

ORDINANCE NO. 136, 2017  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
APPROVING THE ADDITION OF PERMITTED USE ASSOCIATED WITH  
THE LONG POND WIRELESS TELECOMMUNICATIONS FACILITY  
PROJECT DEVELOPMENT PLAN #160018

WHEREAS, Project Development Plan #160018 (“PDP#160018”) proposes the placement of a wireless telecommunications facility in the Low Density Mixed-Use Neighborhood zone district (“L-M-N zone”) on the parcel located at 2008 Turnberry Road, parcel number 8832005002 (the “Parcel”); and

WHEREAS, wireless telecommunications facilities are not an allowed use in the L-M-N zone; and

WHEREAS, a request pursuant to Land Use Code (“LUC”) Section 1.3.4(C)(3), Addition of Permitted Use, has been made in conjunction with PDP#160018 for the addition of wireless telecommunications facilities as an allowed use on the Parcel (the “APU”); and

WHEREAS, pursuant to LUC Section 1.3.4(C)(3), the Planning and Zoning Board (“P&Z”) shall make a recommendation to Council regarding the APU, Council shall be the decision maker on the APU by ordinance, and P&Z shall be the decision maker on the primary application, PDP#160018; and

WHEREAS, pursuant to LUC Section 1.3.4(C)(1)(g), and in satisfaction of such requirement, two neighborhood meetings were held regarding the APU with the first meeting held prior to the submittal of the development application on March 30, 2016, and the second meeting held after submittal of the development application and completion of the first round of staff review on May 25, 2017; and

WHEREAS, pursuant to LUC Section 1.3.4(C)(1)(h), and in satisfaction of such requirement, the proposed use is not a medical marijuana business as defined in Section 15-452 of the City Code or a retail marijuana establishment as defined in Section 15-603 of the City Code; and

WHEREAS, pursuant to LUC Section 1.3.4(C)(3)(c) regarding the requirement that the proposed use of telecommunications facilities is specifically prohibited in the L-M-N zone, and in satisfaction of such requirement, wireless cell facilities are not specifically listed as a prohibited use in the L-M-N zone; and

WHEREAS, at its September 14, 2017, regular meeting, P&Z held a hearing on the APU and recommended to Council by a vote of 4 to 1 that Council not approve the APU; and

WHEREAS, LUC Section 1.3.4(C)(3) sets forth the criteria, as further described below, that must be satisfied in order for Council to approve the APU; and

WHEREAS, the APU was originally scheduled for October 17, 2017, but Council continued the hearing on October 17 to November 21 to allow City staff time to evaluate the issues raised in a letter from legal counsel for Verizon Wireless; and

WHEREAS, at the request of the APU applicant Atlas Tower, Council further continued the hearing on November 13 to December 19, 2017; and

WHEREAS, on December 19, 2017, Council held a public hearing on the APU at which the APU applicant, members of the public, and City staff presented Council with evidence, testimony and argument.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes any and all determinations and findings contained in the recitals set forth above.

Section 2. That the Council, after holding a public hearing on December 19, 2017, at which members of the public, the APU applicant, and City staff provided evidence and argument, and after considering the P&Z recommendation on the APU, hereby approves the requested APU to add wireless telecommunication facilities as a use specifically limited to the Parcel located in the L-M-N zone.

Section 3. That the Council imposes the following condition or conditions of approval:

- (1) The addition of wireless telecommunication facilities as a permitted use on the Parcel is conditional upon the approval of PDP#160018. Upon a final decision to deny PDP#160018 and the conclusion of any related appeals and subsequent action, if PDP#160018 is ultimately denied, the approval of the APU granted herein shall automatically terminate and shall thereafter be null and void.
- (2) To satisfy the requirement set forth in Land Use Code Section 1.3.4(C)(1), the wireless telecommunications facility shall:
  - (a) Be 45 feet or less in height; and
  - (b) Be located further north than proposed in order to be closer to the existing outbuildings on the Parcel and such location shall not be changed without an approved amendment to PDP#160018 and approval of a new addition of permitted use pursuant to Land Use Code Section 1.3.4(F) if required pursuant to Section 1.3.4(F).
- (3) That if, after construction of the wireless telecommunications facilities is completed, such facilities are not operated for any reason for a continuous period of 270-consecutive days, the facilities and the structure in which they are housed shall be removed from the Parcel in accordance with all requirements of the City Code and Land Use Code. For purposes of this condition, any failure to continuously operate

resulting from forces beyond the reasonable control of the owner, other than financial inability to operate, shall not be counted against the 270-consecutive day period. Additionally, the wireless facilities use added by the APU process pursuant to this Ordinance No. 136, 2017, shall terminate and shall thereafter be null and void.

Section 4. That the Council, based on the evidence and information which was provided and presented to the Council at the hearing in this matter, and in consideration of the conditions of approval imposed in above Section 3, makes the following findings of fact and conclusions of law:

- (1) The APU satisfies the criteria set forth in LUC Section 1.3.4(C)(1) as follows:
  - (a) Such use is appropriate in the L-M-N zone.
  - (b) Such use conforms to the basic characteristics of the L-M-N zone and the other permitted uses in the L-M-N zone.
  - (c) The location, size and design of such use is compatible with and has minimal negative impact on the use of nearby properties.
  - (d) Such use does not create any more offensive noise, vibration, dust, heat, smoke, odor, glare or other objectionable influences or any more traffic hazards, traffic generation or attraction, adverse environmental impacts, adverse impacts on public or quasi-public facilities, utilities or services, adverse effect on public health, safety, morals or aesthetics, or other adverse impacts of development, than the amount normally resulting from the other permitted uses listed in the L-M-N zone.
  - (e) Such use will not change the predominant character of the surrounding area.
  - (f) Such use is compatible with the other listed permitted uses in the L-M-N zone district.
  - (g) The LUC requirement for two neighborhood meetings regarding the APU was fulfilled with the first meeting held prior to the submittal of the development application on March 30, 2016, and the second meeting held after submittal of the development application and completion of the first round of staff review on May 25, 2017.
  - (h) Such use is not a medical marijuana business as defined in Section 15-452 of the City Code or a retail marijuana establishment as defined in Section 15-603 of the City Code.
- (2) The APU is not detrimental to the public good;
- (3) The APU is in compliance with the applicable requirements and criteria contained in LUC Section 3.5.1; and

(4) The APU is not specifically listed as a "prohibited use" in the L-M-N zone.

Section 5. That the Council's approval of the APU in this Ordinance is based upon the development proposal described in PDP#160018 and the associated APU request, the conditions of approval set forth in above Section 3, the testimony and evidence presented at the December 19, 2017, APU hearing, and the P&Z recommendation and hearing record. Unless otherwise specified as a condition of approval of the APU, any changes to the use or to its location, size, and design, in a manner that changes the predominant character of or increases the negative impact upon the surrounding area, will require the approval of a new addition of permitted use under the LUC.

Introduced, considered favorably on first reading, and ordered published this 19th day of December, A.D. 2017, and to be presented for final passage on the 16th day of January, A.D. 2018.

  
Mayor

ATTEST:

  
City Clerk



Passed and adopted on final reading on the 16th day of January, A.D. 2018.

  
Mayor

ATTEST:

  
City Clerk

