

CHARTER TOWNSHIP OF ORION PLANNING COMMISSION

***** MINUTES *****

REGULAR MEETING – WEDNESDAY, AUGUST 1, 2012

The Charter Township of Orion Planning Commission held a regular meeting on Wednesday, August 1, 2012 at 7:00 p.m. at the Orion Township Hall, 2525 Joslyn Road, Lake Orion, Michigan 48360.

PLANNING COMMISSION MEMBERS PRESENT:

Doug Zande, Chairman	Carol Thurber, Vice-Chairwoman
Dick Christie, Secretary	John Steimel, TB Rep. to PC
Don Walker, Commissioner, PC Rep. to ZBA	Justin Dunaskiss, Commissioner

PLANNING COMMISSION MEMBER ABSENT:

Chris Barnett, Commissioner

CONSULTANTS PRESENT:

R. Donald Wortman (Township Planner) of Carlisle/Wortman Associates, Inc.
Dan Kelly, Township Attorney
Tammy Girling, Planning/Zoning Coordinator

OTHERS PRESENT:

Michelle Parker	James Carnago	Richard Snelling
Renata Capozzoli	John Capozzoli	Greg Parker
Jane Corliss	Robert LaBelle	Melissa Duby
John Duby	Raphael A. Flajole	Deborah R. Wylin
Mary Painter	Ralph Painter	Jessica King
Carolyn Harrison	Don Harrison	Jerry Morgan
Phoebe Schutz		

1. OPEN MEETING

Chairman Zande called the regular meeting to order at 7:00 p.m.

2. ROLL CALL

All members were present, except Chris Barnett.

3. MINUTES

Moved by Secretary Christie, supported by Commissioner Dunaskiss to approve the July 18, 2012, PC-2004-23(2012), Village Square Planned Unit Development (PUD) Amendment Joint Public Hearing Minutes and the July 18, 2012 Regular Meeting Minutes as presented. **Motion carried 6-0** (Barnett was absent).

4. AGENDA REVIEW AND APPROVAL

Moved by Commissioner Dunaskiss, supported by Secretary Christie to approve the agenda as presented. **Motion carried 6-0** (Barnett was absent).

5. BRIEF PUBLIC COMMENT – NON-AGENDA ITEMS ONLY

None.

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6. CONSENT AGENDA

None.

7. NEW BUSINESS

None.

Chairman Zande recessed the regular meeting and opened the PC-2012-09, Text Amendment to Zoning Ordinance No. 78, Minor Planned Unit Developments Public Hearing at 7:05 p.m.

Chairman Zande closed the PC-2012-09 public hearing and reconvened the regular meeting at 7:08 p.m.

8. UNFINISHED BUSINESS

A. PC-2012-01, Verizon Wireless (Pyramid Network Services) Monopole Tower Special Land Use and Site Plan, Northwest Corner of Baldwin and Waldon Roads

Mr. Robert LaBelle of Myers, Nelson, Dillon, and Shierk, attorney for Verizon Wireless, was present. He noted that they can understand the Township's desire to have an independent radio frequency engineering group be engaged for the purpose of reviewing the need for a tower. They are in favor of a third-party review that would be heard and come to a final decision at the next available regular meeting in September.

Mr. R. Donald Wortman, of Carlisle/Wortman Associates, Inc., overviewed their Special Land Use and Site Plan Review correspondence, dated June 27, 2012*. The proposed tower would require an approved special land use. This case was postponed from the last meeting. Pyramid Network Services, LLC has provided a letter dated June 5, 2012*, which addresses a number of items requested by the Planning Commission as well as whether there are alternative sites that this tower could be located. Also, the main thing for members to determine tonight is whether the Township should have an independent radio frequency engineering group be engaged for the purpose of reviewing the need for a tower.

Attorney LaBelle noted that Verizon Wireless is willing to pay the reasonable costs of that independent third-party review in order to get a final decision at the September meeting.

Commissioner Steimel commented that obtaining evidence for a special land use seems to conflict with what the Federal Telecommunications Act of 1996 states.

Planner Wortman agreed that there are constraints under that Act. Also, Public Act No. 110 in Michigan was recently amended. Attorney Kelly's memo appropriately addresses this.

Mr. Dan Kelly, Township Attorney, commented that this is not a standard special land use request and that in certain cases we will be prohibited or pre-empted from denying a cell tower use. There is at least one case law that talks about that it may be appropriate to deny it on grounds that it does have a detrimental effect to the community as a whole, but it is not very clear under the Act exactly where that line is drawn. I think you should rely upon the memo* (dated March 13, 2012) that we provided you in terms of trying to provide the best interpretation of the Federal Act. One thing is clear that the environmental effects and/or the health and safety effects are not an issue and that is for sure.

Vice-Chairwoman Thurber inquired, how are we with the 150-day clock? Is it because we're taking some action by requesting additional information that we're still within-

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Attorney Kelly noted that he and Attorney LaBelle spoke just before the meeting and he believes that they are prepared to grant us an extension until that next hearing to undertake this study. Is that right?

Attorney LaBelle replied, that's correct. I can confirm that on the record.

Attorney Kelly stated, we'll need a letter from you to indicate that.

Attorney LaBelle stated, we've done it before and we'll do it again this time as well.

Commissioner Steimel inquired whether there is case law regarding the operation of cell towers.

Attorney Kelly replied that in their memo, they did find a couple of cases where the aesthetics related to a cell tower and the denial of a special land use for a cell tower could be upheld, even subsequent to the Federal Act. So, there is some precedence that would suggest that you could base it upon things such as compatibility with the environment, but it's not your standard review for purposes of our ordinance as much as it is trying to in these cases there were some fairly extreme impacts on the aesthetics caused by the cell tower. Where the line is drawn is probably done on a case by case basis.

Commissioner Steimel stated, regarding substantial evidence, but that saying that beauty is in the eye of the beholder, so it's like one guy's word against another guy's word.

Attorney Kelly noted that it's also a balancing test of the need for a cell tower. The heart of the Act was to say that the cell towers are in the best interest of the public and that we do want to have this interconnectivity of cell towers throughout all of the area. Generally it protects and is a benefit to the public. So, if there is a substantial showing of a need, then that can be weighed against the impact on the aesthetic values. If you had very unique circumstances, where you have a very picturesque mountain view or something along those lines, but just a cell tower itself in a residential or urban area probably would not be enough, but that's a judgment call or my opinion as to where that line may be drawn.

Secretary Christie inquired whether the study would include dropped calls locations and would it also explore the potential radio frequency waves hazard.

Attorney Kelly noted that he doesn't believe that it would other than to confirm that this cell tower is within the standards and guidelines that have already been set.

Mr. James V. Carnago, of the Law Offices of James V. Carnago, P.C., 48680 Van Dyke, Shelby Township, Michigan 48317, noted that he is an attorney and is also a member of the Bruce Township Planning Commission and is Chairman of their Zoning Board of Appeals in Macomb County. He is here on behalf of the residents. He noted that he learned today from Mr. Daniel Dunlop, of DTE, whose phone number is 313-235-8426, that there is permission to extend the DTE tower or antenna already. So we have here Verizon going two ways. Either they want their monopole or they're going to go to Detroit Edison. Mr. Dunlop told him he had no idea of their petition for the monopole. That's the new information I have. In addition, it appears your Zoning Ordinance No. 78, Section 27.07, will have to be amended, because it mentions all those aesthetics. I gather from discussion by your attorney, that you're looking toward the Federal Act and you have to comply with the Federal Act. The problem is what does that do for the Township and the residents? He noted that there are many things to consider and that the third-party independent radio frequency engineering group study should be done. It should have been told to you that Detroit Edison had already approved an extension to their tower or antenna. Are they going to continue with the pole if they can get that or are they going to continue with Detroit Edison? I think that's

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something that you should have been told about, but all in all, taking into account your ordinance, what the Federal Act says, and the fact that you're going to do a further investigation, I'll terminate my presentation, because it appears that you're going to an outside source. I'll be back at the next meeting and I will give my litany of reasons why the tower should not be placed in that location and everybody here knows where it's at. There are commercial people and residential people that are fully against the matter.

Ms. Renata Capozzoli, of 3448 Waldon Road, noted that she lives two doors down from the subject site and noted that at the last meeting there were only two people that said that they didn't have good coverage. There are 289 signatures in the packets that say otherwise. She doesn't see the point in building a \$2 million tower when the handful of people could get signal boosters for \$150 from eBay.

Mr. Greg Parker, of 3436 Waldon Road, showed members a postcard questionnaire that he and neighbors received from Verizon and inquired of the petitioner how many responses they received.

Attorney LaBelle replied that they received 813 questionnaires back saying that they need the new tower. Also, that the DTE tower that they're talking about is a DTE tower, but the actual administration is run by ITC, which accepts the applications for purposes of determining when they're going to be able to take these. They've applied to ITC and the main purpose of that was to find out whether they could handle our tower structurally. In the material they provided in June, there is a mark-up from DTE that says that they can't extend the tower or put on the particular type of antenna that they need for 4G operations. Further, they cannot collocate on them. He will present more information at the September meeting.

Commissioner Dunaskiss inquired of Planner Wortman what the third-party study would actually achieve.

Planner Wortman replied that they would review the call traffic data that would be provided by Verizon. What Verizon is saying is that there are dropped calls resulting in insufficient service. He noted that his firm doesn't have the technology to verify since that gets into radio frequency engineering, which is a specialty field.

Attorney LaBelle noted that third-party will have independent monitoring and measuring equipment and will also review our data to determine whether or not the frequencies being obtained at a particular location are sufficient to be able to sustain a signal. Also, that they have a duty to their customers to deliver good service and would not spend \$1 million if there wasn't a need.

Commissioner Walker inquired who would be choosing the radio frequency engineer.

Planner Wortman noted that they have provided the Building Department with the names of two firms that do this type of work.

Commissioner Walker suggested having the radio frequency engineer's study to include investigating the possibility of hooking it up to the DTE tower even though we've heard tonight that it's not possible.

Attorney LaBelle noted that the radio frequency engineer could go into that if you ask them to.

Secretary Christie commented that he is in support of the third-party study.

Attorney Kelly commented that since he knows that the case law talks about the balancing test, in order to accurately balance the need against the aesthetic values, it would seem to him that you would probably

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need to at least have some kind of substantial expert or independent review, so that you can make that balancing.

Commissioner Dunaskiss noted that based on the discussion, he believes that it is pertinent to move forward with the study.

Moved by Vice-Chairwoman Thurber, supported by Secretary Christie regarding case PC-2012-01, Verizon Wireless (Pyramid Network Services) Monopole Tower Special Land Use and Site Plan, Northwest Corner of Baldwin and Waldon Roads, **to postpone until an independent radio frequency engineer's study has been completed**, with Verizon Wireless paying a reasonable cost for that study. This postponement is until the September 5, 2012 regular meeting providing that the independent study can be submitted by August 15, 2012 or in the event that it cannot be submitted by August 15, 2012 that it can be submitted by August 29, 2012 for the September 19, 2012 regular meeting and that Verizon Wireless will grant the time extension from the 150-day shock clock as necessary. Also, that the radio frequency engineer's study shall also include investigating the possibility of hooking it up to the DTE tower through ITC. Roll call vote was as follows: Walker, yes; Dunaskiss, yes; Christie, yes; Steimel, no; Thurber, yes; Zande, yes. **Motion carried 5-1** (Barnett was absent).

Attorney Kelly noted that he believes that they will be able to reach an agreement regarding the cost of the study. However, if they can't, they will bring it back before members at the September 5, 2012 regular meeting and it will be resolved then.

Ms. Michelle Parker, of 3446 Waldon Road, commented that she is glad that they are getting an independent study. She inquired what happened to looking at multiple sites and not just this site.

Chairman Zande replied that there were actually two sites. The first site was in the Orion Oaks Park, which didn't exist and the second one was the tower here on the Township Hall site.

Ms. Parker asked that members verify the locations and information regarding the alternative sites.

B. PC-2012-09, Text Amendment to Zoning Ordinance No. 78, Minor Planned Unit Developments

Mr. R. Donald Wortman, of Carlisle/Wortman Associates, Inc., overviewed their review correspondence, dated June 25, 2012*. This amendment would establish a minor planned unit development (PUD) as an option, which would allow a concurrent conceptual and final PUD and includes criteria that would establish the standards that would qualify for a minor PUD and sets up the procedures within the zoning ordinance for that type of process to proceed.

Commissioner Steimel requested that Planner Wortman explain the difference between a PUD and a minor PUD for the public.

Planner Wortman explained that the eligibility criteria and the design standards are exactly the same, in fact, there is language in there that states that a minor PUD shall be subject to the same criteria as a full PUD. The evaluation process is exactly the same. The only thing that is different is the process, which would allow concurrent conceptual and final PUD.

Commissioner Steimel noted that they would not be getting away with anything. We evaluate if it's eligible and whatever variances they're looking for, for whatever reason, have to be balanced somehow with what we would consider a benefit that outweighs the variance that we're granting as part of the PUD.

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Planner Wortman stated, as community benefits, yes. That is still in there.

Commissioner Steimel inquired whether it still means that the Township Board of Trustees gets a chance to look at it and approve it just like before only it is for both the concept and the final plan at the same time.

Planner Wortman noted that it is still a recommendation from the Planning Commission to the Township Board of Trustees.

Moved by Commissioner Dunaskiss, supported by Commissioner Steimel regarding case PC-2012-09, Text Amendment to Zoning Ordinance No. 78, Minor Planned Unit Developments, **to recommend adoption to the Township Board of Trustees**. Roll call vote was as follows: Dunaskiss, yes; Christie, yes; Steimel, yes; Thurber, yes; Walker, no; Zande, yes. **Motion carried 5-1** (Barnett was absent).

C. Consider Cancelling the August 15, 2012 Planning Commission Regular Meeting

Moved by Vice-Chairwoman Thurber, supported by Secretary Christie to cancel the August 15, 2012 regular meeting due to the lack of agenda items. Roll call vote was as follows: Christie, yes; Steimel, yes; Thurber, yes; Walker, yes; Dunaskiss, yes; Zande, yes. **Motion carried 6-0** (Barnett was absent).

9. PUBLIC COMMENTS

None.

10. COMMUNICATIONS

None.

11. COMMITTEE REPORTS

None.

12. PUBLIC HEARINGS

None scheduled at this time.

13. CHAIRMAN'S COMMENTS

None further.

14. COMMISSIONERS' COMMENTS

Commissioner Walker commented that at the last ZBA meeting, there was an issue about language in Article XXVII, Section 27.02,8, that talks about the detached accessory buildings and lot sizes. We had a lot size that was exactly one acre and when you read the ordinance, it says that ½ to one acre is x number and one acre to 2.5 acres is y number. We made a decision based on what we had, but we thought if the Planning Commission or Township Board should determine if that language should be more clearly written. Such as, should it be less than one acre or more than one acre. This is a concern from the ZBA. He also noted that the tickets for the Baby Dragon Race are now for sale.

Vice-Chairwoman Thurber reminded all to vote next Tuesday.

Commissioner Dunaskiss reminded all to vote next Tuesday.

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15. ADJOURNMENT

Moved by Vice-Chairwoman Thurber, supported by Secretary Christie to adjourn at 8:10 a.m. **Motion carried 6-0** (Barnett was absent).

Respectfully submitted,

Phoebe Schutz
PC/ZBA Recording Secretary
Charter Township of Orion

Planning Commission Approval Date

* Attachment