

**MINUTES OF THE NIGHT HEARING  
OF THE  
LOUISVILLE METRO PLANNING COMMISSION**

**January 19, 2006**

**DOCKET NO. 4-02-05**

Project Name:	Fire Station Tower Site
Location:	Harrods Creek Fire Station, 8905 U.S. Highway 42
Applicant:	Sprint Spectrum. L.P., d/b/a Sprint PCS
Representative:	Sandra F. Keene, Esq. Tilford, Dobbins, Alexander, Buckaway & Black
Project size/area:	150' monopole; 6,000 sq. ft.
Council District:	16 – Councilman Downard
<b>Staff Case Manager:</b>	<b>Jack Ruf, AICP</b>

Notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicant.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (Staff report is part of the case file, maintained in Planning and Design Services offices, 444 South Fifth Street, Louisville, KY 40202.)

**Request:** This is an amended application to construct a 150-foot monopole cellular tower with a ground equipment compound, including waiver requests of the lot size, of the 50-foot setback from residential property lines, to reduce the landscape buffer area, to allow equipment structures to encroach into the lease lot's required yards, and to exceed the maximum height for a cellular tower.

**The following spoke in favor of this request:**

Sandra Keene, 401 West Main Street, Suite 1400, Louisville, KY 40202

Chief Chris Aponte, Harrods Creek Fire Department, 8905 U. S. Highway 42, Louisville, KY 40059

Jonas Barcellano, 7700 Sundance-Drive, Louisville, KY 40222

**The following spoke in opposition:**

Carolyn Head Russ, 1103 Ambridge Drive, Louisville, KY 40207-2470

Lawrence Falk, Mayor of the City of Prospect, 9200 U. S. Highway 42, Prospect, KY

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Mike Haag, 6001 Timber Ridge Place, Louisville, KY 40059

Bill Glancy, 5916 Marina View Court, Prospect, KY 40241

**STAFF PRESENTATION:**

Jack Ruf presented the case, and also showed a Power Point presentation with photos of the site and the surrounding area (see audio-visual cd for his verbatim presentation.) Waivers: Sections 4.4.2.B.1, that requires all structures to be at least 50 feet from any residentially zoned property. Section 4.4.B.2 calls for a 50-foot landscape buffer around the site. They will be providing landscaping on the Fire Department site. Section 4.4.2.B.8 calls for any site to meet the minimum lot size of the district, and this lot is less than the requirements of the district. The applicant has already gotten a minor plat to approve this lot. Section 4.4.2.B.4 to allow the tower to be taller than 100 feet.

Mr. Ruf said that, over the past four years, he has been contacted by virtually every cellular provider licensed to serve this community about possible locations for antennae in this vicinity. He also stated that he has received correspondence from residents concerned about radio frequency emissions. He said that KRS 100.986(1) and Federal law prohibit the Planning Commission from regulating the placement of a cellular antennae tower on the basis of such emissions, to the extent that the facility complies with the regulations of the FCC concerning radio frequency emissions. The applicant has certified that they are in compliance with these FCC standards.

This tower can accommodate co-location of other providers.

Commissioner Carlson asked if a Scenic Parkway Corridor was appropriate for a cell tower? US 42 is a Scenic Corridor. Mr. Ruf said the first preference is highway right-of-ways except designated parkways; second is existing utility towers, then commercial centers, then government buildings, etc.

**SUPPORT:**

Sandra Keene, the applicant's representative, introduced herself and Chief Chris Aponte of the Harrod's Creek Fire Department.

Chief Aponte said the existing communications tower on the fire department site was originally built in 1975; it is 91 feet 7 inches tall. He said their radio

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communications people have told them that the existing tower needs to be replaced, which would be less expensive than repairing it. At that time, the Fire Department was approached by Sprint whose proposal gave them an opportunity to replace the tower and also give the Fire Department a chance to generate revenues from this lease agreement. He said the Harrods Creek Fire Department contacted representatives of the City of Prospect and received a letter back from them stating their support for this cell tower and a request that as many cell providers as possible be located on this tower. He said the HCFD has entered into a lease agreement with Sprint. He said there is a new radio system coming in ("Metro Safe Communications") that does require a higher tower. Currently, because of the topography of the area, there is a ridge that blocks some fire department communications ("dead spots"). Ms. Keene asked Chief Aponte if locating the communications equipment at 150 alleviate the "dead spots" he referred to. Chief Aponte said he was told by the radio technicians that a 250-300 feet height is the best thing for eliminating that problem; however, he realizes that this is not reasonable for this area.

Ms. Keene said the height of the requested pole has been lowered from 180 feet to 150 feet. This location will have the least visual impact and benefit as many people as possible. This project will meet emergency needs, Sprint's needs, cell-phone users' needs, and also generate revenue for the fire department and save the fire department the expense of building a new tower. Ms. Keene read some letters from the City of Prospect's representatives (see file for letters.)

Jonas Barcellano, a radio frequency engineer for Sprint's wireless telecommunications system, said Sprint was receiving many customer complaints about dropped calls in the Prospect area. He said the minimum tower height Sprint can use to fix that problem is about 100 feet. Commissioner Carlson asked about the style of antennae that could be used. Mr. Barcellano said that Sprint will use the traditional style mounts. [For verbatim details, please refer to the audio-visual CD.]

**Opposed**

Carolyn Head-Russ, speaking on behalf of Head Family Properties, stated that there is already a cell tower about one mile down the road. She said this tower will be "extremely visible" because there are no trees close enough to the tower to cover it. Also, there are proposals being considered for multi-family residential development/s next to the proposed tower.

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Lawrence Falk, Mayor of the City of Prospect, said that Prospect has passed a Land Development Code which allows it to regulate the height of cell towers. He distributed a few copies of the Prospect Land Development Code to the Commissioners. He mentioned that the counsel for Sprint had discussed the letters of support from the City of Prospect – Mayor Falk said the City was approached asking about replacing a tower at the fire station and putting a cellular module on it. The City understood that this would be a replacement of the tower as it is now, not taller. He said the City of Prospect does not support the plan as it is being proposed now. He said he has gotten a lot of residents' input on this project, and none of them have expressed a need for a cell tower or mentioned problems with their cellular service. He said there is not a single monopole tower in this area that is over 90 feet tall – why do they need one that is 150 feet tall?

Mr. Ruf and Mayor Falk discussed various towers in the area. Mr. Ruf said that LG&E might not be able to offer cellular phone antennae on their poles. Commissioner Jones said he was concerned because the fire chief for this district said that he wanted the tower to better serve the citizens of Prospect and increase safety – why is the Mayor opposing the tower? Mayor Falk said there was a discussion with the fire chief about two years ago regarding the need to replace the existing tower with a new one. Again, the Mayor said he was under the impression that the new tower would be the same size, height etc. as the old one. The Mayor said that any problems the Prospect Fire Department is having with communications may be due to a type of program they are using, not with the height of their tower. Commissioner Ernst said there was some confusion among the Commissioners, because they were hearing two opposing viewpoints from representatives of the same city.

Commissioner Howard asked Mayor Falk if the City of Prospect had to abide by the FCC regulations regarding cell tower location and radio frequency emissions. Deborah Bilitski, Legal Counsel for the Planning Commission, said that Louisville Metro has its own standards for cell tower height; however, Louisville Metro and the City of Prospect has to abide by all Federal and applicable State laws regarding this issue.

Mike Haag, a Prospect resident, described the landscape and view along that stretch of road by the proposed tower. He is concerned about such a large tower reducing the property values in the area. He said there does not seem to be a problem with dead spots or dropped calls..

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Bill Glancy, a nearby resident, said that Mr. Ruf's photos of the surrounding area seem to suggest that this is a rural area with much open space. He said that right across US 42 from this site are 72 condominiums units (he is an owner of one) and neither he nor any of his neighbors were notified of this project. He also mentioned that this site is located in one of the lowest areas in the district (barely above the floodplain.) He suggested that if the tower were located on a higher ridge of land, maybe it wouldn't have to be so tall.

**REBUTTAL**

Mr. Barcellano said that Sprint is using 90 mhz and other carriers are using 800-900 mhz; therefore, Sprint needs a higher tower because it is working harder than other cellular carriers in the area. Ms. Keene explained why this site is better for their tower than another site which had been discussed, which is about 1 mile down the road. Replacing the tower with the same height would not resolve the Fire Departments issues. The minimum tower height needed for Sprint to cover the Prospect area is 100 feet; however, limiting the tower to 100 feet would not resolve the Fire Department's issues and would not enable others to co-locate on the tower. She said it seemed to make more sense to build one tower that would serve Sprint customers, the Fire Department, and three other carriers, rather than to build several towers.

Mr. Ruf stated that, under the statute, meeting the notification requirement falls to the applicant, and he asked Ms. Keene to explain why the condominium owners across the street were not notified. Ms. Keene said the statute sets forth how and who is notified. She said they had sent a notice to all the contiguous property owners. She said they used the PVA resources to obtain that information. Ms. Bilitski said that, for condominiums, the statute requires notification to be sent to the council of co-owners/condo-owner's association, not to the individual unit owners. Commissioner Howard said that sometimes PVA records will note the name of the developer as the owner, and not necessarily the condominium co-owner's association.

**An audio/visual recording of the Planning Commission hearing related to this case is available in the Planning and Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the cd of the January 19, 2006 proceedings.**

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**Construction of cell tower and associated waivers**

On a motion by Commissioner Wells-Hatfield, the following resolution was adopted:

**WHEREAS**, the Commission finds that based upon evidence and testimony presented in the application, the case file, during Land Development & Transportation Committee review, and during the Public Hearing, that the applicant has requested to construct a 150-foot monopole cellular tower with a ground equipment compound, including waiver requests of the lot size, of the 50-foot setback from residential property lines, to reduce the landscape buffer area, to allow equipment structures to encroach into the lease lot's required yards, and to exceed the maximum height for a cellular tower; and

**WHEREAS**, the requested Waiver of Section 4.4.2.B(1) to allow the applicant's equipment shelters to be located in the front yard of the lease area, to allow said shelters to be located less than 50 feet from the lease boundary lines and the North and west property lines of the Fire Department's lot will allow the proposed monopole and its compound to be located behind the Fire Department's building, making it less visible; and

**WHEREAS**, the Commission finds that strict application of this provision would require the lease compound to be located in an area on the Fire Department's property which would make the proposed facility more visible to the public; and

**WHEREAS**, the Commission further finds that the requested Waiver of Section 4.4.2.B(2) to allow landscaping plantings to be located on the Fire Department's lot rather than within the lease compound is necessary to allow for maximum use within the compound, because by locating the landscaping outside of the lease area, there will be space available for co-location of additional carriers, thus reducing the need for additional towers in the area; and

**WHEREAS**, the Commission further finds that strict application of this provision would cause the required landscaping to be located within the Applicant's lease area thereby reducing or perhaps eliminating space available for co-location on the monopole by other carriers; and

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**WHEREAS**, the Commission further finds that the requested Waiver of Section 4.4.2.B(4) to allow the tower to exceed the 100-foot height limit recently adopted by the Prospect City Council is necessary because the Harrod's Creek Fire District has contracted to co-locate on the proposed facility, and the Fire District currently has poor or no communication capabilities within certain areas of Prospect; and location of the Fire District's communications equipment at 150 feet will alleviate many of these coverage deficiencies; and

**WHEREAS**, the Commission further finds that construction of the monopole at 150 feet will provide co-location opportunities for other carriers that hold FCC licenses to cover this area; and that if the monopole were limited to 100 feet in height, there would be no co-location opportunities, thus any other carrier would be forced to construct an additional tower facility; and

**WHEREAS**, the Commission further finds that strict application of the 100-foot height limit would eliminate co-location of any other carrier, including the Fire District; and by allowing the structure to be constructed to a height of 150 feet, the Fire Department can alleviate its communications system's coverage deficiencies, thereby enhancing public safety; and also this would provide additional space for co-location of at least three additional carriers; and

**WHEREAS**, the Commission further finds that the requested Waiver of Section 4.4.2.B(8) to allow the lease area to be less than 9000 square feet would make the best use of the property, since the applicant does not require 9000 square feet in order to accommodate the proposed monopole and associated equipment; and the proposed lease area is sufficient to serve the applicant's needs, as well as those of any carrier who may co-locate on the facility; and

**WHEREAS**, the Commission further finds that strict application of this provision would deprive the Fire Department of the reasonable use of its land and the applicant would have more land than is necessary to maintain and operate the proposed facility; and granting this waiver request will preserve the remainder of the Fire District's property for its best use; and

**WHEREAS**, The Commission finds the proposal to be in conformance with all other applicable guidelines of the Comprehensive Plan and the adopted zoning regulations; now, therefore be it

**RESOLVED**, that the Louisville and Jefferson County Planning Commission does hereby **APPROVE** the proposal to construct a 150-foot monopole cellular tower, with an additional 10 feet on top as a lightning rod and with a whip antenna for

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use by the Fire Department, and with a ground equipment compound, **ON CONDITION** that the site is developed in strict compliance with the development plan submitted and the applicable design standards of Section 4.4.2.B of the Land Development Code, **AND** that a detailed landscaping plan is submitted for review and approval by staff prior to any request for site disturbance, **AND** that the applicant readily work with others seeking to co-locate on the tower; and does hereby **RECOMMEND** to the City of Prospect that all associated waiver requests of the lot size, of the 50-foot setback from residential property lines, to provide an alternate landscape buffer area, to allow equipment structures to encroach into the lease lot's required yards, and to exceed the maximum height for a cellular tower, be **APPROVED ON CONDITION** that the site is developed in strict compliance with the development plan submitted and the applicable design standards of Section 4.4.2.B of the Land Development Code, **AND** that a detailed landscaping plan is submitted for review and approval by staff prior to any request for site disturbance, **AND** that the applicant readily work with others seeking to co-locate on the tower.

**The vote was as follows:**

**YES: Commissioners Ernst, Carlson, Howard, Jones, Abstain, Queenan, Hamilton, and Wells-Hatfield.**

**NO: No one.**

**NOT PRESENT: Commissioner Adams.**

**ABSTAINING: No one.**

On a motion by Commissioner Howard, the following resolution was adopted:

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed Development Plan for Docket No. 4-02-05 **subject to the above listed conditions of approval as recommended in the staff report.**

**The vote was as follows:**

**YES: Commissioners Ernst, Carlson, Howard, Jones, Abstain, Queenan, Hamilton, and Wells-Hatfield.**

**NO: No one.**

**NOT PRESENT: Commissioner Adams.**

**ABSTAINING: No one.**



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**STANDING COMMITTEE REPORTS**

**Land Development and Transportation Committee**

No report given.

**Legal Review Committee**

No report given.

**Planning Committee**

No report given.

**Policy and Procedures Committee**

No report given.

**Site Inspection Committee**

No report given.

**ADJOURNMENT**

The meeting adjourned at 9:00 p.m.

  
Chairman

  
Director