

PLANNING STAFF REPORT
Special Use Permit

SUMMARY:

Hearing Date: November 19, 2018

Applicant: Optima Towers IV, LLC

Property Owner: H. Allen Wooten, et al.

Case Number: SUP-2018-3

Land Use Proposed: Optima Towers IV, LLC., applicant, on behalf of H. Allen Wooten et al., owner, is requesting the approval of a Special Use Permit for the construction and operation of a telecommunication facility.

Property Record Number and Location: There is one (1) tract associated with this request totaling approximately ±85.29 acres. The subject property is located at 4559 NC Highway 53 W, approximately ± 2,165 feet (0.41 miles) west of the intersection of NC HWY 53 W and New Savannah Road (SR 1340), in the Burgaw Township. The subject property may be further identified by Pender County PIN 3208-18-5058-0000.

Zoning District of Property: The subject property is zoned RA, Rural Agricultural zoning district and according to the Pender County Unified Development Ordinance §5.2.3 Table of Permitted Uses; telecommunication facilities are permitted via Special Use Permit in the RA, Rural Agricultural zoning district.

PROJECT HISTORY:

On April 20, 2015, Optima Towers IV, LLC., applicant, on behalf of H. Allen Wooten et al., owner, applied for and was granted approval of a Special Use Permit (#11355), for the construction and operation of a telecommunication facility, by the Pender County Board of County Commissioners (Attachment 1). Per Section 3.12.4.C of the Pender County Unified Development Ordinance, a Special Use Permit shall expire and become void if final zoning approval has not been issued within 24 months after the Notice of Approval has been sent to the applicant. As a result of the applicant not having obtained final zoning within two (2) years of the Special Use Permit approval, Special Use Permit #11355 officially expired on April 20, 2017.

PROJECT DESCRIPTION:

The proposed 250' tall lattice tower telecommunication facility is to be constructed on an approximately ±85.29 acre tract that is currently used for farming activities. The subject property contains agricultural buildings on the southern portion of parcel and the northern area of the tract is currently vacant and wooded. The applicant proposes to utilize a one hundred (100) foot by one hundred (100) foot lease area for the telecommunication facility. The proposed facility will provide access via an approximately one thousand thirty-three (1,033) foot long, thirty (30) foot wide existing access easement (Attachment 2). According to Sheet Z02 of the submitted site plan, the proposed telecommunication facility will be constructed to accommodate a total of five (5) service providers and future antennas.

Section 5.3.12.P of the Pender County Unified Development Ordinance sets forth specific use standards for Telecommunication Facilities (Attachment 3). The applicant's specific responses to each of these criteria are addressed in the submitted narrative and are shown on the submitted site plan. This Special

Use Permit request has been reviewed for compliance with standards outlined in Section 5.3.12.P, Telecommunication Facilities, and based on the applicant's submittal, the request is in conformance with all items. Specific provisions have been addressed individually to verify conformance.

Setbacks

Per Section 5.3.12.P.2.a, the minimum distance between the tower and an adjoining parcel of land that is residentially developed or is vacant and zoned Rural Agricultural, Residential Performance, Manufactured Home, General Business or Office & Institutional, or from an adjoining local road separating the tower site from such a parcel, must be equal to the tower's height, but not less than 50 feet, nor less than the minimum setback depth applicable in the zoning district. Similarly, Section 5.3.12.P.2.c states that the minimum distance between the tower and any other adjoining parcel or road must be equal to the minimum setback depth applicable in the zoning district, plus any additional distance necessary to ensure that the tower, as designed, will fall within the tower site.

Based on the height of the proposed telecommunication tower, the facility is required to provide a minimum setback of 250 feet from the adjoining parcels of land.

The applicant is proposing the following setbacks for the 250-foot tower:

Property Line	Zoning District Setback	Proposed Tower Setback
North/Side	15 feet	634 feet
South/Side	15 feet	2,654 feet
East/Front	30 feet	318 feet
West/Rear	30 feet	283 feet

This information can be found on Sheet Z01 of the submitted site plan and on page 2 of the submitted narrative.

The nearest single-family residences are located on the rear property (two hundred eighty-three [283] feet) to the west and on the front property (three hundred eighteen [318] feet) to the east of the proposed telecommunication facility.

Telecommunication Users

Pursuant to Section 5.3.12.P.2.e of the Pender County Unified Development Ordinance, as the tower is more than one hundred eighty (180) feet high, it must be engineered and constructed to accommodate at least two additional telecommunication users.

According to Sheet Z02 of the submitted site plan, the proposed telecommunication facility will be constructed to accommodate a total of five (5) service providers and future antennas. This information can also be found on pages 2 and 3 of the submitted narrative.

Fencing

Per Section 5.3.12.P.2.f, the base of the tower and each guy anchor must be surrounded by a fence or wall at least 8 feet high, unless the tower and all guy anchors are mounted entirely on a structure over 8 feet high. Except for its entrances, the fence or wall must be screened with plant material so that no more than two-thirds of its surface is visible, within 3 years after its installation, from a public street or from any adjoining parcel of land that is residentially developed or is vacant and zoned Rural Agricultural, Residential Performance, Manufactured Home, General Business or Office & Institutional.

The application proposes installing a seven (7) foot security fence with three strands of barbed wire as an anti-climbing device, with a total height of eight (8) feet, thereby meeting the requirement for telecommunication facilities.

Landscape and Buffers

As prescribed in Section 5.3.12.P.2.g, a buffer yard must be provided around the perimeter of the lease lot as in accordance with the requirements of Article 8, Landscaping & Buffering. A Type C buffer yard is required along the inside perimeter of a leased lot or parcel for the utilization of telecommunication towers. The landscape plan, as seen on Sheet Z06 of the submitted site plan, shows landscaping surrounding the facility. The applicant proposes to plant the required screening shrubs and understory trees to be in compliance with the Pender County Unified Development Ordinance. The applicant also proposes to retain the greatest extent of the existing surrounding vegetation to adequately meet the 40-foot wide buffer. Based upon Sheet Z06 and aerial imagery (Attachment 4), it appears that the proposed and existing vegetation is sufficient to comply with the Pender County Unified Development Ordinance.

State and Federal Regulations

Per Section 5.3.12.P.2.i of the Pender County Unified Development Ordinance, the tower must meet the standards of the Federal Aviation Administration (FAA) for avoiding obstruction of navigable airspace and approaches to public airports (see Federal Aviation Regulations Part 77, as amended), and for marking and lighting structures to promote aviation safety (see FAA Advisory Circular 70/7460, as amended). Specifically, tower lighting must meet applicable FAA standards for either red obstruction lighting systems or dual lighting systems (red lighting for nighttime and medium-intensity flashing white lighting for daytime). If a tower is proposed to be located within 1,000 feet of a private use airport, the application must so indicate.

As shown in Exhibit 2 of the submitted narrative, the telecommunication facility will meet all FAA and FCC standards for illumination and environmental impacts, and the applicant will comply with all federal standards for radio frequency emissions. All applicable State and Federal permits will be obtained, including inspections and health department regulation compliance.

Tower Separation Requirements

Section 5.3.12.P.3.a states that if the tower is more than 75 feet high, it must be located at least 1,500 feet from any other telecommunications tower greater than 75 feet high; provided, however, that this separation requirement does not apply from a tower if the applicant submits sufficient evidence to demonstrate that a reasonable effort to co-locate on that tower has been made, or that co-location on the tower will not technically satisfy the applicant's specific needs. The applicant submitted evidence that co-location on a nearby tower is not feasible (Exhibit 3 of the submitted narrative) and that there is not another tower, greater than seventy-five (75) feet in height, within a fifteen hundred (1,500) feet radius of the proposed tower, thus satisfying the tower separation requirement. The nearest tower is located approximately 2.65 miles to the east-northeast and is owned by Four County EMC, as stated on Sheet Z01 of the submitted site plan.

Driveway Access

The applicant is proposing access to the lease area via an existing 30-foot-wide access/utility easement, recorded in Deedbook 4509, Page 186. This easement is directly accessible from NC HWY 53 W, which is approximately ±2,165 feet (0.41 miles) west of the intersection of NC HWY 53 W and New Savannah Road (SR 1340). All proposed driveways are subject to review and approval by the NCDOT through a driveway permit, which may be required at the Major Site Development Plan submittal.

Environmental Impacts

According to the National Wetlands Inventory, there are freshwater forested and shrub wetlands located on the northern portion of the subject parcel. However, the extent of these wetlands does not intersect any portion of the lease area.

Data from the North Carolina Flood Risk Information System (NCFRIS) indicates that the subject property is located within Zone AE, a designated Special Flood Hazard Area. However, the extent of this Zone AE Special Flood Hazard Area does not intersect any portion of the lease area.

Prior to the issuance of final zoning approval, a site development plan must be submitted and approved in accordance with applicable provisions of the Pender County Unified Development Ordinance. In addition, the proposal is subject to all other applicable federal, state, and local permits and agency approvals.

Use Type	Ref NAICS	Zoning Districts									
		RA	RP	RM	MH	PD	GB	OI	IT	GI	EC
MISCELLANEOUS USES											
Telecommunication Facilities		SD	SD			SD	SD	SD	SD	SD	

EVALUATION:

- A. Public Notifications:** Advertisements for the proposal have been placed in the Pender-Topsail Post & Voice. Adjacent property owners within five hundred (500') of the subject parcel were notified by first class mail; as well as a sign advertising the public hearing was placed on the subject property.
- B. Basis for Granting SUP:** Approval procedures are located in Section 3.12.3 of Unified Development Ordinance and revocation procedures are located Section 3.12.4 of Unified Development Ordinance. See Attachment 5 for approval procedures (§3.12.3 of the Unified Development Ordinance) and revocation procedures (§3.12.4 of the Unified Development Ordinance).
- C. Unified Development Ordinance Compliance:** The subject property is zoned RA, Rural Agricultural zoning district and according to the Pender County Unified Development Ordinance §5.2.3 Table of Permitted Uses; telecommunication facilities are permitted via Special Use Permit in the RA, Rural Agricultural zoning district.
- D. Pender 2.0 Comprehensive Land Use Plan Compliance:** The subject property is classified as Rural Agriculture in the Pender 2.0 Comprehensive Land Use Plan. The Rural Agriculture future land use category supports and protects Pender County’s agricultural areas. These areas are an essential part of the County’s economy and agricultural heritage. Within the Rural Agriculture future land use category, agriculture uses are highly encouraged. Preservation of prime farmland soils for continued prosperity of farming and forestry operations should be considered.

Manufactured homes and very low density single-family detached dwellings are appropriate uses in this category. Commercial, civic, office, and institutional uses are permitted where compatible with existing neighborhoods and as a resource or employment opportunity for area residents. Development density within this category is one dwelling unit an acre or less. Expansion of centralized

water and sewer systems within this future land use category are discouraged, unless necessary to protect public health when existing systems fail.

In addition to being consistent with the Future Land Use Map, the proposed Special Use Permit is also consistent with one (1) goal and one (1) policy within the Pender 2.0 Comprehensive Land Use Plan:

Goal 4.8: The County maximizes opportunities to benefit public safety, health, and wellbeing by coordinating public facilities, services and utilities development with natural resources conservation.

Policy 5.1.FF: Rural Non-Residential Uses: The County shall continue to accommodate limited non-residential uses in rural areas.

The proposed Special Use Permit does not appear to be inconsistent with any goals, policies, or objectives within the Pender 2.0 Comprehensive Land Use Plan.

- E. Existing Land Use in Area:** There is one (1) tract associated with this request totaling approximately ±85.29 acres, with the vast majority being currently occupied by vacant farmland and wooded areas. The extreme southern portion of the parcel contains existing farm buildings and equipment. The surrounding properties are primarily rural and residential in nature. There are single-family homes on properties to the East, West, and South with intermittent lands occupied by vacant farmland and undeveloped land.
- F. Site Access Conditions:** The applicant is proposing access to the lease area via an existing 30-foot-wide access/utility easement, recorded in Deedbook 4509, Page 186. This easement is directly accessible from NC HWY 53 W, which is approximately ±2,165 feet (0.41 miles) west of the intersection of NC HWY 53 W and New Savannah Road (SR 1340). The site's access will be subject to review and approval by the NCDOT during Major Site Development Plan review.
- G. Conditions To Consider In Issuing the Special Use Permit For This Project:**
1. The project shall comply with all requirements of the Pender County Unified Developed Ordinance, specifically use standards outlined in Section 5.3.12.Q, Telecommunication Facilities.
 2. The obligations imposed by this permit will be the responsibility of the property owners and operator and shall continue in effect for the duration of this permit.
 3. The applicant shall meet all other local, state, and federal regulations.
 4. Any violations of the conditions of this permit, confirmed by the Zoning Administrator shall result in this permit becoming void, if not corrected within 30 days of receipt of the notice of violation.
 5. If subdivided, a plat indicating setbacks and conditions of this Special Use Permit shall be recorded meeting the standards of the Unified Development Ordinance.
 6. Unless a request for additional time is granted or approved otherwise as a condition of the permit, a Special Use Permit shall expire and become void if final Zoning Approval has not been issued for the project within 24 months after the Notice of Approval of the Special Use Permit has been served on the applicant.