

ORDINANCE 2217

AN ORDINANCE GRANTING A SPECIAL USE PERMIT FOR THE INSTALLATION, OPERATION AND MAINTENANCE OF COMMUNICATION ANTENNAE AND RELATED EQUIPMENT BY CLEARWIRE WIRELESS ON THE PROPERTY DESCRIBED AS 7801 DELMAR, PRAIRIE VILLAGE, KANSAS

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF PRAIRIE VILLAGE:

Section 1. Planning Commission Recommendation. At its regular meeting on October 6, 2009, the Prairie Village Planning Commission held a public hearing, found the findings of fact to be favorable and recommended that the Governing Body approve PC2009-15 the granting of a Special Use Permit for the installation, operation and maintenance of antennae and related equipment by Clearwire Wireless at 7801 Delmar subject to the following conditions:

- 1) The Special Use Permit will be approved to allow four carriers (the three existing carriers T-Mobile, Sprint and Cricket plus Clearwire). In the future, additional carriers may locate on the water tower subject to approval of a Site Plan by the Planning Commission and an amended Special Use Permit will not be required.
- 2) The approval of the Special Use Permit shall be for a maximum of ten years. At the end of the ten-year period, and any subsequent ten-year renewal periods, the applicant shall resubmit the application and shall demonstrate to the satisfaction of the Planning Commission and the City Council that a need still exists for the antennas and that all the conditions of approval have been met. The permit may then be extended for an additional ten years and new conditions may be required.
- 3) The antennas and equipment cabinets shall be painted a color that matches the water tower and all wires that connect to the antennas shall be enclosed in a metal shield that is painted the same color as the water tower. The applicant shall maintain the painted surfaces and repaint as needed.
- 4) There will be no security lighting installed around the base of the tower.
- 5) The plans for the antenna connections shall be prepared and sealed by a structural engineer licensed in the State of Kansas, with construction observation provided by a design engineer that is not an employee of the tower's owner.
- 6) The equipment cabinet shall be located in the compound on the west side of the tower. Adequate screening of the equipment cabinets located at the tower base shall be provided by a solid or semi-solid wall or fence, and landscape screening as shown on the revised Landscape Plan and the fence and landscaping shall be maintained in good condition by the applicant. All equipment cabinets shall be adequately secured to prevent access by other than authorized personnel.
- 7) The applicant shall have a structural inspection of all antennas and cables performed by a licensed profession engineer prior to every ten year renewal and submit it as a part of the renewal application.
- 8) Any permit granted which is found not to be in compliance with the terms of the Special Use Permit will become null and void within 90 days of the notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the antennas, equipment cabinets and all appurtenances and restore the site to its original condition.
- 9) The carrier will be allowed to erect a temporary tower when the Water District is stripping and painting the tower.
- 10) The utility transformer will be placed on Water District property.
- 11) Grass tiles that provide vehicle and equipment access to the area beneath the tower shall be maintained in good condition by the applicant.
- 12) The Site Plan submitted with this application, the approved Site Plan, dated April 14, 1987 and the revised Landscape Plan approved in 2003 shall be reincorporated as the Site Plan for approval of this application.
- 13) The applicant may change out equipment boxes, cable and antennas subject to the Staff approval provided that the replacements are generally consistent with the approved plan. If change-outs are significantly different, as determined by the Building Official or his/her designee, a revised Site Plan shall be submitted to the Planning Commission for its review and approval.
- 14) The applicant shall not prevent other users from locating on the water tower.
- 15) If the antenna and equipment installation is not operated for a continuous period of twelve (12) months, it shall be considered abandoned and the owner of the installation shall remove the same within 90 days after receiving notice from the City. If the installation is not removed within that 90 days period, the Governing Body may order the installation removed and may authorize the removal of the same at the permittee's expense.
- 16) The installation shall be structurally maintained to a suitable degree of safety and appearance (as determined by the City and any applicable law, statute, ordinance, regulation or standard) and if it is found not to be in compliance with the terms of the Special Use Permit, it will become null and void within 90 days of notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the installation and all appurtenances and restore the site to its original condition.
- 17) In the future, should the levels of radio frequency radiation emitted be determined to be a threat to human health or safety, the wireless communication installation shall be rectified or removed as provided for herein. This finding must be either mandated by any

applicable law, by federal legislative action, or based upon regulatory guidelines established by the FCC.

- 18) In order to ensure structural integrity, the antennas shall be constructed and maintained in compliance with all applicable local building codes and the applicable standards for such antennas that are published by the Electronic Industries Alliance.
- 19) The installation shall meet or exceed all minimum structural and operational standards and regulations as established by the FCC, FAA, EPA and other applicable federal regulatory agencies. If such standards and regulations are changed, then the installation shall be brought into compliance within six (6) months of the effective date of the new standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency.
- 20) The permit holder shall promptly resolve any electromagnetic interference problems in accordance with any applicable law or FCC regulation.
- 21) A copy of the lease between the applicant and Water District #1 shall be submitted to the City and contain the following provisions:
 - a. The landowner and the applicant shall have the ability to enter into leases with other carriers for co-location.
 - b. The landowner shall be responsible for the removal of the communications facility in the event that the leaseholder fails to remove it upon abandonment.
- 22) The applicant shall obtain all other government approvals and permits to construct and operate communications facilities, including but not limited to approvals by the Kansas Corporation Commission.
- 23) If Clearwire changes its name through merger, acquisition, etc. or sells or transfers its installation to another carrier, it shall notify the City within 30 days of such change and provide a description of the service provided by that carrier. If modifications are required as a result of this change they will be approved by Staff unless in the opinion of Staff are significant changes, then they will be submitted to the Planning Commission for Site Plan Approval

Section II. Findings of the Governing Body. The Governing Body adopts by specific reference the findings of fact on application PC2009-15 as contained in the minutes of the Planning Commission meeting of October 6, 2009, and approves the recommendations of the Planning Commission.

Section III. Granting of the Special Use Permit. Be it therefore ordained that the City of Prairie Village grant a Special Use Permit to Sprint/Nextel for antennae at 7801 Delmar, Prairie Village, Kansas subject to the twenty-three specific conditions listed above.

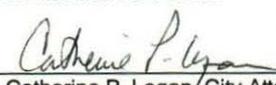
Section IV. Take Effect. That this ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper as provided by law.

PASSED AND ADOPTED THIS 19th DAY OF OCTOBER, 2009.

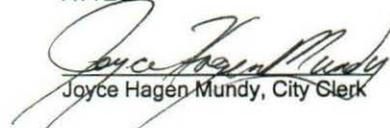
CITY OF PRAIRIE VILLAGE, KANSAS

By: 
Ronald L. Shaffer, Mayor

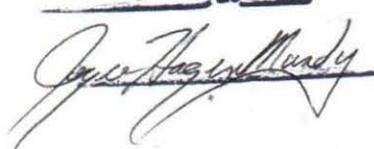
APPROVED AS TO FORM:


Catherine P. Logan, City Attorney

ATTEST:


Joyce Hagen Mundy, City Clerk

I hereby certify that the foregoing is a true and correct copy of the original ordinance; that said ordinance was passed on the 19th day of Oct, 2009; that the record of the final vote on its passage is found on page 145 of journal 47; that it was published in the legal Record on the _____ day of _____ 20____


City Clerk