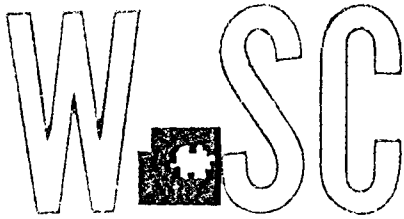


WICHITA -- SEDGWICK COUNTY



METROPOLITAN AREA PLANNING
DEPARTMENT

CITY HALL — TENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202-1688
(316) 268-4421
FAX (316) 268-4390

September 2, 1997

Kensington Gardens, LLC
1147 S. Broadway
Wichita, KS 67211

RE: CU-435 - Conditional use to allow a 148-foot communications tower on property zoned "SF-20" Single-Family Residential and generally located east of Greenwich Road, approximately 1,300 feet north of 21st Street North (11500 E. 21st St. N.)

Dear Sirs:

At its regular meeting on August 14, 1997, the Metropolitan Area Planning Commission considered the above-captioned request. The action of the MAPC was to APPROVE the request, subject to conditions stated in the letter dated August 15, 1997.

This action was not accompanied by valid appeals or protest petitions, therefore, the action of the Planning Commission is FINAL. If you have any questions concerning this case, please contact our office at 268-4421.

Sincerely,



Russ Ewv
Senior Planner

RE/sh

cc: Omnipoint Communications Enterprises, Inc., 1930 E. Industrial Dr., Wichita, KS 67216
JM Consulting Group, Inc. c/o William O'Loughlin, P.O. Box 462, Sedgwick, KS 67135
Glen Wiltse, Sedgwick County Code Enforcement

STAFF REPORT

MAPC May 29, 1997
MAPC August 14, 1997

CASE NUMBER: CU-435

APPLICANT/AGENT: Kensington Gardens, LLC (property owners); Omnipoint Communications Enterprises, Inc. (applicant); JM Consulting, Inc. (agent)

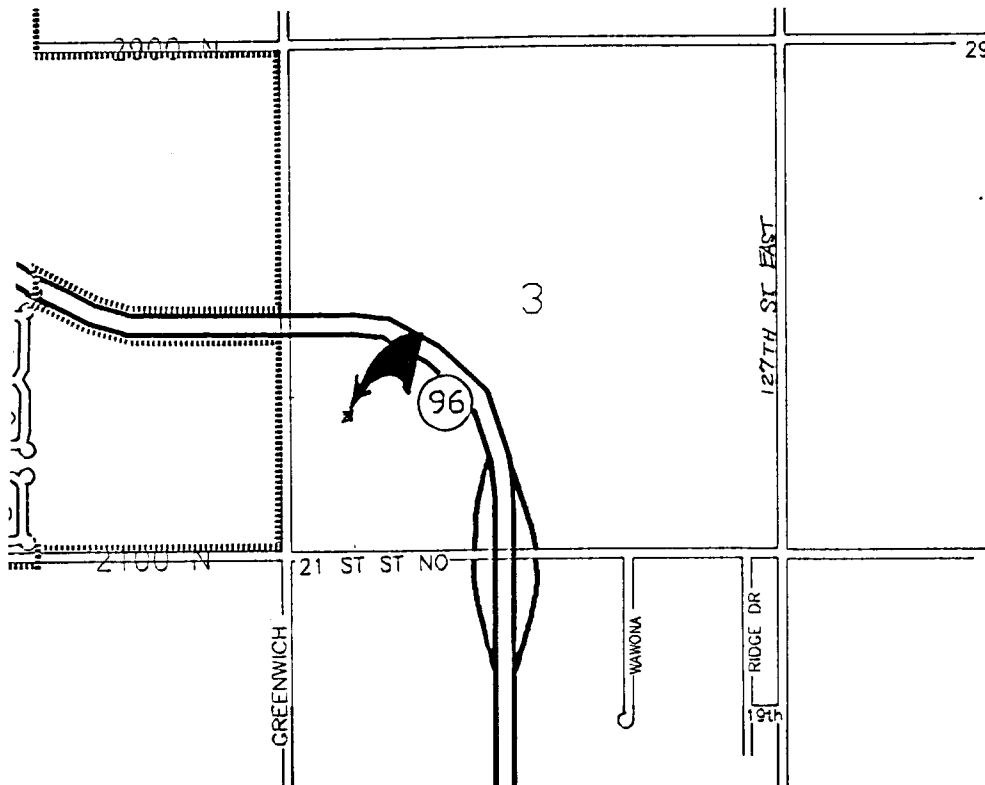
REQUEST: Conditional Use to permit the construction of a 138 foot commercial communications tower

CURRENT ZONING: "SF-20" Single-Family Residential

SITE SIZE: 0.02 acres

LOCATION: East of Greenwich Road, approximately ¼ mile north of 21st Street North

PROPOSED USE: Commercial Communication Tower



BACKGROUND: The applicant requests approval of a conditional use to allow the construction of a 138 foot commercial communication tower on a 0.02 acre site zoned "SF-20" Single-Family Residential, located east of Greenwich Road, approximately ¼ mile north of 21st Street North. The tower is to be used by Omnipoint Communications Enterprises, Inc. to provide wireless communication services to customers as part of a larger personal communications service (PCS) network.

This matter was deferred from the May 29, 1997 MAPC hearing in order to readvertise a new tower location within the proposed cemetery property. The applicant is proposing to construct a monopole tower 130 feet tall with an 8 foot lightning suppressor (originally staff thought it was to be a 140 foot tower with an 8 foot lightning suppressor).

The revised site plan shows the tower compound, measuring 30 feet by 30 feet, located approximately 85 feet further to the east of the original location, and approximately 645 feet east of Greenwich Road. The applicants have stated that the property owner leasing the tower site to them is directing Omnipoint to place the tower within the cemetery's maintenance facility, which is located adjacent to the east of a residential tract and to the north of the Warren Theater tract. The perimeter of the application area is shown to be fenced with a 6 foot chain link fence with extension posts for three strands of barbed wire. The plan also shows a 8 foot by 10 foot equipment area next to the base of the tower. There is a 12 foot wide access road leading to the tower site from Greenwich Road.

The property owner to the west has filed a protest petition against the proposed tower, which was at that time located along the common property line. The revised site plan shows the tower approximately 275 feet east of the nearest structure on the protester's property and approximately 500 feet east of the residence. The applicants have stated that Kensington Gardens is negotiating with the property owner to purchase the tract west of the application area. Staff is expecting the applicants to provide statements from the landowner explaining the restriction on locating the tower at this particular area.

Prior to the May 29 meeting, staff received a letter from Bailis Bell, Director of Airports, that the Wichita Airport Authority suggests that this request "is not in the best interests of the safety of the flying public using Col. James Jabara Airport..." despite the fact that the proposed 148 foot tower is approximately 52 feet below the Airport Hazard Zoning Ordinance height standard. He further comments that these "obstruction prevention standards" are minimum standards with some margins of safety, but that the MAPC has the ability to provide a greater margin of safety by not permitting a communication tower at this location.

Omnipoint Communications Enterprises, Inc. is developing a nationwide personal communication service system, including approximately 44 sites in the Sedgwick County trading area. By co-locating their antennae on existing towers or roof top locations, they have been able to minimize the new construction to 13 on sites where permitted towers "by right" in Wichita, with another three in unincorporated areas requiring a conditional use permit. Staff's tower data base indicates that the nearest communication towers, a 415 foot guyed tower located one-half mile south of 21st Street, west of Rock Road and a 130 foot monopole tower located at 34th Street North and Cemetery (both approximately 2.4 miles from the proposed tower site). According to our records, both towers are not only too far away from Omnipoint's intended service area, but also filled to their capacity.

The zoning code allows commercial communication towers in the "SF-20" Single-Family Residential district only as a conditional use. The application area is located approximately 500 feet east of an existing home, approximately 85 feet from the common property line. The site is situated in the bend of K-96, with all of the land adjacent to the application area zoned "SF-20" Single-Family Residential. Surrounding the application area to the north and east is property that has been approved for use as a cemetery, while to the south and west is property being developed for a theater complex. Property across Greenwich Road has been approved for "LI" zoning.

CASE HISTORY: The tower site is located within a larger 68 acre property approved for use as a cemetery, crematorium, mausoleum, and columbarium by a Conditional Use permit (CU-386), approved by the MAPC on December 28, 1995 and by the County Commission on January 24, 1996. The subject property was platted as part of Lot 1, Kensington Gardens Addition, that was approved by the MAPC on December 12, 1996 and by the City Council on January 28, 1997. This request was previously scheduled for the May 29, 1997 MAPC hearing, but was deferred in order to readvertise an alternative location.

ADJACENT ZONING AND LAND USE:

NORTH:	"SF-20"	Undeveloped; Agricultural
SOUTH:	"SF-20"	Undeveloped; Agricultural; Future theater
EAST:	"SF-20"	Undeveloped; Agricultural; Future cemetery
WEST:	"SF-20"	Single-Family residence; Future industrial park

PUBLIC SERVICES: Except for telephone and electrical service, no public services are required. The property has access to Greenwich Road, a 2-lane paved section-line road, with existing traffic volume of approximately 1,330 average daily trips (ADT) from K-96 to 21st Street North. The 2020 Transportation Plan projects traffic along

Greenwich Road to increase to approximately 4,028 ADT for this segment. Greenwich Road is also projected by the 2020 Transportation Plan to remain a 2-lane roadway, however the recent zone change for the property across Greenwich to the west (Ritchie's Greenwich Business Park) will be making improvements to Greenwich from 21st Street to K-96.

CONFORMANCE TO PLANS/POLICIES: The Sedgwick County Development Guide of the Comprehensive Plan identifies this area as being located within the "new growth" area, a category defining areas that are partially developed and will absorb the majority of the near-term growth of Wichita. The plan does not speak specifically to telephone or cellular phone service, however there is a statement indicating the need to provide the highest quality utility services to the public at a reasonable cost. The zoning code lists five conditions towers are subject to: unobtrusive paint scheme, no nighttime lighting of the tower except for aircraft warning lighting, no advertising, demonstrate an effort has been made to co-located on an existing tower and willingness to provide space for other communication towers.

RECOMMENDATION: Staff remains critical of the location of the proposed tower near a small residential property in the absence of a "consent" letter from the owner of the adjacent property. If the cemetery was zoned "GC" or "LI", this tower would be required to be setback nearly 400 feet from the property (not just the residence). It does not appear to be in the spirit of the zoning code to allow a tower much closer because the underlying property has a residential classification.

In the previous version of the staff report we stated that, at a bare minimum, towers should be setback from residentially-zoned property at least one-half the height of the tower for safety purposes, as recommended by the consultant at the MAPC's wireless workshop last January. We also stated that if the tower were located further away from the adjoining property, staff would probably support a tower in this area. However, it was our intention based on the substantial acreage controlled by the property owner, that "farther away" be a greater distance than 85 feet.

Based upon information available prior to the public hearings, planning staff recommends that the request be DENIED. However, if the Planning Commission and/or the Board of County Commissioners feel that the request is appropriate and is approved, planning staff recommends that any approval of a conditional use be subject to the following conditions:

1. The tower shall be a monopole design and located as indicated on the approved site plan.
2. 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.

3. The color of the tower shall be silver or gray or a similar unobtrusive color unless otherwise required by applicable agencies, or in order to avoid strobe lighting that would otherwise be required by those agencies.
4. There shall not be any nighttime lighting of or on the tower except for aircraft warning lights or similar emergency warning lights required by applicable agencies. No strobe lights shall be used.
5. No commercial advertising signs shall be allowed on the tower or fence.
6. The tower shall not exceed 138 feet in height.
7. At the time of requesting a building permit for a communication tower, the applicant shall demonstrate to the satisfaction of the Zoning Administrator that: (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, and (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.
8. The owner of the tower shall agree in writing at the time of the issuance of a building permit that: (1) the tower is designed to accommodate at least two additional communication company 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 (2) 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.
9. The property owner shall be responsible for the removal of unused communication towers within twelve (12) months of cessation of use. If such a tower is not removed by the property owner, then the city or county may employ all legal measures, including, if necessary, obtaining authorization from a court of competent jurisdiction, to remove the tower, and after removal may place a lien on the subject property for all direct and indirect costs incurred in the dismantling and disposal of the tower, including court costs and reasonable attorney fees.
10. This proposed communication 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: The application area is located approximately 500 feet east of an existing home, approximately 85 feet from the common property line. The site is situated in the bend of K-96, with all of the land adjacent to the application area zoned "SF-20" Single-Family Residential. Surrounding the application area to the north and east is property that has been approved for use as a cemetery, while to the south and west is property being developed for a theater complex. Property across Greenwich Road has been approved for "LI" zoning.
2. Extent to which removal of the restrictions will detrimentally affect nearby property: Based on information on hand at the time this report was prepared, this request could have a detrimental impact on the property adjacent to the west.
3. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: If the applicant cannot build a new tower in this vicinity there will potentially be gaps in the service in the Wichita area. These gaps would result in an inconvenience to Omnipoint customers. However, the location of the 138 foot tower 85 feet from a residential property may create a loss of enjoyment of that property.
4. Conformance of the requested change to adopted or recognized Plans/Policies: The plan does not speak specifically to communication towers, but does generally indicate a need to provide the highest quality utilities at a reasonable cost, provided the location of the structure has a minimal impact on the surrounding. However, it can be inferred from the compatibility setback standards in the zoning code that tall structures like the proposed tower should generally be set back about 3 feet for every foot in height from adjacent residential property lines.
5. Impact of the proposed development on community facilities: No municipal water or sewer service is required, traffic generation is minimal, and no other negative impact on community facilities has been identified.