

**CONDITIONAL USE RESOLUTION NO. CU- 522**

**WHEREAS**, James Spexarth (Owner); Turner Communications, Inc. c/o Denney Workman (Lessee) and PEC c/o Rob Hartman (Agent), pursuant to Section V-D of the Wichita-Sedgwick County Unified Zoning Code (herein referred to as Unified Zoning Code), requested a Conditional Use to allow a communication tower on 80 acres zoned "RR" Rural Residential described as:

The North Half of the Southeast Quarter of Section 10, Township 26, Range 2 West, Sedgwick County, Kansas. Generally located West of 151<sup>st</sup> Street West and ½ mile north of 61<sup>st</sup> Street North.

**WHEREAS**, proper notice as required by the Unified Zoning Code and by the policy of the Metropolitan Area Planning Commission (hereinafter referred to as MAPC) has been given; and

**WHEREAS**, the MAPC did, at the meeting of July 15, 1999, consider said application; and

**WHEREAS**, the MAPC has authority to permit a Conditional Use, subject to any special conditions deemed appropriate in order to assure full compliance with the criteria of the Unified Zoning Code.

**NOW, THEREFORE, BE IT RESOLVED** by the Metropolitan Area Planning Commission that this application be approved to permit a conditional use to allow a communication tower on 80 acres zoned "RR" Rural Residential described as:

The North Half of the Southeast Quarter of Section 10, Township 26, Range 2 West, Sedgwick County Kansas. Generally located west of 151<sup>st</sup> Street West and ½ mile north of 61<sup>st</sup> Street North.

subject to the following conditions:

- A. The tower shall be located on the west 40 acres of the application area and shall be no taller than 1100 feet tall.
- B. The tower shall be fenced with chain link fence, which has a minimum height of 6 feet with an additional 3 strands of barbed wire extended above the chain link fence.
- C. The applicant shall meet all conditions of Section III-D.6.g of the Unified Zoning Code.
- D. The development of this property shall be in substantial conformance with the site plan attached to and made a part of this resolution.
- E. This proposed broadcast tower shall be in compliance with all conditions approval by the MAPC, and/or the Governing Body, as specified above, or this Conditional Use shall be considered null and void.

Adopted this 15<sup>th</sup> day of July 1999. This resolution shall become effective on the fifteenth day after the date last noted above unless the matter is forwarded to the Governing Body for final action under the provisions of Section V-D.6. When any one or more of the exceptions listed in Section V-D.6 exist, this resolution with its conditions of approval shall be considered a recommendation of the MAPC to the Governing Body which shall then have final authority to approve, approve with conditions or modifications, or deny the Conditional Use Application.

METROPOLITAN AREA PLANNING COMMISSION

*Francis J. Garofalo*  
*for William M. Johnson*  
William M. Johnson, Chairman

ATTEST:

*Marvin S. Krout*  
Marvin S. Krout, Secretary

69<sup>th</sup> STREET NORTH

1385

1380

13

SITE PLAN

APPROVED 10/27/99 BY DS

1650'  
OPTION "A"

1425'  
OPTION "B"

700'

450'

150'

N.E. COR. S.W. 1/4 SEC. 10, 28S, 2W

1382

1200'

700'

TURNER TOWER

OPTION "A"

JIM S.  
MARKS.

BTL TOWER

151<sup>st</sup> STREET WEST

1380

KGE OVERHEAD LINE

1385

61<sup>st</sup> STREET NORTH

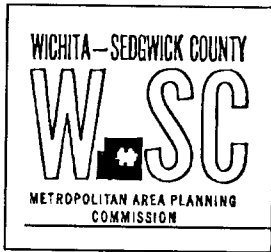
1379

1381

1" = 500'

37

Sut



AGENDA ITEM NO. 6

# STAFF REPORT

Colwich June 28, 1999

MAPC July 15, 1999

CASE NUMBER: CU-522

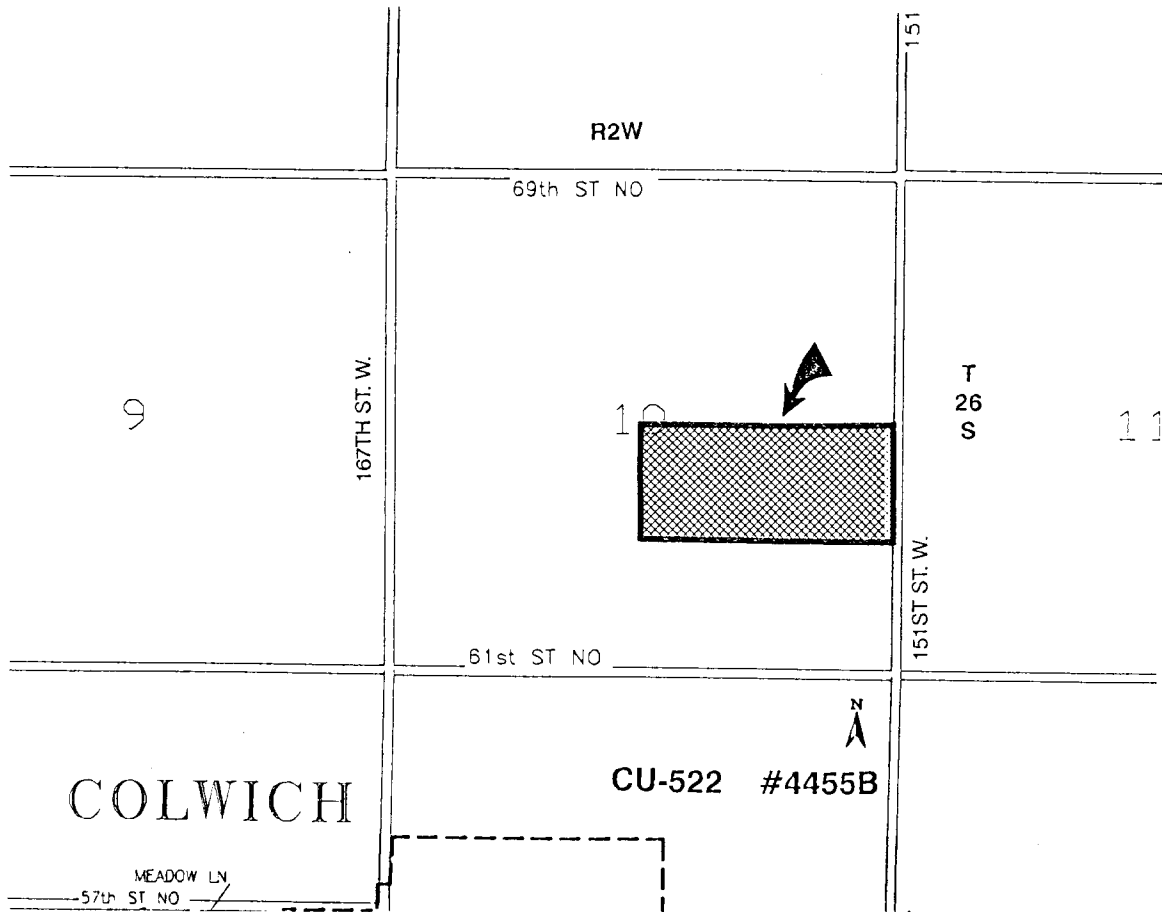
APPLICANT/AGENT: James Spexarth (Owner); Turner Communications, Inc. c/o Denney Workman (Lessee) and PEC c/o Rob Hartman (Agent)

REQUEST: Conditional Use to allow a communication tower

CURRENT ZONING: "RR" Rural Residential

SITE SIZE: 1.0 acres

LOCATION: West of 151<sup>st</sup> Street West and ½ mile north of 61<sup>st</sup> Street North



**BACKGROUND:** The applicant is requesting a Conditional Use to permit a communication tower on an 80 acre unplatted tract located west of 151<sup>st</sup> Street West and ½ mile north of 61<sup>st</sup> Street North. This tower would serve a newly created TV station which has FCC approval to serve the Wichita market. The lessee of this property has submitted a site plan, which shows an 1100 foot broadcast tower in the middle of this 80 acre tract. The tower would be served by an 800 foot long access road from 151<sup>st</sup> Street West with a 30 by 40 foot transmitter building located near this tower. This building would house the equipment for the tower. Additional buildings would probably have to be built, if additional users located on this tower.

The Unified Zoning Code permits communication towers in the "RR" Rural Residential district through a Conditional Use permit. However, the Zoning Code also requires the applicant to provide the following information before a building permit can be issued, and it is appropriate for these issues to be addressed as part of the Conditional Use application:

- (1) there is no available space on existing or approved towers or other structures, which can be utilized to meet the applicant's communication needs;
- (2) there is no other physically and/or fiscally feasible opportunity to rebuild an existing tower or other such structure on which the communication equipment may be located, or to modify an approved tower or other structure. A rebuilding opportunity will be considered fiscally feasible if the cost of rebuilding an existing tower is no more than the cost of building a new tower on a new site;
- (3) the owner of the tower shall agree in writing at the time of the issuance of a building permit the following:
  - (a) that the tower is designed to accommodate at least three communication companies and that reasonable accommodations will be made to lease space on the tower to other communication companies so as to avoid having a proliferation of towers which are not fully utilized, and
  - (b) the owner of the land and the tower will make available in the future the opportunity for another party to pay the cost to rebuild the tower to support additional communication equipment where physically and fiscally feasible.

There are single homes located to the east, north and south on property zoned "RR" Rural Residential. The home to the north is 2,100 feet away from the tower while the home to the south is 1,800 feet south of the tower. The home east of 151<sup>st</sup> Street West is 1,300 feet east of the tower. West of the property is agricultural land and a communication tower to the southwest of the application area. This area is also zoned "RR" Rural Residential. There are another four broadcast/communication towers

located approximately 1 to 1 ½ miles south of the application area.

**CASE HISTORY:** None

**ADJACENT ZONING AND LAND USE:**

NORTH:	“RR”	Agricultural land and single family home
SOUTH:	“RR”	Agricultural land and single family home
EAST:	“RR”	Agricultural land and single family home
WEST:	“RR”	Agricultural land and communication tower

**PUBLIC SERVICES:** This property has access to 151<sup>st</sup> Street West, a two-lane County highway, with current traffic volumes on this roadway of 1,267. The 2020 Transportation Plan estimates that the volumes on this roadway will be 1,110. No improvements along this roadway are projected by the Sedgwick County Capital Improvement Program in the next seven years.

There are no municipal services available to serve this site.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use map of the Comprehensive Plan identifies this area as appropriate for “agricultural” use. This category has the intent of protecting agricultural resources and is meant to accommodate agricultural operations on substantial acreage. This category can allow other uses common in rural areas, which are no more offensive than normal agricultural uses.

The Transportation/Utilities Locational Guidelines of the Comprehensive Plan also recommends that utility facilities with significant noise, odor and other nuisance elements, should be located away from residential areas. Adopted policy in the treatment of communication towers is clearly established in the zoning code, which is stated in the background section.

**RECOMMENDATION:** The applicant has sufficiently addressed the criteria established in the Unified Zoning Code as explained in the consultant’s report, therefore staff is recommending the request be approved, subject to the following conditions:

- A. The tower shall be located 150 to 200 feet south of the location as indicated on the site plan to provide additional separation from the tower to the residential home across 151<sup>st</sup> Street West. The tower shall be no taller than 1100 feet tall.
- B. The tower shall be fenced with chain link fence, which has a minimum height of 6 feet with an additional 3 strands of barbed wire extended above the chain link fence.

- C. The applicant shall meet all conditions of Section III-D.6.g of the Unified Zoning Code.
- D. This proposed broadcast tower shall be in compliance with all conditions approval by the MAPC, and/or the Governing Body, as specified above, or this Conditional Use shall be considered null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: There is agricultural land located to the north, south and west of the application area, with a single family home located farther to the north and to the south. East of the application area is a single-family residence located almost directly across from the communication tower. All of the property abutting this development is zoned "RR" Rural Residential. There are four towers located about 1 to 1 and ½ miles south of the application area.
2. The suitability of the subject property for the uses to which it has been restricted: The site is currently zoned "RR" which only permits a communication tower through a Conditional Use request in this zoning classification. The application area could continue to be used as agricultural land or other uses permitted in the "RR" Rural Residential district.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The tower is located across the street from a single-family home. Staff believes that this development of a 1100 foot tower with a 30 foot by 40 foot building will impact this residential home since they will be able to see it from their front door and yard with no screening or buffering provided. The area to the south and west is all owned by the applicant or his family.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The Land Use map of the Comprehensive Plan identifies this area as appropriate for "agricultural" use. This category has the intent of protecting agricultural resources and is meant to accommodate agricultural operations on substantial acreage. This category can allow other uses common in rural areas, which are no more offensive than normal agricultural uses.

The Unified Zoning Code does establish local policy aimed at minimizing the building of new communication towers as explained in the background section of this report. Based on the report provided by staff's consultant, there are several other towers in the area, which have not been examined sufficiently by the applicant, which could meet the applicant's needs. Therefore, this application does not meet the intent of the policy.

5. Impact of the proposed development on community facilities: This request will generate additional traffic in the area but should not be significant. Sedgwick County Code Enforcement has stated that no on-site services will be required.