

City Council Introduction: **Monday**, August 21, 2000
Public Hearing: **Monday**, August 28, 2000, at **1:30 p.m.**

Bill No. 00R-232

FACTSHEET

TITLE: SPECIAL PERMIT NO. 1846, requested by U.S. West Wireless, L.L.C., for authority to construct a 78' tall personal wireless facility (wireless telecommunications tower), with requests to waive the landscaping requirements and the fall zone, on property generally located at No. 9th & "W" Streets.

STAFF RECOMMENDATION: Conditional approval.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 06/28/00; 07/12/00; 07/26/00 and 08/09/00
Administrative Action: 08/09/00

RECOMMENDATION: Conditional approval, with amendment (6-1: Duvall, Carlson, Taylor, Krieser, Hunter and Bayer voting 'yes'; Newman voting 'no'; Steward and Schwinn absent).

FINDINGS OF FACT:

1. The Planning staff recommendation of conditional approval is based upon the "Analysis" as set forth on p.3-5, concluding that the proposed tower is of a style and in a location that will minimize the visual impact. The base equipment is contained in a small 42"x42"x12" cabinet. The area on which the tower will be located is developed as a steel plant. The residential area to the west is zoned industrially, and could re-develop for industrial uses. Given the slim style of the tower and the minimal base equipment, it would have a minimal impact in this area.
2. The applicant's testimony is found on p.8-9; 11-12; 13; and 14. Throughout the course of six weeks since the initial public hearing, the applicant complied with the Planning Commission's request to investigate alternative locations, including sites on the University of Nebraska-Lincoln campus; however, on August 9, 2000, the applicant advised the Commission that the original site at 9th & "W" is their desired location, including the waiver of landscaping and the fall zone. The results of the meeting with the neighborhood were not available.
3. Testimony in opposition is found on p.9-10, and the record consists of 5 letters and email messages in opposition (See p.48-54. The staff response to the North Bottoms Neighborhood concern about whether or not the Planning Commission can deny this request is found on p.55.
4. The Planning staff had requested an additional Condition #2.1.3 regarding structural calculations; however, the necessary calculations have been done and are satisfactory. Therefore, Condition #2.1.3 is no longer needed. (See p.047 and Minutes, p.14).
5. Condition #2.1.2 had required that the applicant provide landscaping in an alternate location; however, the City Attorney determined that such a condition cannot be required and the staff requested that it be deleted. (See p.6 and Minutes, p.10).
6. On August 9, 2000, the Planning Commission voted 6-1 to agree with the staff recommendation of conditional approval, including the waiver of landscaping and the fall zone, with amendment deleting Condition #2.1.2 (See Minutes, p.14-15).

FACTSHEET PREPARED BY: Jean L. Walker

DATE: August 14, 2000

REVIEWED BY: _____

DATE: August 14, 2000

REFERENCE NUMBER: FS\CC\FSSP1846

ANALYSIS:

OVERVIEW:

1. This is a request for a 78' tall personal wireless facility (wireless telecommunications tower) generally located at N. 9th and "W" Streets.
2. The proposal is for a slender pole that has the antenna and remote units mounted at the top in a cylindrical formation. Additional antenna are proposed to be flush mounted further down the pole. The total height of the proposed facility is 78' tall. The base equipment is to be contained in a metal cabinet that is roughly 42" wide by 42" high by 20" deep. The cabinet looks similar to the cabinets containing electronic equipment that one sees at signalized intersections.

STANDARDS FOR EVALUATION:

Conformity with Comprehensive Plan.

3. The proposed facility is located in an industrial district that is shown as industrial on the "Figure 16 Lincoln's Land Use Plan." The proposal is generally consistent with the Comprehensive Plan.
4. The proposed wireless facility is to be located on the grounds of the Capital Steel plant. The 10th Street overpass and several utility poles are in the immediate vicinity. The proposed tower will be slender, and the antennas will be mounted flush to the pole.

Preference of site location in accordance with Chapter 27.68.080.

5. The proposed site is a "Preferred Location Site" in that it is an industrially zoned and developed area, the facility is minimally obtrusive, and would have a minimal impact on the abutting residential uses.

Compatibility with abutting property and surrounding land uses.

6. A single family residence does exist within 167 feet west of the site. The house is zoned I-1 and the property could be developed for much more intensive uses by right. The area a block to the west is zoned R-4, and is developed with single family residences.
7. Given the design of the proposed tower, it would be less obtrusive than the steel plant. There are a number of power lines and lights in close proximity. The proposed tower will blend in with the existing infrastructure in this location.

Adverse impacts such as the visual, environmental or noise impacts.

8. The proposed tower is a slim pole with cylindrical antenna and equipment mounted closely to the pole that will blend well with the surrounding utility and light poles.

Availability of suitable existing structures for antenna mounting.

9. The applicant indicated that they explored the possibility of co-locating the antenna with power poles and billboards. The power poles did not provide opportunities to locate the antennas at the necessary height. In order to locate on the billboard, the antenna would be required to extend 10' above the billboard, making it more obtrusive. Additionally, the billboard would not provide the coverage required for the site.
10. The applicant looked at the feasibility of locating on two existing transmission towers. The 911 tower close to this site is in the process of being re-located to accommodate the baseball stadium. The other tower did not provide the coverage needed.

Scale of facility in relation to surrounding land uses.

11. While the proposed tower will be taller than the utility poles that are in close proximity, the tower will not be out of scale with the larger industrial operation on the property.

Impact on views/vistas and impact on landmark structures/districts, historically significant structures/ districts, architecturally significant structures, landmark vistas or scenery and view corridors from visually obtrusive antennas and back-up equipment.

12. The proposed facility is within a Capitol View Corridor. However, at this location and at the proposed height, the facility would not have a negative impact on the view of the Capitol.

Color and finish.

13. The pole is proposed to be galvanized, the antenna and power pack are proposed to be a neutral color, and the base equipment is propose to be painted a neutral green.
14. The proposed facility is in an airport turning zone. However, the proposed height of 78' is well within the height allowed in the turning zone.

Ability to co-locate.

15. The application has requested that they not be required to provide for future co-location at this site. The Zoning Ordinance provides that the ability to co-locate is one of the standards for evaluation of such facilities. Additionally, Section 27.68.110(d) of the Zoning Ordinance states that towers less than 100 feet in height shall be designed to accommodate one additional provider, unless co-location is shown to be infeasible.
16. Subsequent conversations with the applicant indicate that they are willing to design the tower for an additional provider and to reserve space at the base for a future provider.
17. This particular application shows antenna for the applicant at two different heights. If another provider were to locate on the structure, the tower would need to be higher.
18. The proposed tower blends well with the other light poles and utility poles in the area. A taller tower would be more obtrusive. Additionally, most of the other providers use base equipment and antennas that would be more obtrusive.

Screening potential of existing vegetation, structures and topographic features, and screening potential of proposed facilities, ground level equipment, buildings and tower base.

- 19. The applicant has requested a waiver of the landscaping requirement. The Design Standards require a landscape screen of 70% of the area around the base of the tower from the ground to 10' in height, with half the plant material reaching a mature height of 35'.
- 20. Given the setting, a waiver of the landscaping requirement would be appropriate.
- 21. The Urban Development Department has suggested that the landscaping be provided elsewhere in the neighborhood.

Impact on natural resources, open spaces, recreational trails, and other recreational resources.

- 22. The facility will not have a negative impact on natural or recreational resources.

GENERAL:

- 23. The applicant has requested a waiver of the 39 foot fall zone. The area to the east and to the south is rail road right-of-way, the area to the east is undeveloped right-of-way. The closest building is over 100 feet from the proposed tower. If the tower were to fall, it would not pose a threat to the public or to structures.

STAFF CONCLUSION:

The proposed tower is of a style and in a location that will minimize the visual impact. The base equipment is contained in a small 42"x42"x12" cabinet. The area on which the tower will be located is developed as a steel plant. The residential area to the west is zoned industrially, and could re-develop for industrial uses. Given the slim style of the tower and the minimal base equipment, it would have a minimal impact in this area.

STAFF RECOMMENDATION:

Conditional approval

CONDITIONS:

Site Specific:

- 1. This approval permits a 78' tall wireless communications facility for a period of 15 years, with a waiver of the fall zone required by 27.68.110(g) and a waiver of the landscaping required by the Design Standards for Zoning (page 60) provided that the landscaping is provided in a different location.

General:

- 2. Before receiving building permits:
 - 2.1 The permittee shall complete the following instructions and submit the documents and plans to the Planning Department office for review and approval.

2.1.1 Provide evidence that the proposed tower meets all FAA, and state and local aviation requirements.

~~2.1.2 Provide landscaping or a surety to guarantee landscaping in an alternate location to the satisfaction of the Urban Development, Parks & Recreation and Planning Departments.~~

(Per Planning Commission at staff's request, 08/09/00**)**

3. The following conditions are applicable to all requests:

- 3.1 Before operating this personal wireless facility, all development and construction is to comply with the approved plans.
- 3.2 The personal wireless service provider shall comply at all times with the current applicable FCC and FAA standards and regulations, and any of those of other agencies of the federal government with authority to regulate towers and antennas.
- 3.4 All privately-owned improvements, including landscaping, are to be permanently maintained by the owner.
- 3.5 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
- 3.6 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.
- 3.7 The permitted shall, within 10 days of written demand, reimburse the City for all direct and indirect costs and expenses as provided in Section 27.68.090, in connection with the issuance and review of this permit.
- 3.8 As a part of this approval, the permittee agrees that the permittee, successors and assigns shall, at its sole cost and expense, indemnify and hold harmless the City, its officers, officials, boards, commissions, agents, representatives, and employees against any and all claims, suits, losses, expenses, causes of actions, proceedings, and judgements for damage arising out of, resulting from, or alleged to arise out of or result from the construction, operation, repair, maintenance or removal of the provider's facilities. Indemnified expenses shall include, but not be limited to, all out-of-pocket expenses, such as costs of suit and defense and reasonable attorney fees, and shall also include the reasonable value of any services rendered by the City Attorney's office and any employees of the City and any consultants retained by the City.

3.9 The City Clerk is to file a copy of the resolution approving the permit and the letter of acceptance with the Register of Deeds. The Permittee is to pay the recording fee.

Prepared by:

Jennifer L. Dam, AICP
Planner

SPECIAL PERMIT NO. 1846

PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 28, 2000

Members present: Newman, Taylor, Steward, Hunter, Duvall, Carlson and Bayer; Schwinn and Krieser absent.

Planning staff recommendation: Conditional approval.

Jennifer Dam of Planning staff submitted two letters in opposition from property owners in the neighborhood.

Proponents

1. Stephen Forbes of U.S. West Wireless, presented the application. U.S. West is striving to be a new wireless provider in Lincoln with a concept for wireless coverage in the community of Lincoln beginning with an initial number of sites for initial launch, followed by some refining later. This is their first application in Lincoln.

The proposal is to erect a 78' pole located on an industrial parcel of land which they attempted to locate away from residential uses, while still accomplishing their coverage needs. The coverage needs in this area are dual coverage--for Memorial Stadium, the new ballpark complex as well as I-180 traffic. This system does not extend to heights frequently seen as their equipment is different.

Forbes stated that Lincoln's wireless ordinance is a sensible approach to try to manage the industry and its impacts on the community and U.S. West will endeavor to obtain sites that are preferential under this ordinance. Often times they will not have to erect a pole, but in this case they are. Forbes displayed pictures of a silhouette style pole, with a unipak (three antenna panels of about 4' high and 7" wide, wrapped in a way to appear as an extension of the pole). At the base of the pole, there will be base equipment, a 42" x 42" x 20" box, differing substantially from a lot of the larger compounds. This would fit in the back seat of a car. There are wall mount type units as well. This application would require the ground unit.

2. Corby Dill, of U.S. West Wireless, also testified. He is in charge of the system design. In general, over the next few months, U.S. West will be bringing some applications forward to cover the City of Lincoln with general coverage. They will then come back later to fill in areas where there are weak spots and do more "in building" type coverage. This particular site is one that is of great importance--the UNL campus is populated nine months of the year; the football stadium is a very high point of coverage, even though used minimally during the year; and the addition of the baseball complex. I-180 in and out of town is very heavily traveled and is an area that needs coverage. This site would allow the best coverage on all three of these facilities to obtain the objectives of U.S. West with this site.

Steward asked whether the applicant had investigated putting this on an existing structure like the scoreboard at the stadium. Dill indicated that dealing with the University has been another step. Getting UNL approval for something like that would be more difficult. He has not personally had discussions with the University, however. There would be interference issues if the antenna were placed on the scoreboard.

Steward suggested that it is general policy to thoroughly investigate existing structures in the area or planned structures. If University-related activities are the primary target, he believes there should be some possibility of negotiating with UNL. Dill responded that U.S. West did investigate other structures in the area, i.e. the billboards on I-180; LES structures such as light poles. They have not come to any agreement for installation of the antenna on any other structures. They did investigate in this immediate area before deciding to erect a pole.

Forbes concurred that they have not visited with UNL. In researching the billboards and LES poles, in both cases there were complications. They would not achieve the isolation needed on the LES poles which were in the right-of-way. They would have to create an extension to the billboards that would have drawn more attention to the billboard and increased the adverse effect that people have towards billboards. All other potential locations in this area tended more toward the residential uses.

Hunter noted that one of the Commission's goals is to reduce the number of poles. Is there a reason why U.S. West did not want to build this pole with another carrier option? Forbes clarified that this pole has been designed for the possibility of collocation. They do have pole designs of 55' in a number of their other markets where the property owners have the preference for a more slender, sleeker appearance. This pole design is not their sleekest because they want to respond to collocation possibilities. A more slender, sleek appearance that is less distracting is feasible.

Carlson observed that the neighbors wonder why this could not be moved further to the west. Dill stated that they did examine some areas to the east of this location towards 14th Street on the north side of the railroad tracks. This particular area caused problems for coverage on I-180 headed north and would necessitate another site around Cornhusker Highway. Moving toward the University resulted in issues with I-180 and interference issues. Dill does not believe there is much on North 10th Street. They did examine a gravel parking lot between the railroad and UNL property, but it would have caused problems with coverage on I-180 because of the trees and foliage.

Opposition

1. Sheryl Burbach, President of North Bottoms Neighborhood Assn., testified in opposition. The neighborhood is currently working with Urban Development on a focus area plan which looks at the strengths and weaknesses of a neighborhood and tries to capitalize on strengths and work on weaknesses. The strengths of the North Bottoms Neighborhood are close proximity to downtown, UNL and the baseball complex. They need to attract more homeowners to the neighborhood. At a recent board meeting, the members walked down to the area and they did look at this cell tower location. It would be nice if Capital Steel could move somewhere else. They want to preserve the neighborhood and want to look forward to improving the neighborhood so they do not want to accept any unattractive towers to this neighborhood that would block the vistas. This would defeat the goal of improving the looks of this neighborhood.

U.S. West did not contact the neighborhood.

Carlson noted that some different locations in this area have engineering problems and some were aesthetic problems. If we were to assume there needed to be a tower somewhere in that proximity, would the neighborhood have an interest in discussing a different location? Burbach's response was that the neighborhood is trying to preserve what they have now. They have hope for the future that it will look

better. A site that takes this neighborhood out of the equation would be their goal. They would not be opposed to incorporating it with something else that is already there, but putting up another structure is not acceptable to this neighborhood.

Bayer inquired as to the number of towers already in this neighborhood. Burbach stated that they have received information on another cell tower going up on 14th & Military and the 911 tower is being relocated over by the baseball field. She suggested that U.S. West share with the 911 tower.

2. Wynn Hjermstad, Urban Development Department, stated that Urban Development is not opposed to this tower location. However, she is working on the Focus Area Plan for this neighborhood. There are a number of proposals going on in North Bottoms. Urban Development thought this tower was in a different location when she wrote the letter dated June 9th; however, Urban Development does support the neighborhood. Cell towers are not always a very welcome addition to a neighborhood and they are not great architectural features for neighborhoods, but Urban Development also understands the necessity. Hjermstad noted that U.S. West is requesting to waive the landscaping requirements. Hjermstad had suggested that the applicant be required to provide landscaping in some other area of the neighborhood if the waiver is granted; however, the Law Department has indicated that such a condition is not appropriate. If it is agreed that the landscaping for the tower site should be granted, then the City does not have the authority to require the landscaping at some other alternative location. It cannot be made a cost of doing business. Hjermstad suggested that cell tower companies might want to consider something like this on a voluntary basis.

In regard to the future thinking and planning for this neighborhood, Steward observed that the proposed location of this tower is adjacent to railroad tracks, adjacent to a major overpass thoroughfare and in the midst visually of an industrial area. Although the tower would be within the boundaries of the neighborhood, from a visual standpoint it is Steward's opinion that this tower would never appear to be an intrusion on the neighborhood unless there is real opportunity for change in the land use of this immediate area. What is Urban Development's prospect, from the city's point of view, of that little industrial corner changing? Hjermstad responded that the neighborhood's biggest concern initially is the encroachment—that it not encroach any further into the residential area. Whether that industrial area is likely to change is more of an economic consideration for Capital Steel. One of Urban Development's goals will be to stop the expansion of more industrial into the neighborhood. They have not yet talked with Capital Steel. They have just begun the Focus Area process. She does not believe it is likely that that land use will change, however.

Rick Peo of the City Law Department advised that it is not an appropriate condition to include the requirement that the applicant put landscaping in a different location. The purpose of the landscape screen is to avoid the impact of the tower at this location. You cannot require any exchange. Therefore, Condition #2.1.2 should be deleted from the staff recommendation.

Bayer inquired about collocation on the 911 tower. Jennifer Dam of Planning staff stated that the new 911 tower will be located at 14th & Military Road with a variety of equipment on it. It does have a couple of slots for future cell tower locations; however that site is outside the search ring for this particular location. U.S. West uses a tighter search ring. She is concerned that it would not help them enough to avoid another tower.

Bayer inquired whether a cell tower could also be an electrical wire pole. Dam responded that there are a lot of possibilities. In fact, there are several companies working with LES. However, in this particular location with wooden utility poles, they have not found an application that works real well.

Bayer noted that the staff is recommending approval, with conditions; however, we are dealing with a very fragile neighborhood. Is there anyplace else? Dam observed that there has been a lot of talk about the billboards, but those are already very sensitive and the antenna would have to go above the billboard which might draw more attention to it. It would be staff's concern that a cell tower on top of the billboard might cause the billboard to remain in place longer than we desire. Dam agreed that this is a very fragile area. However, the proposed area is zoned industrial and surrounded by industrial uses and it is a very slim tower. Capital Steel's operations are right in the area. The base equipment is very small. She believes this application is suitable for this area. She would have considered it differently if it had large base equipment and the large antenna mounting bracket.

Bayer suggested that cell towers are a lot like railroads—you can maybe adjust them to where they go but not stop them. Lincoln now has six wireless providers. At what point can the city limit the number of providers? Dam indicated that it is illegal to limit the number of providers. The number of providers is based on Federal law and licenses granted by FCC. Dam suggested that the Commission could defer this hearing so that additional locations can be considered. She suggested that there might be a possibility for collocation on the lights for the baseball stadium.

Dam also observed that the UNL process is different than a zoning process; however, the staff could ask the applicant to make contact with the University to explore that option.

Hunter knows that there is a mandate of the Commission to protect the environment, including the visual environment. This is all going to come to a crossroads where we are in conflict with an FCC regulation and she is fearful that it is going to become a legal issue. Dam assured the Commission that as the project planner, she considers the design of the tower and the impact it would have based on the surrounding uses.

Hunter noted hearing "our technology". What's the reality of getting some consistency in terms of their technology? Dam responded, stating that a big part is digital versus analog technology. Digital has a smaller coverage area, thus the need for more sites.

Response by the Applicant

Forbes assured the Commission that U.S. West does take the neighborhood seriously. As far as Urban Development and the scenario described, U.S. West would not have a problem with posting a bond for landscaping in an alternate location. They would contribute \$500 to \$1000 for the purpose of providing landscape to suit the needs of the neighborhood. They do have situations where ground units are a preference to the owners without landscaping because the landscaping tends to encroach more.

Steward asked the applicant whether they would agree to a two week deferral in order to give the applicant more time to convince the Commission that they've done due diligence on all the site possibilities as well as meeting with the neighborhood association. Forbes stated that he has been making attempts to meet with neighborhood associations in the community; however, in this situation, he did not have the opportunity to

do so. The applicant did explore all the options in the search area and this seemed to clearly be the best location. He does not know whether the University would entertain discussions, but he does not believe that a location on campus will accomplish their objectives here.

With regard to U.S. West search rings, to move back south to the University is going to cause them engineering difficulties and coverage issues that they are trying to eliminate with this location. This location will give them the best coverage for what they can work out with the city and the neighborhoods. Dill could investigate going to places like UNL, but he believes it will result in two poles as opposed to one. He does not know what issues would arise with putting a pole to the south. There are visual corridors. He has reviewed many options over the past six months in this search ring and this ended up being the best location that they could agree upon with the Planning staff in terms of minimal impact without compromising coverage.

Steward moved to defer for two weeks, seconded by Carlson. Steward understands the process of the engineering search and he believes there has been a lot of discussion with the staff. However, if it is primarily a University-related market that is being sought, then they have not performed due diligence in exploring locations on University property. Steward stated that he also understands the apprehensiveness of trying to ask that question, but two weeks to ask that question and meeting with the neighborhood association would give him more comfort that there actually is no other alternative.

Carlson agreed. If cell towers are going to move into something where our hands are tied, we owe it to the community that we've investigated every single option. He believes they have done due diligence with the staff, but he believes they need to bring more people to the table. Carlson encouraged the applicant to meet with the neighborhood association. It could be an issue of mitigation with the neighborhood as opposed to an alternative location.

Hunter stated that she is very encouraged by the posture that the Commission is taking; that is, that there needs to be a protected environment with regard to the number of cell towers. She cautioned that the Commission will be considering these very carefully so that we don't wind up with a sea of cell towers as the landscape for this city.

Taylor stated that he is "pro-neighborhood", but he also looks at the necessity of having this type of equipment in the area. He does not have any problem with the location they are proposing. But he wants to be sensitive to the neighborhood association. He agrees that they need to take a due diligent approach and seriously consider some other alternatives.

Steward commented that the Commission knows from experience over the last couple of years that technology changes and designs change. Among the towers he has seen before the Commission, this appears to be the best looking one. So, as an object in the environment, he would be far less concerned about this tower ultimately. We also know that technology changes and we are in conflict with the aspirations of the neighborhood more than the existing circumstance. He believes there may be opportunity for discussion with the neighborhood.

Newman sees a traffic safety red flag glaring when she hears that they want to attract the I-180 driving population. When she thinks of people coming on that six-lane corridor it terrifies her. If we located the tower on the other side of Memorial Stadium and just catered to University students, she would be happy.

Bayer informed the Commission that he had two neighbors from the area call him in opposition.

Motion for continued public hearing and administrative action on July 12, 2000, carried 7-0: Newman, Taylor, Steward, Hunter, Duvall, Carlson and Bayer voting 'yes'; Krieser and Schwinn absent.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 12, 2000

Members present: Carlson, Schwinn, Steward, Krieser, Taylor, Newman and Bayer; Hunter and Duvall absent.

Jennifer Dam of Planning staff submitted an email from the North Bottoms Neighborhood Association requesting delay of this application until they receive additional feedback from the applicant.

In addition, Dam noted that at the last meeting, the question about use of the baseball lights and UNL property came up. The baseball lights will not be installed for at least a year. She did not know whether we would meet the need requirements of the applicant by asking them to wait that long and it would not meet the ordinance requirement to act within a reasonable time.

Dam also talked with UNL. Their Master Plan shows a building immediately north of Memorial Stadium in what is now a parking lot so they would not consider putting a tower in that parking lot. The Athletic Dept. said they had not talked about putting something on the building or the stadium and offered to talk with other people in the University to determine whether they would consider something if appropriately designed. Therefore, Dam requested another two-week deferral in order to get more feedback from the University.

Proponents

1. Sharon Martin, real estate market manager for **U.S. West Wireless**, stated that the applicant continues to take the position that the site at Capitol Steel is the most logical choice to provide the engineering coverage for what they are looking for as well as the least aesthetic negative impact on the community. Their concern with the UNL property is that there will be even more neighborhood and public concern on how that will look. Locating on the stadium itself is another enormous concern for the applicant.

Steward asked the applicant whether they are implying that the Commission should vote today or is the applicant willing to wait another two weeks? Martin stated that she would leave that to the Commission's judgment.

Schwinn moved to continue for two weeks, with continued public hearing and administrative action scheduled for July 26, 2000, seconded by Steward and carried 7-0: Carlson, Schwinn, Steward, Krieser, Taylor, Newman and Bayer voting 'yes'; Hunter and Duvall absent.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 26, 2000

Members present: Steward, Carlson, Newman, Taylor, Duvall and Schwinn; Hunter, Bayer and Krieser absent.

Jennifer Dam of Planning staff submitted a request from the applicant for another two-week deferral as they are working with the University of Nebraska for an alternative site.

Dam also submitted a copy of an email received from Allen Burbach requesting an explanation of criteria used by the Planning Commission in approving or denying the proposal. Dam stated that she responded to Burbach's email and outlined the criteria and attached a copy of the staff report which addresses the criteria. If the Planning Commission votes to deny the request, the Commission must identify the difference of opinion on those criteria and provide its denial in writing as required by federal law.

Steward moved to defer, with continued public hearing and administrative action scheduled for August 9, 2000, seconded by Taylor and carried 6-0: Steward, Carlson, Newman, Taylor, Duvall and Schwinn voting 'yes'; Hunter, Bayer and Krieser absent.

CONTINUED PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 9, 2000

Members present: Duvall, Schwinn, Newman, Carlson, Steward, Taylor, Krieser, Hunter and Bayer.

Proponents

1. Jill Bazzell testified on behalf of the applicant, **U.S. West Wireless (now Qwest Wireless)**. The Planning Commission had requested that they investigate alternative locations and talk with the neighborhood association. The applicant has complied with the requests. All other alternative sites were ruled out as possible locations for RF reasons. They did investigate the UNL scoreboard but it does not give the coverage needed for the area. Therefore, the applicant is requesting that the original application site be considered and approved with the waiver of landscape requirements and fall zone.

The Commission asked for the neighborhood response. Corby Dill of Qwest Wireless advised that Steve Forbes of Qwest Wireless met with the neighbors after the first public hearing, but Dill did not have any specific information. He knows that the neighborhood wanted the landscaping to be done elsewhere in the neighborhood but the City Attorney's office advised that such a requirement is not appropriate and the applicant is not willing to do so. Dill believes that the neighbors are opposed to the facility in general.

There was no testimony in opposition.

Jennifer Dam of Planning staff requested that Condition #2.1.2 regarding providing landscaping at a different location be deleted. The City Law Department has determined that we cannot ask for this condition. The staff had also previously requested to add a condition regarding structural calculations; however, Dam advised that those calculations have been provided and are satisfactory so the additional condition is not needed.

Carlson assumed from the correspondence that the neighborhood's objection is the location of the structure. He presumes that has not changed and he has no sense that there were mitigating design influences that would change that. Dam concurred.

Hunter inquired about the bond. Dam advised that the bond required by the ordinance has been posted to guarantee removal. It need not appear as a condition of approval because it is a minimum requirement.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

August 9, 2000

Hunter moved to approve the Planning staff recommendation of conditional approval, with amendment deleting Condition #2.1.2, seconded by Taylor and carried 6-1: Duvall, Carlson, Taylor, Krieser, Hunter and Bayer voting 'yes'; Newman voting 'no'; Steward and Schwinn absent..