

## SPECIAL USE EXCEPTION REVIEW REPORT

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**Petition Number:** SUE 13-07

**Petitioner:** Douglas Dolan of Dolan Realty Advisors for  
AT&T  
13075 Manchester Rd.  
St. Louis, Mo 63131  
314-799-2375

**Agent/Engineer:** Mike Douchant  
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**Project Name:** New Ballwin Park Cell Tower

**Filing Date:** 9/6/13

**Review Report Date:** 9/9/13

**Submission Compliance  
Certification Date:** 9/9/13

**Requested Action:** Special Use Exception Site Plan Amendment

**Purpose:** Elimination of flagpole requirement

**Code Section** Article XIV Sec. 1 (15)  
Article XVI, Sec. 4 (B)  
Chapter 7.6, Sec. 7.6 - 3 & 4

**Location:** 315 New Ballwin Rd. (New Ballwin Park)

**Existing Zoning/Land Use:** PA / Public Park

**Surrounding Zoning/Land Uses:** North – R-2 / Single Family  
South – R-3 / Single Family  
East – R-3 / Single Family  
West – R-3 / Single Family

**Plan Designation:** Active Recreation

## **Project Description:**

Mr. Dolan of Dolan Realty Advisors, a real estate firm that is working as AT&T's agent, has submitted an amendment to the original special use exception ordinances for this site (Ordinance 2660 in 1997 and Ordinance 12-03 in 2012). The later petition amended the provisions of ordinance 2660, which granted AT&T a special use exception to erect a 50' tall cellular utility tower in New Ballwin Park in 1997 by permitting the tower to be made 60' tall and expanding its diameter from 18" to 32". The tower was to retain its stealth monopole design and disguise as a flagpole. The bigger pole had more room for interior mounted antennas. The servicing equipment is still mounted inside a structure that was built as an addition to the restroom facility near the base of the tower. No change to the ground lease will be necessary to accommodate this change but the language of the lease will have to be changed to eliminate the reference to the flagpole design.

The language of the lease and the applicable Ballwin regulations appear to allow AT&T to replace and upgrade equipment and antennas within the leasehold area without zoning approval, however, the lease and the special use exception that authorized the erection of this facility specifically address and require the stealth flagpole design and will have to be amended to eliminate this requirement.

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## **Planning and Plan Review Considerations:**

The existing site development plan was approved per Ordinances 2660 and 12-03 and is still applicable and being utilized at this site. Communications tower approvals in city-owned parks involve issues and regulations in the PA Public Activity zoning district, the Height and Area regulations of the zoning ordinance and Chapter 7.6 Communications Facilities of the Ballwin Code of Ordinances. All of these regulations were considered and utilized during the review of the original plan. Since the proposed amendment to the site development plan could potentially touch on provisions of all of these regulations, they must again be reviewed for applicability as a part of the consideration of this proposed change to the approved site development plan for this communications facility in New Ballwin Park.

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## **Zoning Ordinance Requirements / PA District (Article VIII A):**

1. **Section 1. Generally:** This section is not applicable to this review.
2. **Section 2. (1 - 4) Use Regulations:** These subsections are not applicable to this review.
3. **Section 2. (5) Use Regulations:** Public utilities and services including easements are allowed by special use exception in the PA district "provided that the exterior appearance of any building so permitted shall be in keeping with the character of the neighborhood in which it is located". Since no changes to the ground-mounted equipment or buildings are

proposed, this section only appears to apply to the tower itself under this petition.

**This petition proposes to leave the 32” diameter 60’ tall tower in its present configuration, but proposes to eliminate the flag, the flag hoisting/flying equipment, the flag illumination fixtures and eliminate the requirement that a flag be flown from the tower.**

The original petition (ordinance 2660) acknowledged that flagpoles are common structures in municipal parks and that the structure that was proposed at that time was much larger in diameter than a conventional flagpole of equivalent height would commonly be, but it was ultimately accepted that the design of that structure was sufficiently similar to a conventional flagpole to be considered in-keeping with the character of the neighborhood and the concept of stealth design. A similar analysis was done in conjunction with the 1<sup>st</sup> amending petition (ordinance 12-03) that increased the height and diameter of the tower. The wider and taller tower was again accepted as being sufficiently similar to a conventional flagpole to be considered in-keeping with the character of the neighborhood.

**This proposal to eliminate the flag flying requirement is predicated on the inability of AT&T to employ a mechanism that causes the flag to actually fly. It appears to get caught in the wind shadow the 32” diameter tower and just hangs there or knots around the halyard. It does not fly. No solution has been found to resolve this issue. There are evidently several towers in the region that have a similar problem. The proposal from AT&T is to eliminate the flag and lighting and increase the monthly lease payment by about \$100 to offset the failure of the flag to properly wave. AT&T says the \$100 is based on the cost of replacing flags and operating/maintaining the illumination, but no documentation supporting this cost has been provided. The tower would otherwise be left in its present configuration.**

4. **Section 3. Height Regulations:** No change to the height of the tower is proposed per this petition, so the provisions of this section do not apply. The 35’ structure height limitation of this subsection was amended to allow a 60’ tower height by ordinance 12-03. The tower is in compliance with that ordinance.

5. **Section 4. Area Regulations:** The footprint and locations of the proposed facilities will not change, so the provisions of this section do not apply to this petition.

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#### **Zoning Ordinance Requirements / SUE Regulations (Article XIV):**

1. **Section 2 (1) Yard Requirements:** All minimum yard requirements of the PA District have been met.

2. **Section 2 (2) Site Illumination:** **There is no site illumination as a part of this SUE but the petition proposes to eliminate the fixtures illuminating the flag.**

3. **Section 2 (3)** Landscaping: No change to the landscaping is proposed so the provisions of this section do not apply to this petition.

4. **Section 2 (4)** Fencing: There is no fencing involved with the facility.

5. **Section 2 (5)** Parking: No dedicated parking spaces are in place for this facility and none are proposed as a part of this petition.

6. **Section 2 (6)** Paving: No changes to the existing paving on this site are proposed as a part of this petition.

7. **Section 2 (7)** Sewers: Sewers are not an issue for this facility.

8. **Section 2 (8)** Loading Facilities: No loading facilities are required or proposed for a facility of this nature.

9. **Section 2 (9)** Ingress/Egress: No changes to the existing ingress/egress facilities are proposed as a part of this petition.

10. **Section 2 (10)** Required area for the intended use: No change to the space demands of this use will be associated with this change.

11. **Section 2 (11)** Dead storage of automobiles: There has been no history of this as an issue on this site, and no reason is foreseen to expect this change to create such a problem.

12. **Section 2 (12)** Trash containers: Insofar as this site operates without personnel most of the time, there is no need for permanent trash containers in conjunction with this use.

13. **Section 4 (7)** This subsection discusses the eight findings that the Board of Aldermen has to make in order for a special use exception to be approved. The following discusses those of these eight findings that seem to be applicable to this petition.

a. Will substantially increase traffic hazards or congestion. This issue is not related to this petition.

b. Will (the proposed special use exception amendment) adversely affect the character of the neighborhood? New Ballwin Park is located in a residential neighborhood surrounded on three of its four sides by single family residential uses. The tower is located at the highest elevation point in the park and near the heavily traveled New Ballwin Rd. This location makes the tower particularly visible to the surrounding residences and the driving public. In the original petitions it was determined that a 50' tall stealth cellular tower disguised as a flagpole was an acceptable non-recreation use in a park due to the community's need

for the service it provides. **Its intrusive presence in the park was mitigated by the monopole design and the disguise as a flagpole.** This perspective did not change with the increase in the diameter and height of the tower approved per ordinance 12-03.

**The removal of the flag will impact the stealth factor of the tower. This flag was an essential element of the original analysis that led to the approval of the special use exception for a tower in New Ballwin Park. The petitioner maintains that there is a mitigating factor that requires it to request this amendment to the original approval. The petitioner maintains that the flag does not work on the new tower and cannot be made to work. The flag apparently gets lost in the wind shadow of the bigger diameter tower and does not fly. It simply hangs there and gets tangled in the halyard mechanism. The petitioner has not produced any documentation to support this position other than the flag's failure to fly. No engineering analysis of wind currents, laminar flows or other physical characteristics of the tower and its interaction with prevailing winds in the area have been presented to demonstrate the cause of the failure of the flag to fly as intended or that there is no possible fix to the halyard assembly or the tower to correct the problem. I recommend that the petitioner be required to provide such documentation before Ballwin accepts the petitioned amendment.**

**If one accepts that the flag cannot be flown from this tower, a secondary issue of removing the flag is whether Ballwin should fly a flag in New Ballwin Park. Ballwin flies flags in front of all of its major buildings including the Government Center, Police and Court Center, Public Works, the Pointe, and North Pointe. New Ballwin Park was the only park to fly a flag and that was only because of the stealth tower. Ballwin does not otherwise have flagpoles in its parks.**

c. Will adversely affect the general welfare of the community. It is difficult to understand how the general welfare of the community would be adversely affected by the elimination of this flag but its elimination will change the character of the tower and perhaps the area.

d. Will overtax public utilities. This is not directly applicable to this petition.

e. Will adversely affect public safety and health. This is not directly applicable to this petition.

f. Is (the proposed special use exception amendment) consistent with good planning practice? **The approval of the original tower in 1997 establishes that allowing stealth cellular towers disguised as "fat" flagpoles in single family residential neighborhoods was considered good planning practice. The question that is raised with this amended petition is related to whether the loss of the flag, as a separate issue apart from the continued presence of the monopole tower which will not change, would not be considered good planning practice. Is the flag necessary for this tower to be good**

planning practice? There are other monopole type cellular towers in and around the Ballwin area that are not flagpoles and that do not seem to be problematic from an operational or aesthetic perspective. Two of similar scale are the tower behind 461 Ivywood in the rear of the Wildwood Plaza on Clayton Rd. and the tower on the rear of the property at 870 Reinke Rd. Both of these towers are of similar height to the New Ballwin Park tower and are in close proximity to single family residential uses. I am aware of no serious negative impacts on the nearby residential properties as a result of these towers not being flagpoles. Similarly, there are large cellular towers on the Point property at #1 Ballwin Commons Circle and at the Ballwin Government Center at 14811 Manchester Rd. These towers are 2-3 times taller than the new Ballwin park tower and are either in, or immediately adjacent to, significant municipal parks. Again, I am aware of no measurable negative impacts to the parks due to the failure of these towers to fly flags. There is little evidence to support the position that this would not be considered good planning practice as that term is applied in Ballwin.

g. Can be operated in a manner that is not detrimental to the permitted developments and uses in the district. **I believe that the discussion in “f” above addresses the concern expressed by this subsection. Similar installations elsewhere in the city that do not fly flags do not appear to have any measurable negative impacts on permitted uses in the respective zoning districts.**

h. Can (the proposed special use exception) be developed and operated in a manner that is visually compatible with the permitted uses in the surrounding area? **The issues in this subsection are similar to those of subsections “b” and “f” above. In this situation neighborhood character, visual compatibility and good planning are very closely related. As proposed, this change will probably have impacts on people’s perspectives about the result of such a change, but there is no measurable evidence of which I am aware, as of this writing, that the change will not be visually compatible with the permitted uses in the surrounding area.**

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## **Zoning Ordinance Requirements / Height and Area Regulations (Article XVI)**

1. **Section 1 -3 and 5 – 30:** These sections are not applicable to this petition.
2. **Section 4 (A) (1-6):** These subsections deal with locating and erecting satellite earth stations and are not applicable to this review.
3. **Section 4 (B):** This subsection addresses tall structures such as church spires, towers, chimneys, etc, and allows such structures to be erected in excess of the height limitations of the zoning district by special use exception. The original petitions were submitted and approved in their current form pursuant to this section. The proposed change does not appear to deviate from the original petition as it relates to the requirements of this subsection.

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## Communications Facilities Ordinance Requirements (Chapter 7.6)

### Section 7.6-1. Purpose;

This section explains that the purpose of this chapter of the Ballwin Code of Ordinances is to:

1. Provide for appropriate locations and development of communications facilities serving the city. **The flagpole was originally approved at this location via the special use exception process, so one would assume that the process determined that this location met the requirement as appropriate for the location and development of communication facilities. .**

2. Minimize adverse visual impacts of facility installations through careful siting, design, screening and camouflaging techniques. **This facility was approved as a flagpole. Presumably, this was seen as a design technique that screened or camouflaged the tower.**

3. Maximize the use of existing support structures to minimize the need for additional facilities. **This subsection did not apply to this facility.**

4. Maximize the use of disguised support structures to insure architectural integrity of the area and scenic quality of protected natural habitats. **A flagpole is specifically listed as one type of disguised support structure, so its use clearly met the intent of this subsection. The elimination of the flag makes this a tower and therefore not a disguised support structure that meets the intent of this subsection.**

### Section 7.6-2 Definitions

The original petition considered the tower structure a “disguised support structure” (DSS) as defined in this section. The definition requires a DSS to be “...camouflaged or concealed as an architectural or natural feature. Such structures may include but are not limited to clock towers, campaniles, observation towers, pylon signs, water towers, light standards, flag poles and artificial trees”.

**This structure is considered a disguised support structure (flagpole) under the provisions of Ordinances 2660 and 12-03. The elimination of the flag will change the classification of this structure from “disguised support structure” to “tower” and make it subject to ordinance requirements that only apply to towers.**

### Section 7.6-3 General Requirements

All antennas and support structures of all kinds are required to comply with all provisions of this section.

- (a). *Principal or Incidental Use:* Per this subsection, a support structure (tower) is an incidental use because the principal uses in the PA District are non-residential.
- (b). *Building Code and Safety Standards:* Compliance with all locally applicable construction code requirements will be required. No change per this provision is expected in association with this petition.
- (c). *Regulatory Compliance:* The facility is required to meet all applicable FCC, FAA and other federal and state regulations. No change per this provision is expected in association with this petition.
- (d). *Security:* Site security should not change as a result of the proposed change.
- (e). *Lighting:* **I have assumed that the light illuminating the flag will be removed from the tower as a part of this petition, although this has not specifically been stated in the submitted documentation.**
- (f). *Advertising:* No advertising has been proposed for this facility.
- (g). *Design:*
- (1 - 3) *Color:* These three subsections address the issue of color. No change to the color of the structure is proposed.
- (4) *Landscaping:* No changes to the landscaping has been proposed.
- (5) *Residential Separation:* The code requires that all towers be separated from any off-site single family or multifamily residential structure a distance equal to the height of the tower. No change to the height of the tower or the setback from nearby residential properties is proposed as a part of this petition.
- (6) *Ground anchors:* There are no ground anchors utilized with this tower.
- (7) *Vehicle storage:* This subsection prohibits vehicle storage and outdoor storage in conjunction with a structure. No such storage is proposed with this petition.
- (8) *Parking:* No change to the maintenance parking is proposed pursuant to this petition.
- (h). *Shared Use:*
- (1) This subsection deals with alterations and modifications to facilities existing on the date of adoption of ordinance 2590 in 1997. This tower does not predate this ordinance.
- (2) This subsection stipulates that, prior to the issuance of any permit to install, build or modify any tower, the tower owner shall furnish an inventory of all towers in or within ½

mile of Ballwin and an agreement, if applicable, to the shared use of such facilities. **As outlined in the discussion of subsection 7.6-2, the proposed change to this structure changes its classification from “disguised support structure” to “tower”. That change subsequently triggers the provision of this subsection. No such information has been provided.**

**Although this subsection does not provide an opt-out option for minor changes, there is a question as to whether the provision of this information is salient to this petition given the very local impact of the tower’s design change.**

(3) This subsection deals with towers in excess of 100 feet and is not applicable to this petition.

(4) This subsection deals with new tower petitions and is not applicable to this petition.

**7.6-4 Permitted Use:** This subsection states that upon receipt of the appropriate building permit the following are allowed:

1. **(A)** This subsection addresses the attachment of antennas to any tower existing on the effective day of the adoption of this section (4/97). The tower involved in this petition was erected after that date, so the subsection does not apply.
2. **(B)** This subsection addresses the attachment of antennas to buildings and structures such as water towers provided that the antennas are allowed. This subsection does not apply to this petition because no antenna attachments are part of this petition.
3. **(C)** This subsection appears to allow the attachment of antennas to existing towers on land owned by the city following the approval of a lease agreement without the need for a public comment process. Although this section may have allowed the issuance of a building permit for the new antennas allowed by ordinance 12-03 without the necessity of a public hearing, it does not allow amendments to the structure such as that proposed in this petition. **This is, therefore, not a permitted use that bypasses the special use exception process.**
4. **(D)** This subsection only applies to facilities erected on state or federally owned land and does not apply to this petition.

**7.6-5 (A-G) Administrative Permit Required:**

This part of chapter 7.6 establishes criteria and a process for the issuance of administrative permits for communications towers. The administrative permit review process assures that the criteria for tower construction and operation outlined in Section 7.6-3 is addressed if the facilities can be erected pursuant to Section 7.6-4.

All of the subsections A -G deal with specific sets of circumstances that are outside the parameters of this petition, and therefore this section does not apply to this petition.

**7.6-6 Special Use Exception Required:**

**Article XIV of the zoning ordinance required a special use exception for the tower due to its height and Article VIII A required a special use exception for the public utility use in the PA district. The SUE granted per ordinance 12-03 clearly stipulated that this tower was to be a flagpole disguised support structure. This petition is an amendment to the site development plan approved per this special use exception and must follow the SUE procedure. The special use exception criteria are discussed earlier in this report.**

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Thomas H. Aiken, AICP  
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