



To: Franklin County Board of County Commissioners
From: Pat Toth
Department: Planning & Building
Date: Wednesday, February 8, 2023

AGENDA ITEM NARRATIVE:

Consider Special Use Permit Application #2211-2009 (Tower Associates) to allow for the construction and operation of a 197-foot guy wired meteorological evaluation tower (MET) in an A-1 (Agriculture) Zoning District.

BACKGROUND:

The Planning Commission held a public hearing on January 19, 2023 to consider a Special Use Permit Application #2211-2009 (Tower Associates) to allow for the construction and operation of a 197-foot guy wired meteorological evaluation tower (MET).

After hearing Staff's presentation, Applicant's presentation and public testimony the Planning Commission recommended denial of Special Use Permit Application #2211-2009 (Tower Associates) to allow for the construction and operation of a 197-foot guy wired meteorological evaluation tower (MET) in an A-1 (Agriculture) Zoning District, with a vote of 6-2. The Planning Department sent notice to seven (7) property owners. Twenty-two (22) people spoke at the public hearing and expressed concerns regarding the request.

PLANNING COMMISSION RECOMMENDATION:

The Planning Commission recommended denial of Special Use Permit Application #2211-2009 (Tower Associates) to allow for the construction and operation of a 197-foot guy wired meteorological evaluation tower (MET) in an A-1, Agriculture Zoning District.

SPECIFIC ACTION REQUESTED:

The Board of County Commissioners has three (3) options: (1) The board can accept the Planning Commission's recommendation and deny the Special Use Permit Application; (2) The board can refer the Special Use Permit application back to the Planning Commission for further consideration pursuant to the provisions of K.S.A. 12-757(d) and (3) The board may override the Planning Commission's recommendation and adopt a Resolution approving Special Use Permit Application.

Suggested motion for denial of this item would read as follows: "I make a motion to deny Special Use Permit Application #2211-2009 (Tower Associates) allowing for the construction and operation of a 197-foot guy wired meteorological evaluation tower (MET) in an A-1 (Agriculture) Zoning District".

Suggested motion to refer this item back to the Planning Commission would read as follows: "I make a motion to refer Special Use Permit Application #2211-2009 (Tower Associates) for further consideration".

Suggested motion for approval of this item would read as follows: "I make a motion to approve Special Use Permit Application #2211-2009 (Tower Associates) to allow for the construction and operation of a 197-foot guy wired meteorological evaluation tower (MET) in an A-1 (Agriculture) Zoning District subject to the nine (9) conditions listed in the resolution.

ATTACHMENTS

Planning Commission Staff Report

Excerpt of Draft Planning Commission Minutes

Resolution/s



Franklin
COUNTY KANSAS
EST. 1855

**BOARD OF COUNTY COMMISSIONERS
FRANKLIN COUNTY, KANSAS**

RESOLUTION NO. 22-_____

**A RESOLUTION DENYING SPECIAL USE PERMIT APPLICATION #2211-2009
(TOWER ASSOCIATES) TO ALLOW FOR THE CONSTRUCTION AND OPERATION OF
A 197-FOOT GUY WIRED METEOROLOGICAL EVALUATION TOWER (MET) IN AN
A-1 (AGRICULTURE) ZONING DISTRICT**

WHEREAS, Franklin County, Kansas is a county municipal government, organized pursuant to K.S.A. 19-101; and

WHEREAS, The Franklin County Board of County Commissioners did adopt Resolution # 23-91 creating the Franklin County Planning Commission as provided in K.S.A. 12-744; and

WHEREAS, the Franklin County Planning Commission did publish notice on December 24, 2022 that a public hearing would be held to consider Special Use Permit Application #2211-2009 (Tower Associates) as required by K.S.A. 12-757 and Article 23, Section 23-5.02 of the Franklin County Zoning Regulations; and

WHEREAS, the Planning Commission did on January 19, 2023 hold a public hearing for the consideration of Special Use Permit Application #2211-2009 (Tower Associates) to allow for the construction and operation of a 197-foot guy wired meteorological evaluation tower (MET) in an A-1 (Agriculture) Zoning District; and

WHEREAS, the Planning Commission, after reviewing and considering all reports and testimonies did, by a majority vote of those present, deny said Special Use Permit Application based on certain findings; and

WHEREAS, the Board of County Commissioners of Franklin County, after duly reviewing the recommendation of the Planning Commission together with all public comments for and against said Special Use Permit Application finds:

1. That the Special Use Permit is not consistent with the County Zoning Regulations.
2. That the Special Use Permit is not in conformance with and would further enhance the County Comprehensive Plan.
3. The Special Use Permit could overburden the County roads and other public services.
4. The Special Use Permit will unduly affect the character of the surrounding community.

5. The Special Use Permit could unduly impact property values of surrounding properties.
6. The subject property is not suitable for the proposed use.

PASSED AND ADOPTED by the Franklin County Board of County Commissioners this 8th day of February, 2023. This action shall become effective upon publication in the official county newspaper.

Ianne Dickinson
Chair

Received and recorded this the 8th day of February, 2023.

Janet Paddock
County Clerk



Franklin
COUNTY KANSAS
] EST. 1855 [

**BOARD OF COUNTY COMMISSIONERS
FRANKLIN COUNTY, KANSAS**

RESOLUTION NO. 23-_____

A RESOLUTION APPROVING SPECIAL USE PERMIT APPLICATION #2211-2009 (TOWER ASSOCIATES) TO ALLOW FOR THE CONSTRUCTION AND OPERATION OF A 197-FOOT GUY WIRED METEOROLOGICAL EVALUATION TOWER (MET) IN AN A-1 (AGRICULTURE) ZONING DISTRICT

WHEREAS, Franklin County, Kansas is a county municipal government, organized pursuant to K.S.A. 19-101; and

WHEREAS, The Franklin County Board of County Commissioners did adopt Resolution # 23-91 creating the Franklin County Planning Commission as provided in K.S.A. 12-744; and

WHEREAS, the Franklin County Planning Commission did publish notice on December 24, 2022 that a public hearing would be held to consider Special Use Permit Application #2211-2009 (Tower Associates) as required by K.S.A. 12-757 and Article 23, Section 23-5.02 of the Franklin County Zoning Regulations; and

WHEREAS, the Planning Commission did on January 19, 2023 hold a public hearing for the consideration of Special Use Permit Application #2211-2009 (Tower Associates) to allow for the construction and operation of a 197-foot guy wired meteorological evaluation tower (MET) in an A-1 (Agriculture) Zoning District; and

WHEREAS, the Planning Commission did on January 19, 2023 hold a public hearing for the consideration of Special Use Permit Application #2211-2009 (Tower Associates) to allow for the construction and operation of a 197-foot guy wired meteorological evaluation tower (MET) in an A-1 (Agriculture) Zoning District, and after reviewing and considering all reports and testimonies did, by a majority vote of those present, deny said Special Use Permit based on certain findings; and

WHEREAS, the Board of County Commissioners has determined the following conclusions of law:

1. Special Use Permits are based upon the zoning power granted by the State empowering governing bodies to adopt zoning laws for the protection of the public health, safety and general welfare.
2. The Board of County Commissioners of Franklin County did adopt Zoning Regulations on August 14, 2002 which included a section (Article 23, Sections 23-1 through 23-5) setting out the procedures and basis for review in considering a Special Use Permit including the following criteria:
 - a. Whether approval of the special use would be consistent with the intent and purpose of these regulations;

- b. Whether the location of the proposed use is compatible to other land uses in the surrounding neighborhood;
 - c. Whether the proposed use places an undue burden on the existing transportation and service facilities in the area affected and, if so, can such additional facilities be provided;
 - d. Whether the proposed use is made necessary or desirable because of changed or changing conditions in the area affected;
 - e. Whether the applicants' property is suitable for the proposed use;
 - f. Whether the proposed amendment would be in conformance to and further enhance the implementation of the Comprehensive Plan;
 - g. Whether the relative gain to the public health, safety and general welfare outweighs the hardship imposed on the applicant by not approving the proposed special use;
 - h. Whether the proposed use, if in compliance with specified conditions, would be consistent with the character of the neighborhood and surrounding uses; and
3. In addition to the criteria set out in the County Zoning Regulations, the Board of County Commissioners has noted and reviewed the following additional factors regarding Special Use Permits as set out by the Kansas Supreme Court in *Golden vs. City of Overland Park* that were applied in the *K-S Shopping Center vs. City of Kansas City, KS* case:
- a. Is the proposed use consistent with the zoning and uses of properties nearby, as the permit will not change the underlying zoning of the subject property.
 - b. Is the proposed use in conformance with the suitability of the land for the requested uses.
 - c. Will the proposed use detrimentally affect nearby property.
 - d. The length of time the property has remained vacant for use/s as currently zoned.
 - e. Does the proposed use create a benefit to the public health, safety, and welfare.
 - f. Is the proposed use recommended for approval by the County's professional staff.
 - g. Is the proposed use in conformance with the County's Comprehensive Plan.

WHEREAS, the Board of County Commissioners, having reviewed the criteria set forth in Article 19 of the County Zoning Regulations and the factors of the Supreme Court case of *Golden vs. City of Overland Park*, that were determined applicable to the Special Use Permit application by *K-S Shopping Center vs. City of Kansas City, KS* case, have concluded that the applicant has met the criteria of the County Zoning Regulations and applicable factors of the *Golden vs. City of Overland Park* case; and

WHEREAS, the Board of County Commissioners, after reviewing the recommendation of the Planning Commission, all public comments for and against said Special Use Permit together with the Staff recommendations, the criteria of the County Zoning Regulations and factors of the *Golden* applicable to the *K-S Shopping Center* Special Use Permit case, have determined the following findings:

- a. That as conditioned, the Special Use Permit is in substantial conformance with, and would further enhance, the County Comprehensive Plan because it does not change the underlying zoning of the property and will not preclude the development of the surrounding area.
- b. That as conditioned, the Special Use Permit will comply with other applicable County standards.
- c. That as conditioned, the Special Use Permit will not pose any threat to the public health, safety or welfare as the activities permitted are localized to the property.
- d. That as conditioned, the Special Use Permit is in conformance with the character of the neighborhood as the neighborhood is a rural and is used for agricultural, low-density residential and commercial uses.
- e. That as conditioned, the Special Use Permit is in conformance with the zoning and uses of other nearby property.
- f. That as conditioned, the Special Use Permit is appropriate given the suitability of the land for the proposed use. The land area is adequate for on-site parking, loading, unloading and storage of materials and products.
- g. That as conditioned, the Special Use Permit contains mitigation measures to minimize impacts to surrounding properties or services. The conditions placed on the permitted uses will minimize adverse effects to adjoining properties.
- h. That as conditioned, the Special Use Permit will not unduly impact property values of surrounding properties.
- i. That the approval contains a provision for reconsideration or revocation of the permit if the conditions set forth in Section 2 of this Resolution have not been satisfactorily completed.

NOW, THEREFORE, Be It Resolved, that the Franklin County Board of County Commissioners does hereby approve Special Use Permit Application #2211-2009 (Tower Associates) as follows:

Section 1: Special Use Permit Application #2211-2009 (Tower Associates) is granted for the following described properties:

The Southwest Quarter of Section 13, Township 16, Range 17 containing 160 acres, more or less, Franklin County Kansas. AND The South Half of the Northwest Quarter and the Southwest Quarter of the Northeast Quarter of Section 13, Township 16, Range 17, EXCEPT Commencing at the Southwest Corner of the Northwest Quarter of said Section 13; Thence North 45.6 rods; Thence East 35.2 rods; Thence South 45.6 rods; Thence West 35.2 rods to the Place of Beginning, containing 10.00 acres, more or less, Franklin County, Kansas.

Section 2: The Special Use Permit for the real property described above shall be authorized for the construction and operation of a 197-foot guy wired meteorological evaluation tower (MET) in an A-1 (Agriculture) Zoning District pursuant to the Franklin County Zoning Regulations and the following conditions:

1. This Special Use Permit allows for the operation of a 60 meter (197 foot) meteorological evaluation tower and ancillary equipment as described in the applicant's application and shall be developed according to the submitted plans except as amended by the following conditions.
2. No external lighting is being approved as part of this request.
3. All structures and equipment shall be removed from the property upon decommissioning.
4. That the tower and related facilities comply with the County Building Codes and Permits.
5. That the tower base be kept free of noxious weeds, litter and debris.
6. Cattle fencing shall be installed around the base of the tower and all guyed wires.
7. That a sign be placed on the fence around the tower to include a contact name and telephone number of a responsible party in the event of an emergency.
8. That the tower shall be removed upon termination of the use or after four (4) years. The Special Use Permit can be renewed after four (4) years if needed.
9. The Special Use Permit shall be null and void by operation of law if the Special Use Permit has not been initiated and utilized by commencing the activity or use at the site specified in said permit within one (1) year of the date of approval.

PASSED AND ADOPTED by the Franklin County Board of County Commissioners this 8th day of February, 2023. This action shall become effective upon publication in the official county newspaper.

Ianne Dickinson
Chair

Received and recorded this the 8th day of February, 2023.

Janet Paddock
County Clerk