

Quirk in town code may streamline approval of downtown cell tower

By J.R. Logan

The Taos News, 5/5/2016

A proposal to build a 150-foot tower downtown may not need certain approvals because it would be built on land owned by the town of Taos.

The town council recently agreed to lease a small piece of land behind Taos Town Hall to Atlanta-based Commnet Wireless for the construction of a tower. Commnet says the tower will provide better cell service downtown, and the town says it will improve emergency communications.

Last month, the town council unanimously voted to lease the property to Commnet for \$18,000 a year.

The town code contains specific provisions for the construction of towers and antennas that include minimum setback requirements and considerations to reduce the aesthetic impact.

However, a single sentence in the code could mean the Commnet project might not be subject to some of those rules.

The code says antennas or towers located on property owned or leased by the town “are deemed to be permitted uses and shall not require administrative approval or a special use permit.”

That section could allow Commnet to bypass the special use permit process, which includes specific requirements for towers. Such permits must also receive the approval of the planning and zoning commission at a public hearing.

The code says that the planning commission must “consider the health, safety, welfare and continued aesthetic beauty of the community” when judging any special use application. The commission is also directed to consider several factors when considering a special use application for a tower, including its proximity to residential structures and whether the tower design reduces “visual obtrusiveness.”

The code also dictates specific setback requirements that must be met before a special use permit is approved. If the property on which the Commnet tower were not owned by the town, the code says it would have to be at least 150 feet from the property boundary of the adjacent Taos Retirement Village.

By bypassing the special use permit process, the Commnet tower may not be subject to any of those limitations.

The Taos News was made aware of the provision exempting towers built on town-owned land by Louis Fineberg, town planning director, who was reviewing the code in anticipation of the Commnet application.

Even if Commnet is not required to get a special use permit, the tower may still be subject to the review of the Historic Preservation Commission. It may also be required to get a variance because of its unusual height, though it's not yet clear whether that will be necessary.

Mark Hensen with Commnet Wireless told *The Taos News* Tuesday (May 3) his company originally approached the town with the idea of building a tower downtown to improve cell service. Hensen said town officials expressed an interest in using the tower to boost their own emergency communications capabilities. In August 2014, the town issued a request for proposals (RFP) to build a "100-150-foot communications tower and/or telecommunication system site on municipal property."

Hensen said Commnet ultimate goal is to improve cell coverage for its retail brand – Choice Wireless — in and around the Plaza. Hensen said the tower could fit a total of four cell service providers.

The tower's inordinate height is largely due to the number of providers the tower can accommodate and the town's request that emergency communications equipment be added. Hensen said that equipment adds about 50 feet to the tower's height. He added that Commnet has come up with a plan to meet setback requirements on the small piece of land behind Taos Town Hall.

Hensen said he was not aware of the provision to loosen requirements for towers built on town-owned land.

"From everything that we've been through with the town, they've been saying we would have to go through the public hearing process," he said. "We will submit our plans, and they will make the determination on what is required.

Our entire intention is to go through this with straightforward intention and with everyone aware."

The town's legal department denied a public records request from *The Taos News* this week asking to review Commnet's proposal. The proposal was supposed to include several details about the project, including a site plan and an explanation of how the tower will look.

In denying the request, the town cited a state law regarding the disclosure of sealed bids.

The statute reads: "The contents of any proposal shall not be disclosed so as to be available to competing offerors during the negotiation process."

Commnet was the only company to respond to the RFP. The town says the lease with Commnet has not been executed, and thus the negotiations have not ended.