

STATE OF MAINE

COUNTY OF YORK

CITY OF SACO

The following are minutes of the August 18, 2008 Council Meeting.

- I. **CALL TO ORDER** – On Monday, August 18, 2007 at 7:02 p.m. a Council Meeting was held in the City Hall Conference Room.
- II. **ROLL CALL OF MEMBERS** – Deputy Mayor Ronald Morton conducted a roll call of the members. Councilors present: Margaret Mills, Leslie Smith, Jr. Sandra Bastille, Arthur Tardif, Eric Cote and Marston Lovell.

Mr. Richard R. Michaud, City Administrator and Lucette S. Pellerin, City Clerk were also in attendance this evening.

**III. PLEDGE OF ALLEGIANCE**

**IV. GENERAL :**

**V. APPROVAL OF MINUTES:** Minutes were not presented this evening.

**VI. AGENDA ITEMS:**

**A. (First Reading) Contract Zone: Cell Tower McKenney Road**

U.S. Cellular dba Maine RSA #1, Inc., proposes to erect a 190 foot tower on a 100’X100’ portion of the property at 202 McKenney Road. Wireless Telecommunication Facilities are not an allowed use in the C-1 zone. The applicant has identified this location due to its desire to cover the service area in northwest Saco, where coverage is poor or not available. A contract zone is the only option that would allow a cell tower to be built and operated in this location. There is precedent for cell towers being allowed via contract zoning; existing towers off Industrial Park Road, Rte. One and Flag Pond Road were approved as contract zones.

This item was reviewed by the Planning Board at its June 17 meeting. The Board made a negative finding as to whether the contract zone is proposed for land with an unusual nature or location, determining that insufficient information had been provided to allow for such a finding. The Board made a positive finding on each of the other three standards found in Sec. 1403-6, but voted to make a negative recommendation on the proposed contract zone.

Councilor Mills moved, Councilor Tardif seconded, that the City of Saco hereby ordains and approves the First Reading of the contract zone document titled, ‘**Contract Zone Agreement By and between Maine RSA #1, Inc. and the City of Saco**’, dated June 17, 2008; and further move to schedule a Public Hearing for September 2, 2008. The motion passed with five (5) yeas and one (1) abstention. Councilor Cote abstained.

**Contract Zone Agreement**  
**By and between**  
**Maine RSA #1, Inc. and the City of Saco**  
**June 17, 2008**

THE CITY OF SACO HEREBY ORDAINS:

I. That the zoning ordinance of the City of Saco, dated January 2, 1985 as amended through November 19, 2007, is hereby amended by adopting the proposed change in use as further described in the following contract by and between the City of Saco and the U.S. Cellular Corporation.

This contract amends the Saco Zoning Ordinance in order to permit the construction of a Wireless Telecommunication Facility at 202 McKenney Road, identified as Tax Map 125, Lot 10, subject to the following conditions and restrictions, as provided for in Section 1403 of the Saco Zoning Ordinance:

1. Maine RSA #1, Inc., (the Applicant), and/or its affiliates, proposes to construct a single Wireless Telecommunication Facility in the form of a monopole tower one hundred ninety (190) feet in height at 202 McKenney Road (Subject Property).
2. The record owner of the Subject Property is Linda L. Fenderson. Right, title and interest for the application is demonstrated via an Option to Lease by and between Linda Louise Fenderson, 1018 South Street, Dayton, Maine and Maine RSA #1, Inc., with an address of Attention: Real Estate, 8410 West Bryn Mawr Avenue, Suite 700, Chicago, Illinois 60631, a Maine corporation.
3. Said Option to Lease would grant the right to construct operate and maintain a Wireless Telecommunications Facility, as defined by the City of Saco Zoning Ordinance, on a 100 foot by 100 foot portion (0.23 acre) of the Subject Property.
4. The Subject Property has an area of 8.25 acres, and is a legally nonconforming lot due to having only sixty (60) feet frontage on McKenney Road; two hundred (200) feet of frontage is required in the C-1 zone. A single family dwelling exists on the property.
5. The Subject Property is located in the C-1 zoning district.
6. Wireless Telecommunication Facilities are a conditional use in certain zoning districts in Saco. Said Facilities are not an allowed use in the C-1 district.
7. As stated in a letter dated May 20, 2008 from Robert Gashlin, KJK Wireless, 8 Providence Avenue, Falmouth, Maine, agent for U.S. Cellular, "U.S. Cellular is licensed by the Federal Communications Commission to provide telecommunications service to northwest Saco and the surrounding areas where it lacks adequate coverage and capacity".

8. The Applicant requests that the City of Saco establish a Contract Zone specifically and exclusively for the portion of the Subject Property subject to said Option to Lease in order to allow the construction, operation and maintenance of a Wireless Telecommunication Facility.

II. This contract amends the Saco Zoning Ordinance as follows:

A. Notwithstanding Section 410-14, a single Wireless Telecommunication Facility, as described in the application materials submitted by KJK Wireless on behalf of Maine RSA #1, Inc., to include a one hundred ninety (190) foot monopole tower and supporting infrastructure, antennas, utilities, equipment shelter, back-up power generator, propane tank, associated equipment and an access road from McKenney Road, sited within a fenced enclosure as shown on a site plan submitted by the Applicant, entitled "U.S. Cellular, Site Name: Salmon Falls, Site No.: 853399," shall be regarded as an allowed use on the Subject Property.

III. This Contract Zone is subject to the following conditions and restrictions, as provided for in Section 1403 of the Saco Zoning Ordinance:

1. The Wireless Telecommunication Facility is subject to review under the provisions of Section 728, and Article 11, Site Plan Review of the Saco Zoning Ordinance.
2. Except as addressed in this Contract Zone document, the project shall adhere to all other applicable provisions of the City of Saco Zoning Ordinance.
3. All details as shown on the final plan approved by the Planning Board are hereby incorporated into this contract by reference. The site shall be developed in conformance with those plans. Minor changes may be approved by the staff of the City of Saco. Any changes determined by the staff to be "major" shall be submitted to the Planning Board for review. If it is determined that the changes constitute a change in the contract, then the developer shall also be required to obtain City Council approval of the changes.
4. This Document and Contract Zone affects only the Subject Property.
5. This contract and its provisions shall apply exclusively to the contract zone request submitted by the Applicant and/or its agents.
6. **This Document and the Contract Zone it creates shall not be transferable prior to development as proposed by the Applicant, unless permission for said transfer or conveyance is approved by the City Council.**
7. Failure of the Applicant to secure site plan approval from the Planning Board, and any and all other permits or approvals that may be required by the City or other regulatory

agencies including but not limited to the Maine Department of Environmental Protection and/or Federal Communications Commission within one year of the approval of this Contract by the Saco City Council shall render this Contract null and void. In the event that permits or approvals are delayed due to circumstances beyond the control of the Applicant, this one year deadline may be extended by one year upon written request submitted by the Applicant, subject to approval by the City Council.

8. Breach of these conditions and restrictions by the developer shall constitute a breach of the contract. Said breach of contract shall constitute a zoning violation, subject to enforcement action by the City of Saco.
  
9. The Applicant shall provide the City of Saco with a co-location position on the proposed tower at an elevation of not less than one hundred forty (140) feet above the base of the tower, and with space in the equipment shelter, at no cost to the City, in order that the City may install or have installed an antenna for wireless telecommunication purposes.
  
10. It is the intent of the City that towers, structures or similar installations erected as part of a Wireless Telecommunication Facility shall be available to multiple tenants, carriers, and/or providers of wireless telecommunication service. The Applicant shall provide a signed statement obligating the owner of the Facility and its successors and assigns to:
  - a. Respond in a timely, comprehensive manner to any request for information from a potential co-location applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;
  - b. Negotiate in good faith for shared use of the facility by third parties, thereby agreeing to not limit the number of carriers utilizing the Facility to less than the carrying capacity of the Facility;
  - c. Allow shared use of the facility if any applicant agrees in writing to pay reasonable charges for co-location;
  - d. Require no more than a reasonable charge for shared use, based on community rates and generally accepted accounting principles. This charge may include , but is not limited to a pro-rata share of the cost of planning project administration, site design, construction, financing, return on equity, depreciation, and all of the costs of adapting the Facility or equipment to accommodate a shared user without causing electromagnetic interference.

**IV. By vote of the Saco Planning Board on June 17, 2008, and the Saco City Council on \_\_\_\_\_, 2008, the following findings are hereby adopted:**

The portion of Map 125, Lot 10 proposed as a site for a Wireless Telecommunication Facility by the Applicant and/or its agents is of an unusual nature and location, for the following reasons:

1. The property is unique because it is located in an area that has substandard or no wireless telecommunications service. Also, US Cellular has determined that this specific location is required to effectively implement its Federal Communications Commission license.
2. U.S. Cellular's intended service area is in northwest Saco where the overwhelming majority of land is zoned Conservation District (C-1). The Ordinance provides that telecommunications facilities are permitted only in the Light Industrial / Business Park District, Highway Business District, Business Park District, and Industrial District. No such districts are located in close enough proximity to U.S. Cellular's intended coverage area to provide adequate service. Accordingly, U.S. Cellular proposes to construct its Facility in the Conservation District pursuant to contract zoning.

B. The proposed rezoning is consistent with the Saco Comprehensive Plan, based on the following goals:

Part One and Part Two of the *Saco Comprehensive Plan* discusses the origins, trends, and existing socio-economic conditions in Saco. Like many northern New England manufacturing based communities, Saco has recognized the need to transition to a more diverse, dynamic, and contemporary orientation which is a basis for a viable community. Saco has successfully made this transition and the catalyst has been innovation and forward thinking community planning. Wireless telecommunication facilities do provide a stimulus for a diverse, dynamic and contemporary community. For example, currently 85% of all citizens own cell phones and 22% have replaced traditional land based telephones with cell phones as their only means of communications. Many people work from their homes and require adequate cell phone service and broadband (which wireless telecommunications facilities provide). Many people also require cell phone service while they commute to work, while they conduct routine errands, and during emergency situations. Last year up to 30% of all calls for emergency services in Maine came from cell phones. Wireless telecommunications have become a fundamental need in many people's lives and this trend is still evolving.

U.S. Cellular's proposed Facility is also consistent with Part Four of the *Saco Comprehensive Plan* that encourages compatibility with regional plans. Specifically, US Cellular's intent to provide cellular service to northwest Saco that currently has inadequate or no such service is directly compatible with Governor Baldacci's Wireless Telecommunications Initiative and the Federal Government's Telecommunications Act of 1996.

The *Saco Comprehensive Plan*, Section 17B, states a goal is "To assure that new commercial and industrial development occurs in a way that is visually and environmentally sound and that protects established residential neighborhoods." The

location of the Facility will have a minimal impact on the area because it is located in a relatively remote and forested area on an 8.25-acre parcel that is 200' back from the closest

property line and approximately 750' back from McKenney Road. The Facility will produce minimal or no noise, dirt, dust, glare, odor, fumes, smoke, gas, sewerage, refuse, vibration, or danger of explosion or fire.

The *Saco Comprehensive Plan*, Section 17F, states a goal is "To accommodate the growth of commercial and industrial activities in designated growth areas where public services and facilities are or can be provided." The *Saco Comprehensive Plan* has identified northwest Saco as one of the fastest growing areas in Saco. This area currently has substandard or no telecommunications service and the Facility will provide such service that will accommodate the growth of commercial and residential activities.

The *Saco Comprehensive Plan*, Section 17M, states a policy that "The City should continue to pursue economic growth that expands the City's tax base." It is anticipated that the Facility will produce a revenue stream for the City in the form of personal property taxes.

- C. The proposed use is consistent with, but not limited to, existing uses and allowed uses within the C-1 zone. Similar existing uses in the C-1 zone include a Wireless Telecommunication Facility off Flag Pond Road, a cable television tower off Boom Road, and a radio broadcast tower off Simpson Road. Allowed uses include agriculture, single and two-family dwellings, essential services, kennels, timber harvesting, golf courses, hospitals and clinics, extractive industry, etc.
- D. The conditions and restrictions noted above are adequate to the meet intent of the Saco Zoning Ordinance.

Based on the above findings, and the conditions and restrictions listed above, the City Council hereby incorporates this Contract Zone agreement into the Saco Zoning Ordinance by reference. By signing this contract, both parties agree to abide by all the conditions and restrictions as contained herein.

Adopted by the Saco City Council on \_\_\_\_\_, 2008.

City of Saco

Maine RSA #1, Inc.

\_\_\_\_\_  
Richard Michaud, City Administrator

## VII. ADJOURNMENT

Councilor Mills moved, Councilor Bastille seconded, to adjourn. The motion passed with six (6) yeas. TIME: 7:24 p.m.

ATTEST: \_\_\_\_\_  
Lucette S. Pellerin, City Clerk

