

Seven Ways to Overcome Obstacles and Gain Zoning Permits

By John Rowe

A site acquisition veteran shares valuable lessons he learned in the zoning process: the need to do your homework and to know the territory, and how to win before a city council after a planning commission loss.

The wireless siting industry lost one of its pioneers, Richard “Rick” Sullivan, on Jan. 16. He first served Cellular One, then AT&T as the regional real estate and construction manager for site acquisition, permitting, relocations, renewals and contractors for as many as 14 states, and as director of external affairs. For the five years before his retirement in March 2015 after 26 years of service, Rick was AT&T national DAS outdoor and contracts manager. We met at a Denver Regional Council of Governments (DRCOG, pronounced Doctor Cog) forum about the future of wireless after my return to Denver after researching zoning for a 1989 pre-PCS project for the 13-county area surrounding San Francisco.

Rick told me he never lost a zoning hearing. Maybe Rick invested himself so much in the process that he knew how the city council or the county board would vote on each application. If things didn’t look good, the application could be delayed to another day or withdrawn until prospects improved. The Lord took Rick before I learned his style and process.

Another reason someone might never lose a zoning permit application could be because they could sell as well as the Music Man or they could lead like the Pied Piper. Maybe the company they represented satisfactorily addressed all objections

or never proposed locations subject to significant opposition.

Right Time and Procedure

It’s not always an option to withdraw an application. An impatient carrier may want an answer without waiting for the right process to conclude. The budget supporting the application might be due to expire, leaving it dormant for a time. In many cases, the budget is restored, and the time the application was on hold was used to resolve issues that took more time. Once, I was told to stop work on a leased site mere days away from zoning approval because the site was put on hold. Staff issues had been resolved, and no local opposition was apparent.

Another time, after nine years during which the carrier periodically put a site on hold for a year or more at a time, and after waiting for the landowner (a country club) to agree to sign a lease, an application was filed. Obtaining a permit to build on the golf course required a zoning variance unless a short text amendment could be approved or unless the course was rezoned to agricultural land. The jurisdiction’s staff indicated the historic community would object to a text amendment, but there was a chance for approval with rezoning because then the site would only have required something similar to a conditional use permit. The carrier wanted

an answer without taking time for more favorable zoning. It would have been better to delay the application until the rezoning could have been tested independently of the carrier’s involvement.

In another instance, a jurisdiction’s staff favored adding wireless use to more districts, and a text amendment was proposed and obtained outside of the carrier contract. An affected site was on hold, and by the time the site came off of hold, permits were approved much quicker and more easily. The text amendment was handled while other active sites were being developed in the same city.

It’s good for a site acquisition specialist to get the work done before budgets evaporate. It avoids extended delays and allows the specialist to be paid sooner rather than later, if at all. Nevertheless, encouraging an over-anxious carrier to wait may prove the wisest long-term approach. It’s better to win later than lose now.

Pre-zoning

Case law shows that essential elements of good zoning applications come from documenting that the site selection process considered the best alternative locations. Meeting with planning staff in the initial site acquisition stage helps, too. Zoning considerations need to be included in the initial stages of site acquisition.

I worked on the original RF design for PCS in Salt Lake City for the system that was third in the United States to go online in 1997. The number of sites at risk from zoning considerations was reduced from 30 to 15 of the first 65 planned sites because of an evaluation of existing structures, favorable zoning and the existence of neighborhood groups. Five initial acquisition agents were provided with files that gave them enough of a head start to acquire the first 50 sites in five weeks. The files included search area ring maps and USGS topographical maps. They identified relevant neighborhood groups and city and county agencies. They included tax maps, street maps, permit contacts, hearing schedules, and building and zoning code excerpts. The files contained county assessor printouts listing landowner contact information.

Going the Extra Mile

Zoning contractors are well served by going the extra mile to gain approval, but most scopes of work they receive don't pay a premium for politicking with elected officials.

This is why in many markets job requisitions for contractors specify prior local experience.

When planning commissions, city councils, county commissioners or staff see a consultant carry applications over and over again, they get a good idea how much effort the consultant puts into the job and to what extent the consultant can be trusted. Good zoning agents can work effectively in any jurisdiction.

Losing to Win

Some of my most profound lessons have

come in the wake of gaining approvals while facing strong and sometimes emotional opposition from neighbors or the jurisdiction's staff. This is when the zoning specialist wins the most respect in the midst of losing other battles along with application and hearing preparation.

All too often, what wireless carriers consider to be sites of satisfactory quality aren't the same as what planning departments and neighbors want. Consultants and carriers need to support the virtues of highly contested applications as much as possible. They should help elected officials to feel responsible for making good decisions for community safety while

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listening to neighborhood opposition. Well-supported applications demonstrate to the jurisdiction that it is the master of its own fate. Sometimes some well-placed shame goes far.

Local Demographics

It took three years for the city council of Rapid City, South Dakota, to overturn a planning commission denial and approve an application for a 100-foot flagpole tower less than 500 feet from a 90-foot monopole.

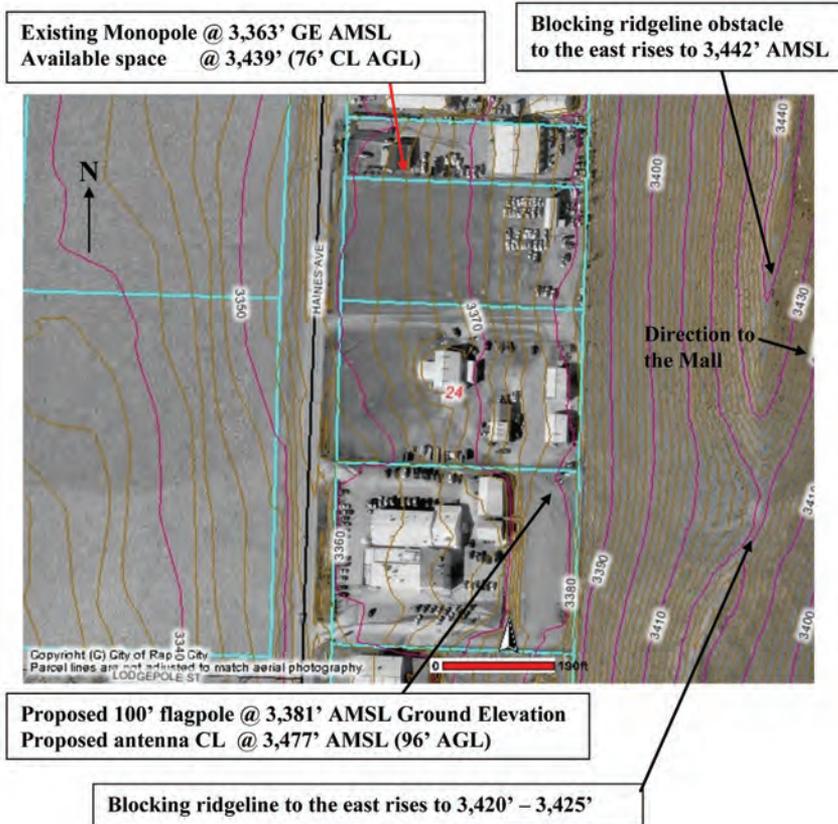
Despite the public need for adequate

wireless communications, the Rapid City authorities sensed high stakes in keeping the Black Hills region's landscape as pristine as possible to attract new residents and tourists. The annual Sturgis Motorcycle Rally 28 miles away in Sturgis, South Dakota, attracts as many as 500,000 bikers. Many area businesses make the lion's share of their annual income in three summer months. Carriers have to build more network capacity to carry the peak wireless traffic of summer than is needed during the rest of the year.

When the planning commission first considered the flagpole application, planning department staff had concluded the nearby monopole could hold additional antennas. The carrier said the monopole was too short to serve a shopping mall a half-mile away with any antenna position except the top one. A competing carrier owned the monopole, and its antennas occupied the top position. Meanwhile, no neighborhood opposition to the flagpole materialized.

The planning commission staff asked the applicant to withdraw the application and further investigate collocation on the monopole. It took almost nine months to obtain a structural analysis from the competing carrier. My client had to map the foundation and produce a soils report, which took three months at a cost of \$12,000, for the six-year-old monopole.

The analysis and report showed the monopole to be strong enough for the additional load, supporting the staff's earlier conclusion. If it failed, that could have tilted the staff to accept the flagpole when we filed a second application



For the Rapid City, South Dakota, site, this is a comparison of the ridgeline obstacle ground elevations to the east toward the shopping mall for the existing monopole and the proposed flagpole elevations. The author supplied this photograph for the city council hearing of May 9, 2009.

for it. Consequently, 10 months later, the planning department staff recommended denial of the application, as did the planning commission.

Many factors involving the monopole led to the eventual approval of the flagpole because it became clear to the city council that collocating on the monopole was impractical, if not impossible. The ground leased for the monopole had only enough space for the pole and the owner's shelter; thus, two new leases were required, one for additional ground and one for tower space.

The landowner wouldn't grant formal access consent without a \$2,000 advance. The carrier's business policy wouldn't allow an advance to be paid without an

executed agreement. The policy wouldn't allow an agreement without due diligence, and due diligence wasn't possible without formal site access.

Meanwhile, efforts to achieve a compromise with the landowner's attorney stalled because of a conflict of interest. The landowner's attorney had done some work for my client wireless carrier in the past. The landowner's attorney couldn't get involved, and the landowner stopped trying.

These problems caused us to redirect our energy to the original site and a new flagpole application. Nevertheless, without going through these steps in an attempt to comply with the planning commission staff's desires, the case we

made to the city council for overturning the planning commission denial might not have been as compelling.

Flagpole Approval

The land for the flagpole site changed ownership. The new owners agreed to the terms of the signed ground lease for the flagpole, but wanted it elsewhere on the property. This required a new lease, more elevations to be surveyed, a new environmental study and plans to be redrawn.

The second flagpole application was filed 23 months after the first. It was continued for a month so the planning commission staff could speak with the monopole's landowner to see if they could persuade him to allow site access without the upfront payment. He would not.

We provided landscaping detail and persuasive RF engineering information to support the technical need for the flagpole and the unsuitability of a lower position on the monopole for serving the shopping mall, and then we went to a hearing. Two years and two months after the first application was filed, the planning commission denied the second application. Five months later, the city council overturned the denial. The flagpole site was built and placed into service.

Practicality

Is a city council or a county board more practical than a planning commission? From the 1950s through the 1970s, my father's job was real estate and the construction of gas stations in the Chicago area. Occasionally, he would talk about planning commissions making idealistic decisions that often were reversed by more practical city councils in a growing metropolitan area. In my



The author provided this photograph of a flagpole to the city council of Rapid City, South Dakota, in support of a site permit application. A photo simulation was not requested, required or provided.



Looking from the flagpole location toward the monopole, this view looks 500 feet across separately owned vacant property that was not available for a wireless tower site lease. The author supplied this photo to the city council.

experience, this still occurs on occasion.

Here are some possible reasons the city council approved the flagpole. There were many seemingly insurmountable obstacles for collocating on the monopole. One of the new landowners where the flagpole was to be built played an important role in its approval. In light of the collocation problems, the planning commission's denial was idealistic. We demonstrated patience in persevering to demonstrate to the city council the practical way to look at the evidence. Line-of-sight graphics documented a compelling technical need for the new flagpole, and the flagpole would accommodate three carrier positions with line of sight to the mall. The flagpole design was more attractive than the monopole. Cities often are unable to get an existing carrier or monopole owner to build a taller pole replacement or to increase its ground space for competition. A denial may have been proven to have the effect of inhibiting one wireless carrier's ability to provide adequate capacity in a specific area with respect to another carrier's functional capability in the

same area, thus discriminating among functionally equivalent service providers, and that's against federal law.

Hearing Dynamics

One time during a hearing, a planning commission representative invited me to leave my seat in the audience and join the commission staff at its table. I walked through the short courtroom partition to take a seat at the table. After making my presentation, I returned to my seat in the audience. Later, a neighbor to the proposed site took the seat at the planning commission staff's table and remained there until the hearing ended in a decision to recommend denying the application. I realized that it hadn't been necessary for me to give up the seat at the table.

When the county board met the next month, my boss went in my place because I had another hearing elsewhere. My advice to him was not to get up from the seat at the table. The boss could see how being in that seat held power. The county board overturned the planning commission recommendation.

Conclusion

Here are seven ways to overcome obstacles and gain zoning approvals:

1. For everything there is a right time and procedure.
2. Pre-zoning is critical to proposing the best location, all things considered.
3. Go the extra mile. Leave no stone unturned in your best interests.
4. Be willing to lose before you win.
5. Don't just know, but truly understand, local demographics.
6. A city council or a county board is more practical than a planning commission.
7. Pay meticulous attention to local and hearing dynamics.

I hope these ways of overcoming obstacles and gaining zoning approvals might keep you thinking at each twist and turn of your difficult permit application process. We all aspire to achieve a zoning record like Rick Sullivan's.

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