACTUAL INFORMATION**

1. The property is currently zoned R1 – Residential District. All existing uses are permitted by right in this zoning classification.
2. The subject lots have: Tract E-1A = 33,261.6 Sq. ft.; Tract E-1B = 7,515 Sq. ft. Each lot meets the lot size requirement in the R1 – Residential District.

3. The properties gain access from McGovern Hill Road.
4. The areas under discussion are located within a low density residential designation in the Comprehensive Plan.
5. The lands are located outside of a flood area.
6. Public facilities are available to serve the properties.
7. The neighborhood is characterized by single-family residential uses and open space vacant lands.

STAFF DISCUSSION

The purpose of the plat is to combine two lots into one lot.

- The plat has a North Arrow.
- Signature and seal of the surveyor
- Dimensions are shown on all sides of the property
- Scale of drawing is shown
- Acknowledgements are shown
- Certification for City and County are shown

All requirements have been met to process the subject plat.

Ms. Green moved to approve the Plat for Don and Anita Hanson of Lots E-1A and E-1B of Tract E-1 Revised of Crawford Addition II, located in the NE 1/4 of Section 27, T5N, R3E, B.H.M., City of Deadwood, Lawrence County, South Dakota. Mr. Ryan seconded and the motion carried.

All in favor	-	5
Opposed	-	0

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

DEADWOOD BOARD OF ADJUSTMENT

Mayor Toscana called the Board of Adjustment to order.

Ms. Silvernail moved to approve the Plat for Don and Anita Hanson of Lots E-1A and E-1B as recommended by the Deadwood Planning and Zoning Commission. Mr. Peterson seconded and the motion carried.

All in favor	-	5
Opposed	-	0

Mayor Toscana adjourned the Board of Adjustment and turned the meeting back over to the Planning and Zoning Commission.

PLANNING AND ZONING

Chairperson Farrier called the Planning and Zoning meeting back to order.

OPEN:

Mr. Ryan questioned if the sign for the Segway Tours had been removed. Mr. Raysor, City Planner and Public Works Director, stated it would be down shortly and stored for the winter.

Ms. Williams stated that following the Planning and Zoning Commission Meeting there would be an informal meeting with Historic Preservation, City Commission, Planning and Zoning and Winter & Company regarding the Design Guidelines.

ADJOURNMENT:

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

All in favor - 5
Opposed - 0

There being no further business, Planning & Zoning Commission adjourned at 5:25 p.m.

ATTEST:

Ms. Marie Farrier
Chairman (Acting)
Planning and Zoning

Ms. Sheree Green
Secretary (Acting)
Planning and Zoning