

**ORDINANCE NO. 3312**

**AN ORDINANCE APPROVING A CONDITIONAL USE PERMIT AUTHORIZING A CELLULAR COMMUNICATIONS TOWER AT A LOCATION GENERALLY DESCRIBED AS 409 NW 3RD STREET IN THE CITY OF ABILENE, KANSAS**

**WHEREAS**, the Planning Commission reviewed a request by Running R Property Management, LLC ("Applicant") concerning the placement of a cellular communication tower by US Cellular ("Lessee") at property generally located at 409 NW 3<sup>rd</sup> Street in Abilene, Kansas;

**WHEREAS**, Lessee has entered into an agreement with Applicant to lease said property for the construction and maintenance of a cellular communications tower; and

**WHEREAS**, the Planning Commission conducted a Public Hearing per Section 24-4 of the Zoning and Subdivision Regulations on September 20, 2016, and following public comment recommended approval of the Conditional Use Permit allowing a cellular communications tower on the above referenced property.

**NOW, THEREFORE BE IT ORDAINED**, by the City Commission of the City of Abilene, as follows:

**SECTION ONE. Conditional Use Permit.** That a Conditional Use Permit is hereby issued to Applicant for the placement of a cellular communications tower by Lessee as generally provided in the Conditional Use Permit application and Staff Report as provided in **Exhibit A**, attached hereto for property legally described as follows:

*A tract of land in Lot 3, on North Third Street, Thompson and McCoy's Addition, City of Abilene, Dickinson County, Kansas described as follows:*

*Beginning at a point that is North 89° 54' 22" West 5.00 feet and North 00° 33' 58" West 8.00 feet from the Southeast Corner of said Lot 36; thence North 89° 54' 22" West 20.00 feet; thence North 00° 33' 58" West 25.00 feet; thence South 89° 54' 22" East 20.00 feet; thence South 00° 33' 58" East 25.00 feet to the point of beginning, containing 500 square feet.*

*Subject to easements and restrictions of record.*

**SECTION TWO. Permit Conditions: Approval.** Per Section 20-103 of the Zoning and Subdivision Regulations, the Planning Commission may impose, and the City Commission may approve, reasonable conditions on the approval of a Conditional Use Permit. Such conditions are approved for this Permit as provided in the attached Staff Report.

**SECTION THREE. Implementation.** The City Manager, or designee, is hereby authorized to issue a Conditional Use Permit once all conditions have been reasonably met.

**SECTION FOUR. Effective Date.** This Ordinance shall become effective and in full force from and after its passage, adoption and publication in the official City newspaper.

**PASSED AND APPROVED** by the Governing Body of the City of Abilene, Kansas this 14<sup>th</sup> day of November 2016.



**CITY OF ABILENE, KANSAS**

By: *Dee Marshall*  
Dee Marshall, Mayor

*Penny Soukup, CMC*  
Penny Soukup, CMC  
City Clerk

APPROVED AS TO FORM:

*A. O. Martin*  
Aafon O. Martin, City Attorney

**EXHIBIT A**

**Conditional Use Permit Application and Staff Report**

**Running R Property Management, LLC**

**409 NW 3rd Street**

**Abilene, KS**

**November 14, 2016**

## STAFF REPORT

**PC 16-8 Conditional Use Permit, at the request of the U.S. Cellular as agent to owner Running R Property Management, LLC, for the placement of an Flush Mounted Antenna in a "C-4, Central Business District"**

<b>Date:</b>	October 11, 2016
<b>Owner:</b>	Running R Property Management, LLC
<b>Applicant:</b>	Tracey Malone, on behalf of U.S. Cellular, as agent to owner
<b>Requested Action:</b>	Conditional Use Permit
<b>Purpose:</b>	Placement of an Flush Mounted Antennas against the building of Sunflower Hotel
<b>Location address:</b>	409 NW 3rd Street, Abilene, Kansas
<b>Comprehensive Plan:</b>	<b>Key Issue 3</b> – Lack of coordinated marketing efforts to promote economic and cultural activities; <b>Goal B</b> – Market Abilene to Abilenians
<b>Sites Existing Zoning:</b>	"C-4, Central Business District"
<b>Surrounding Zoning and Land Use:</b>	North: "C-4, Central Business District" South: "C-4, Central Business District" East: "C-4, Central Business District" West: "C-4, Central Business District"
<b>Land Area:</b>	0.32 acres, more or less
<b>Notice Date:</b>	Notice of the Public Hearing was published in the Abilene Reflector-Chronicle on September 20, 2016 and by mail as required by the Section 26-102 of the Zoning Regulations.

### COMMENTS

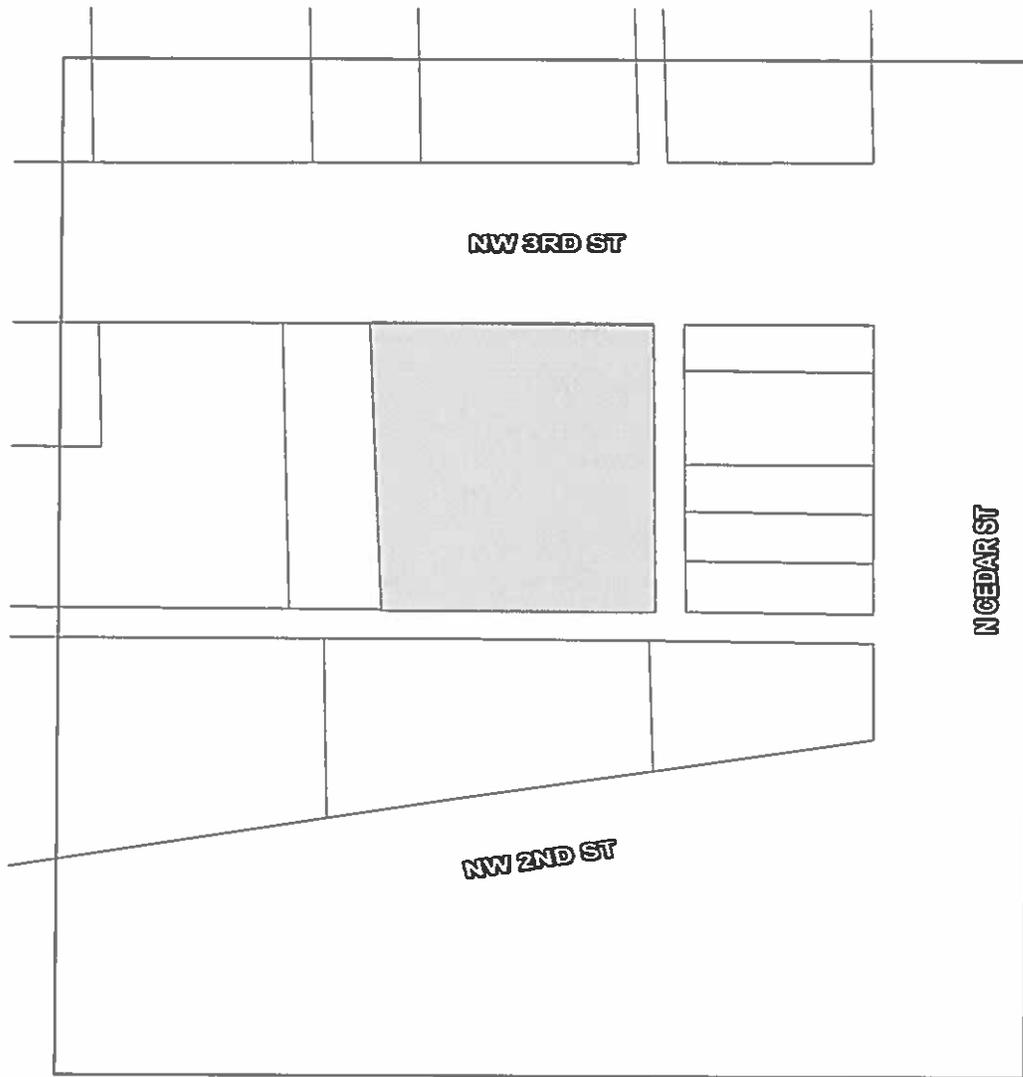
1. Running R Property Management, LLC. request a conditional use permit to construct a Flush Mounted Antennas to the rooftop of Sunflower Hotel for the purposes of cellular communication.
2. Zoning Regulations Article 24 states the following with respect to telecommunication towers:  
*"Consideration of an application for a Conditional Use Permit for a telecommunications tower shall be considered and acted upon by the Planning Commission and Governing Body in adherence to the limitations upon local authorities set out in the National Wireless Telecommunications Siting Policy, Section 332(c), 47 U.S.C. 332(c) which provides in part that the regulation of the placement, construction and modification of personal wireless service facilities by a local government shall not unreasonably discriminate among providers of functionally equivalent services; and shall not prohibit nor have the effect of prohibiting the provision of personal wireless services. Further, the siting policy provides that a local government shall act on any request for authorization to place, construct or modify personal wireless service facilities within a reasonable period of time after the request is duly filed, taking into account the nature and scope of such request. Further that any decision by a local government to deny a request to place, construct or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record. And further that no local government may regulate the placement, construction and modification of personal wireless*

*service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the F.C.C.'s regulations concerning such emissions."*

3. Running R Property Management, LLC is the owners of property at 409 NE 3<sup>rd</sup> Street is the owner of record, but Tracey Malone will be the authorized agent of the property owner has provided the City with sufficient documentation demonstrating the authority to sign on the property owner's behalf.
4. The proposed construction of the Flush Mounted Antennas will be located on property NW 3<sup>rd</sup> Street and has been review from the Abilene Historical Society to ensure that requirements are met.



*Aerial of Subject Property 409 NW 3<sup>rd</sup> Street*



*Drawing of Subject Property 409 NW 3rd Street*



Ground View from the side

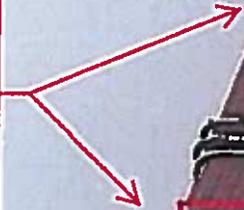


**View from the roof top**



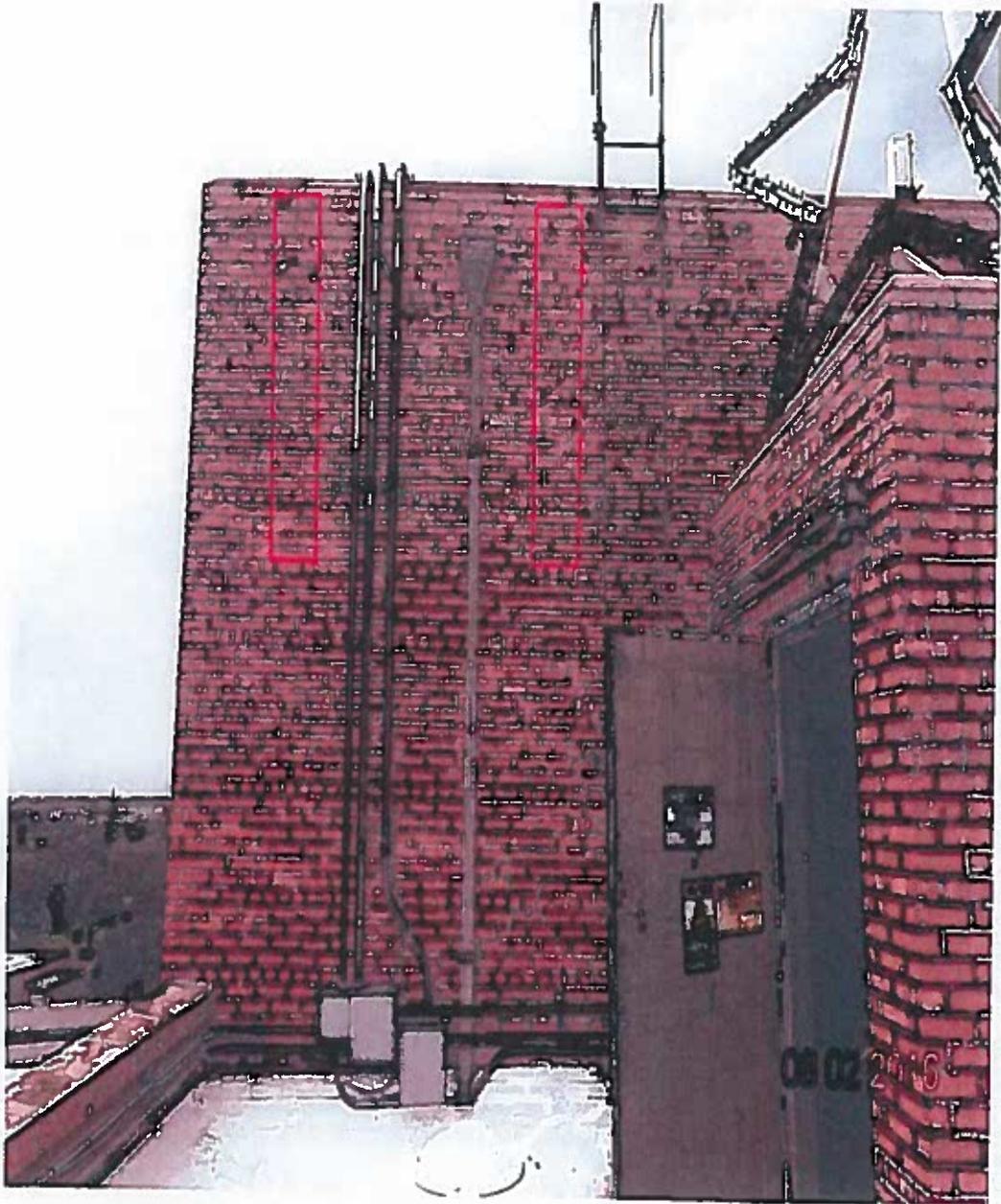
View from across the street of

Alpha Sector  
Antennas painted  
to match brick



HOTEL

08 02 2016





RAYCAP

FLRBS

FXCBs Double Stacked

08 02 2016

## **RECOMMENDATION AND FINDINGS**

Staff recommends approval of a conditional use permit to be located at the subject property based on the following considerations outlined in Article 26-108 and 26-110:

1. Whether the change in classification would be consistent with the intent and purpose of these regulations. Article 24 of the Zoning Regulations provides regulations for telecommunication towers so as to “preserve, protect and promote the public health, safety, and general welfare.” The Article further states placement, construction and modification of personal wireless service facilities by a local government shall not unreasonably discriminate among providers of functionally equivalent services; and shall not prohibit nor have the effect of prohibiting the provision of personal wireless services. Further, the siting policy provides that a local government shall act on any request for authorization to place, construct or modify personal wireless service facilities within a reasonable period of time after the request is duly filed, taking into account the nature and scope of such request. Further that any decision by a local government to deny a request to place, construct or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record. And further that no local government may regulate the placement, construction and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the F.C.C.'s regulations concerning such emissions.” Staff has no evidence that the proposed use would be inconsistent with the aforementioned intent and purpose of Article 24.
2. The character and condition of the surrounding neighborhood and its effect on the proposed change. The subject property is located in an area of the community that has a Central Business District of uses ranging from commercial, institutional (governmental), and residential.
3. Whether the proposed amendment is made necessary because of changed or changing conditions in the area affected, and if so, the nature of such changed or changing conditions. The catalyst for the proposed Conditional Use permit is not necessitated by a change of the conditions to the area. Incidentally, the Running R Property Management, LLC. request a conditional use permit to construct a Sled Mounted Antennas to the rooftop of Sunflower Hotel for the purposes of cellular communication, which they have conditional use permits located on their site already with Verizon.
4. The current zoning and uses of nearby properties, and the effect on existing nearby land uses upon such change in classification. As previously mentioned, the subject property is in an area that has Central Business District of land uses.
5. Whether every use that would be permitted on the property as reclassified would be compatible with the uses permitted on other property in the immediate vicinity. The subject property is presently zoned as “C-4”, Central Business District.” The subject matter of the request is whether to allow a sled mounted antennas to the roof on the property. As such, if the Conditional Use Permit is approved it will not add to or diminish the uses that are currently allowed on the property by right or conditionally.
6. The suitability of the applicant's property for the uses to which it has been restricted. The proposed telecommunication antenna will be located on the roof of the Sunflower Hotel and will following the Conditional Use Permit as directed by the Planning Commission’s final agreement.
7. The length of time the subject property has remained vacant or undeveloped as zoned. The property has been used by the Sunflower Hotel for rooming visitors and clients purposes since the 1930s.
8. Whether adequate sewer and water facilities, and all other needed public services exist or can be provided to serve the uses that would be permitted on the property if it were reclassified. This point is not applicable to the proposed request.

9. The general amount of vacant land that currently has the same zoning classification proposed for the subject property, and any special circumstances that make a substantial part of such vacant land available or not available for development. This point is not applicable to the proposed request.
10. The recommendations of professional staff and advisors. Staff recommendations are discussed below.
11. Whether the proposed amendment would be in conformance to and further enhance the implementation of the Comprehensive Plan. Key Issue 3 in the Comprehensive Plan identifies the "lack of coordinated marketing efforts to promote economic and cultural activities." Goal B of Key Issue 3 establishes the goal of "marketing Abilene to Abilenians." Staff is of the opinion that the proposed telecommunication antenna aligns with these two points in the Comprehensive Plan, and will allow the US Cellular to market its offerings to the general public.
12. Whether the relative gain to the public health, safety, and general welfare outweighs the hardship imposed upon the applicant by not upgrading the value of the property by such reclassification. This point does not seem to be applicable to the proposed telecommunication antenna as the applicant does not own or seem to control a majority stake in the subject property. The hardship created if the telecommunication antenna tower is not approved may be the potential loss of rent revenue by property owner if the applicant plans to operate under the terms of a lease with the property owner for use of the property for telecommunication. The hardship to the applicant, although not the property owner, may be losses of revenue arising from lose of customers as a result of potential hardships associated with cellular phone use in the area. It would be difficult to determine if a loss of revenue resulted from a lack of telecommunication towers at the proposed location.
13. Such other factors as the Planning Commission may deem relevant from the facts and evidence presented in the application.

Staff recommends approval of a conditional use permit for telecommunication antenna tower to be located at the subject property based on the following considerations outlined in Article 26-110:

1. Whether approval of the conditional use would be consistent with the intent and purpose of these regulations. Please refer to Item 1 in the aforementioned section.
2. Whether the location of the proposed use is compatible to other land uses in the surrounding neighborhood. Please refer to Items 2, 4, and 5 in the aforementioned section.
3. Whether the proposed use places an undue burden on the existing public infrastructure in the area affected, and if so, whether additional infrastructure can be provided. Electric service in the area is provided by Westar Energy and is adequate to accommodate the proposed use.
4. Whether the proposed use is made necessary or desirable because of changed or changing conditions in the area affected. Please refer to Item 3 in the aforementioned section.

#### **Recommended Conditions**

Staff recommends approval of a conditional use permit for a telecommunication antenna tower to be located at the subject property and building with the following conditions:

1. The location of antenna tower in nonresidential areas and minimize the appearance of the tower;
2. Encourage users of tower and antennas to co-locate them, to the extent possible, in areas where the adverse impact on the community is minimal;
3. Minimize adverse visual and aesthetic effects of tower through careful design, the new structure is a prefabricated 10' tall equipment building and is set back from adjacent property line 60 feet.

4. Avoid potential damage to adjacent properties and personal injury from tower failure and falling ice and debris through engineering, careful siting of tower structures, and other requirements;
5. Ensure compliance with applicable City of Abilene, State of Kansas, federal statutes and regulations;
6. Comply with all necessary and relevant requirements of the Telecommunications Tower in Article 24, as amended.
7. The telecommunication antenna tower was reviewed and recommended by a vote of 4-0 by the Historic Preservation Commission that the proposed design and location meet their concerns with regard to the Historic Sunflower Hotel site and location.
8. Towers shall not be artificially lighted, unless required by the Federal Aviation Administration, Federal Communications Commission or other applicable authority. If lighting is required, such lighting shall be to the minimum applicable standards so as to minimize the disturbance to the surrounding views.
9. The main telecommunication antennas and equipment will be entirely enclosed by a security access door on the roof top of the Sunflower Hotel. This requirement shall not apply to alternative tower structures provided equivalent alternative security measures are installed.
10. Telecommunications towers and antennas shall be constructed to the minimum height necessary to accomplish their required telecommunications purpose.
11. The environmental effects of radio frequency emissions shall not serve as a basis to approve, deny or otherwise regulate a telecommunications tower or antenna to the extent said emissions comply with Federal Communications Commission regulations concerning said emissions.

#### Article 24 Telecommunication Towers Applicants Response

##### 1. Section 24-101

- a. The proposed antenna installation requires a condition use permit because it involves the installation of radio antenna.
- b. Radio frequency engineers have determined a need for another project location central to the City of Abilene for both geographic coverage as well as improvements in call and data network traffic. Current project locations are all outside of the City Limits of Abilene, primarily north east and west of Abilene near Interstate 70. These existing locations cannot be modified to improve the network inside the City.
- c. The new structure is a prefabricated 10' tall equipment building and is set back from adjacent property lines 60' feet.
- d. This proposal involves this installation of antenna on an existing structure and is categorized as an existing structure/building collocation. The requirement to exclude all other collectable buildings, structures, and towers was seen as inapplicable to this project. Radio engineers did evaluate other existing structures including the water tower at 210 NE 13<sup>th</sup> Street and 1040 NW 8<sup>th</sup> Street owned by Nex-Tech Wireless, LLC. The engineers determined on March 14, 2016 that these locations were not suitable to meet radio frequency objectives.  
The radio frequency engineer's request for a new location mentioned the Sunflower Building by name as the location that was best suited to meet US Cellular's objectives in the area. US Cellular's objectives in this case are to improve coverage and capacity in downtown Abilene.
- e. This section is inapplicable. This is not a proposal for a new communication tower.
- f. This section is inapplicable. This is not a proposal for a new communication tower
- g. This wireless communication facility antenna and equipment will meet FAA and FCC requirements. No lighting is proposed.
- h. Pending on application.

##### 14. Section 24-2 Fencing and Screening 24-201

- a. The ground compound is proposed to be fenced. See the construction drawings

##### 15. Section 24-3 24-301

- a. All applicable setbacks are met or exceeded city guidelines.
16. Section 24-4  
24-401  
Fencing is proposed on the ground. Rooftop access will be controlled
17. 24-5 Access  
24-501  
The ground equipment location is adjacent to a back parking lot in a secure place.
18. Section 24-7 Design of the antenna design was proposed to blend into the character of the existing building.

**Planning Commission Action**

Per Section 26-104(a) of the Zoning Regulations, the Planning Commission has the following options with respect to this item:

1. Recommend to the governing body approval of the proposed ordinance that would permit the conditional use of a telecommunication antenna on the subject property subject to the conditions recommended by the Planning Commission.
2. Recommend to the governing body partial approval of the proposed ordinance that would permit the conditional use of a telecommunication antenna on the subject property subject to the conditions recommended by the Planning Commission. The Planning Commission would need to specify the parts of the proposed ordinance that are recommended for approval and which are not recommended for approval.
3. Recommend to the governing body denial of the proposed ordinance that would permit the conditional use of a telecommunication antenna on the subject property subject to the conditions recommended by the Planning Commission.

The proposed Ordinance has been prepared and is included with this memorandum for the Planning Commission's review and consideration.

All options will require the Planning Commission to include with its recommendation reasons for such recommendation to the governing body. If a motion for approval fails to gain approval for any reason, the application is deemed to have been denied and will be submitted to the governing body.