



Charter Township of Orion
Oakland County, Michigan

Planning Commission
Regular Meeting Minutes, Wednesday, September 19, 2012

The Charter Township of Orion Planning Commission held a regular meeting on Wednesday, September 19, 2012 at 7:00 p.m. at the Orion Township Hall, 2525 Joslyn Road, Lake Orion, Michigan 48360.

PLANNING COMMISSION MEMBERS PRESENT:

Carol Thurber, Vice-Chairwoman	Dick Christie, Secretary
Don Walker, Commissioner, PC Rep. to ZBA	Justin Dunaskiss, Commissioner
Chris Barnett, Commissioner	

PLANNING COMMISSION MEMBERS ABSENT:

Doug Zande, Chairman	John Steimel, Commissioner, TB Rep. to PC
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CONSULTANTS PRESENT:

R. Donald Wortman (Township Planner) of Carlisle/Wortman Associates, Inc.
Dave Schroeder, (Township Engineer) of Orchard, Hiltz & McCliment, Inc.
Beth McGuire, Township Zoning/Planning Administrator

OTHERS PRESENT:

Robert LaBelle	Michelle Parker	John Capozzoli
Renata Capozzoli	Greg Parker	Melissa Duby
Melissa Brofford	John Zielinski	Scott Hubble
Jessica King	Robert Cloutier	Michelle Cloutier
James Carnago	Vern Gerard	Melanie Gerard
Phoebe Schutz		

1. OPEN MEETING

Acting Chairwoman Thurber called the regular meeting to order at 7:00 p.m.

2. ROLL CALL

Chairman Zande and Commissioner Steimel were absent.

3. MINUTES

Moved by Secretary Christie, supported by Commissioner Barnett to approve the September 5, 2012 regular meeting minutes as presented. **Motion carried 5-0** (Zande and Steimel were absent).

4. AGENDA REVIEW AND APPROVAL

Moved by Secretary Christie, supported by Commissioner Dunaskiss to approve the agenda as presented. **Motion carried 5-0** (Zande and Steimel were absent).

5. CLOSED SESSION – ATTORNEY LEGAL OPINION

Moved by Commissioner Dunaskiss, supported by Secretary Christie to recess the regular meeting to go into the Closed Session Meeting at 7:03 p.m. and that Attorney Dan Kelly, Mrs. Beth McGuire, and Mr. Don Wortman also be included in the closed session. Roll call vote was as follows: Barnett, yes; Dunaskiss, yes; Christie, yes; Walker, yes; Thurber, yes. **Motion carried 5-0** (Zande and Steimel were absent).

Moved by Commissioner Barnett, supported by Secretary Christie to come out of the Closed Session Meeting and to reconvene the regular meeting at 7:40 p.m. Roll call vote was as follows: Christie, yes; Walker, yes; Barnett, yes; Dunaskiss, yes; Thurber, yes. **Motion carried 5-0** (Zande and Steimel were absent).

6. BRIEF PUBLIC COMMENT - NON-AGENDA ITEMS ONLY

No comments given.

7. CONSENT AGENDA

None.

8. NEW BUSINESS

None.

9. UNFINISHED BUSINESS

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

Commissioner Walker noted that he is a relatively new Planning Commission member and that he has lived in the Township for 24 years. He has been on the Zoning Board of Appeals for many years and he is a concerned citizen. Something that has bothered him as a resident is when they have closed session meetings, he always wondered why residents couldn't go in and wondered what was going on in there. He has been an attorney for 32 years. He just wanted to say that with regard to the closed session meeting today, it was regarding a legal opinion of something that might involve the Township and involve all of you if it turns into litigation. That is why there was a closed session and no one was talking about the public residents.

Ms. Melissa Brofford, of Pyramid Network Services, noted that she is a consultant for Verizon Wireless.

Mr. Robert LaBelle noted that he is an attorney representing Verizon Wireless. He noted that he will do an abbreviated summary of the case since they have done presentations before this commission before. He also noted that Mr. Scott Hubble, their radio frequency engineer, will also be speaking tonight, and is primarily responsible for identifying the need for where the tower should be located as well as showing how the propagation maps work and describing them.

Ms. Brofford commented that they are proposing a 145-foot low-profile monopole tower in a fenced in 120-foot by 60-foot area to be located near the northwest corner of Waldon and Baldwin Roads. New Par is the parent company of Verizon Wireless. There is a significant gap of coverage in this intersection area. She then showed the proposed location of the tower on their map. The parcel is owned by Mr. Larry Mullins. They have obtained a lease for the portion of the property to build the telecommunications facility. It is zoned OP-1 and is 3.2 acres. She then overviewed the pictures from their initial presentation with a picture of the proposed tower cropped into the pictures.

Mr. LaBelle noted that the pictures are not just photo chop and that this is done under engineering details by an engineering firm of what it will look like.

Ms. Brofford continued to review their pictures of what it will look like with the tower from different directions.

Mr. LaBelle noted that most of the properties in the proposed area are developed as commercial, except for two residential sites. He commented that he believes that it will blend in and won't be noticeable. They have an obligation to serve their customers in this area and this is a good site for them.

Mr. Scott Hubble, of Verizon Wireless, overviewed their propagation maps that show the different levels of coverage in the area and that the proposed tower would resolve the deficiencies of coverage.

Ms. Brofford noted that in looking at a shorter tower, it would not give adequate coverage.

Mr. LaBelle noted that they have looked at several different options, including the DTE electric tower, and they feel that this is the best option for good coverage. He also noted that there is no tower in the county park, so they can't collocate there. He then overviewed the Federal Telecommunications Act. He also noted that the Township cannot deny this tower according to the Act and that the health and environmental effects cannot be a basis for the decision. He then overviewed a survey that they did on postcards last Spring that were sent to their customers. They got back 812 responses in which they said, yes we would like to have that coverage. He then gave a summary copy of that survey to the Chairman for the record file. He also noted that Verizon would not spend more than \$500,000 capital to put up a tower that is unnecessary. They are trying to satisfy their obligations and needs of their customers who have paid for service and are entitled to it.

Acting Chairwoman Thurber offered time for public comments.

Mr. James Carnago, of 48680 Van Dyke, Shelby Township, Michigan 48317, commented that he has been an attorney for forty years and he also is a member of the Planning Commission and is the Chairman of the Zoning Board of Appeals in his locale. He noted that the Township's Zoning Ordinance may have to be changed since it indicates that the tower should be built in a manner to retain the integrity of a residential neighborhood and character, property values, and aesthetic quality of the property at large. It is also supposed to be concealed from view. There is no reason that it should have to be here. He then presented a petition to members that has 294 signatures of residents located in the general area of the proposed location for this tower. He noted that the current land owner of the subject site had it rezoned and he and Verizon are going to make out by selling positions on that tower. This is a business enterprise and is of no benefit to the local community in that general area. You've had a number of businesses and residents that have voiced their opinion as 'no, no, no'. He realizes that the Federal Statute exists, but for the community to forget about its citizens at this point is wrong. There needs to be screening of this tower. It will be in full view. In reviewing Michigan cell tower cases, in most cases the tower was located 500 feet away from any residences. In this case, you have the Parkers who are within 146 feet of this proposed tower and Mr. Snelling is 100 feet from the proposed tower. The Capozzoli's are 250 feet from the proposed tower. He asked members to think about whom they're dealing with, big business or community. Verizon will make more money here than anyone else and what benefit is there for this community. As technical progress happens every day, will these towers even be used in five years? Will there just be a group of abandoned towers then? Will Verizon come and take them down? There are other areas that this could be placed, such as, Orion Oaks Oakland County Park and Friendship Park. Is there a good reason why it must be placed here? Why couldn't it be somewhere that it would be out of the view of neighbors and people driving by? This is not an aesthetic addition, it's not a statue or park, it sticks out of the ground. There is also a question of safety. They say that they do not fall because they don't have any guy wires. No one can state that in the future that one of these won't fall. There has also been fires with these towers. His client and all wish to have a residential community. They don't want this tower here. Who are your constituents here, Verizon or the locals

that assist and pay the taxes here? Your people don't want the tower. He understands that there is a statute, but there are exceptions here.

Mr. John Capozzoli, of 3448 Waldon Road, commented regarding the coverage maps. He also noted that a tower in Rochester Hills on Walton Boulevard between Livernois and Brewster had an air conditioner unit to cool down the main building that has the computers or whatever for the tower and it was extremely loud. He then played the recording of that extreme noise from his cell phone. If the proposed unit has the a/c unit, that noise will only be 200 feet from their home.

Mr. Vern Gerard, of 3443 Mahopac, on Mill Lake, commented that the petitioner had said that the tower would be shielded by the trees and then asked whether the trees would be protected and be there forever. Is that a park or protected area? Is there something that guarantees that those trees won't be cut down?

Mr. LaBelle replied that he could not guarantee that.

Mr. Gerard noted that he is the President of their Homeowners Association and had several people come to him that don't want to see this go in. He doesn't believe anyone in their neighborhood got that (initial) survey and he himself is a Verizon customer and he did not receive one and asked what the results of that survey were.

Acting Chairwoman Thurber noted that members have three different surveys in front of them. In their initial meeting packet they received the post card survey. In this meeting packet members received copies of an unofficial survey (the source is not known). Members also received one tonight by the petitioner.

Ms. Melanie Gerard, of 2613 Thornbrier Court, noted that her home faces Waldon Road. She noted also that she is a Verizon Wireless customer and believes that the tower will be a complete eyesore to their community. She is very concerned about the negative effects on the property values in the area.

Mr. John Zielinski, of 3351 Leewood Drive, commented that he lives just a little north of the subject site. He noted that he has done research on the radiation coming from these towers, which some of the effects include cows not being able to give milk and women getting breast cancer from living near these towers. They suggest that you're only safe if you live 400 meters, which would be greater than four football fields, away from a cell tower before you're not going to experience any health issues. They also stated that in the United States the amount of power that can come out of these towers is not regulated. He would like to know the amount of the power that will come out of this tower. He wanted to bring this information to the attention of members.

Ms. Jessica King, of 3600 Seney Drive, commented that she has been a Verizon customer for fourteen years and is very happy with her service. She noted that their map shows that it's a dead zone where she lives and it isn't, so that shouldn't be a point in making your decision. In her opinion, the Federal Statute that the petitioner is saying that they have to meet is already met. She inquired what the motivation is to put a \$500,000 tower there.

Ms. Michelle Parker, of 3436 Waldon Road, noted that she lives adjacent to the proposed site. She does not feel that Verizon has done their due diligence in seeking out alternate sites. She noted that the misinformation that they have been provided with in the past has made them question everything. She

would like to see the information that was gathered from the other sites that Verizon says that they looked into.

Mr. Carnago noted that he is the attorney that is here on behalf of the area residents. He then inquired what the results are of the study that the Township was going to have done to determine the need for this proposed tower.

Mr. Dan Kelly, Township Attorney, noted that there was a review of the propagation study, as well as a legal opinion with regard to some of the case law of the Federal Telecommunications Act, has been provided to the Township Board of Trustees. Since that was provided to the Township Board of Trustees, it is really for them to waive the attorney/client privilege on that.

Secretary Christie read aloud email correspondence received from Mr. Wally Haley, of Haley Law Firm, PLC, 10059 Bergin Road, Howell, Michigan 48843, dated 09-18-12, in which he noted AT & T's interest in collocating there on the subject site and his support of the proposed tower*.

Mr. LaBelle noted that some of these things were responded to in the initial meeting. He noted that T-Mobile is also interested in collocating at this site. Collocating is encouraged in the zoning ordinance to avoid the need for too many towers. He noted that if there comes a time where the tower is not needed anymore, then we have to take them down in accordance with the zoning ordinance and they have to place a bond for that purpose. He noted that there is no tower in the county park as was suggested. They looked at all possible alternative sites for this tower.

Mr. Greg Parker, of 3436 Waldon Road, inquired whether the tower will still look like the pictures that the petitioner has shown when the other two collocators are there and asked for a picture that would show that.

Ms. Brofford commented that they don't have a picture showing the collocators on the tower.

Acting Chairwoman Thurber noted that the collocators are not before the commission right now and they're only considering Verizon right now.

Mr. Parker asked the public if there was anyone in support of the proposed tower to stand up, but no one stood up.

Then Mr. Scott Hubble, of Verizon Wireless, stated that he lives in Orion Township in Mill Creek Village.

Mr. Parker noted that ok now we have one resident in favor of this tower, but he has a conflict of interest, because he works for Verizon Wireless. He then pleaded with members to have the petitioner look at other alternate locations, such as, Friendship Park or Orion Oaks. They say that there's no tower at Orion Oaks, so why don't they build it there? He also noted that the commission's first obligation is to protect the local citizens and tax payers.

Moved by Commissioner Dunaskiss, supported by Secretary Christie regarding case PC-2012-01, Verizon Wireless Monopole Tower Special Land Use, with the location on the northwest corner of Baldwin and Waldon Roads, Sidwell #09-20-351-011, to forward a recommendation to the Township Board of Trustees to approve the special land use based on the following findings of fact: 1) That the petitioner has demonstrated that the operating requirements necessitate that the location proposed and that the sites

and buildings where personal wireless services facilities are permitted by the ordinance are not within the general area; 2)The petitioner has made a good faith effort to locate on alternative sites; 3)The petitioner has established a need for the service, which has been confirmed in all the reports and information provided and received by our Township Attorney, Verizon Wireless, Don Wortman, and OHM, in their review; 4)It is compatible with adjacent land uses and adjacent to the site you have the DTE sub-station as well as the general office use on the hard corner; 5)It is compatible with the Master Plan, which has this area slated for general office use; 6)There is adequate public services that serve the site being all the services, water, power, and the like; 7)The impact on traffic is none and there will only be a service vehicle that will access the site one time a month; 8)There will be no detrimental effects to public health, safety, or welfare; and, 9)The proposed site will not isolate that existing land uses as again there is a DTE sub-station adjacent to the site as well as an office development on the hard corner as well as the Federal Telecommunication Act requires that the petitioner provide coverage and fill in the gaps in the coverage area, which has been demonstrated and shown that need.

Commissioner Barnett thanked the public for coming tonight and for their input throughout this process with Verizon. Members have listened to everyone's concerns and have asked for and obtained additional information from the petitioner to help them come to a decision. The Federal Telecommunications Act is pretty broad reaching. Members do understand who our constituents are. As a Township we have to follow the Federal Telecommunications Act. The decision doesn't come easily and we do understand your frustration, but if the petitioner provides what is required by the Act- If we move it to Friendship Park, there are people that live by there also. It's not that we don't care. They have established the need and they have attempted in good faith to collocate and there is pretty good case law that supports that.

Acting Chairwoman Thurber noted that the Planning Commission is a recommending board on this and the final decision on this will be by the Township Board of Trustees.

Roll call vote was as follows: Dunaskiss, yes; Christie, yes; Walker, yes; Barnett, yes; Thurber, yes.
Motion carried 5-0 (Zande and Steimel were absent).

Mr. R. Donald Wortman, of Carlisle/Wortman Associates, Inc., overviewed their Special Land Use/Site Plan Review correspondence, dated June 27, 2012*. In their previous review, they had questions regarding landscaping and also the details regarding the building and that has since been submitted. We feel those have now been addressed.

Mr. Dave Schroeder, of Orchard, Hiltz, & McCliment, Inc. (OHM), overviewed their Site Plan Review correspondence, dated June 12, 2012, and noted that they are in substantial compliance with the Township's ordinances and engineering standards*.

Mr. Dan Kelly, Township Attorney, commented that this case is expected to be in front of the Township Board probably within a month, but we had a discussion and the shock clock starts anew today and that's Verizon's position, so we have time to get this done.

Mr. LaBelle noted, yes. The shock clock, I think, is ninety days for this one if I remember correctly based on what the statute states. Restarting the clock now is going to give you at least sixty days and they would appreciate getting on the first available Township Board meeting.

Attorney Kelly commented that he doesn't see any reason to get it done in sixty days, just wanted to make sure that we're on the same page that sixty days is satisfactory with Verizon.

Mr. LaBelle commented that it's not satisfactory with Verizon, but it fits the shock clock.

Moved by Commissioner Dunaskiss, supported by Secretary Christie regarding case PC-2012-01, Verizon Wireless Monopole Tower Site Plan, with the location on the northwest corner of Baldwin and Waldon Roads, Sidwell #09-20-351-011, to forward a recommendation to the Township Board of Trustees to approve the site plan based on the following findings of fact: 1)That the petitioner has updated their submittal with the materials dated from June 5, 2012 and the petitioner continues to assert and state that the coverage and the need for the new tower at this location has been met and they have established that need; 2)The petitioner has provided information stating that the ITC/DTE tower is not a viable alternative for this petitioner; 3)The petitioner asserts that the existing building and/or existing tower is not a viable collocation on this portion of Baldwin Road, nor is there an alternative site available in the immediate area; 4)The petitioner has also supplied us with a copy of the lease agreement for the tower to be removed if abandoned; and, 5)The petitioner has established a need and provided the radio frequency engineer's study to the Township. Roll call vote was as follows: Barnett, yes; Dunaskiss, yes; Christie, yes; Walker, yes; Thurber, yes. **Motion carried 5-0** (Zande and Steimel were absent).

B. Consider Cancelling the October 3, 2012 Planning Commission Regular Meeting

Moved by Secretary Christie, supported by Commissioner Barnett to cancel the October 3, 2012 regular meeting due to the lack of agenda items at this time. **Motion carried 5-0** (Zande and Steimel were absent).

10. PUBLIC COMMENTS

None.

11. COMMUNICATIONS

A. Communication from the Building Official Regarding an Administrative Review

Acting Chairwoman Thurber overviewed correspondence received from Mr. Tom Berger, Township Building Official, dated September 4, 2012, regarding the PC-2012-10, Orion Commerce Center, Bldg. No. 2, Additional Car Parking - Administrative Review, which he approved*.

12. COMMITTEE REPORTS: None.

13. PUBLIC HEARINGS: None scheduled at this time.

14. CHAIRMAN'S COMMENTS

Acting Chairwoman Thurber asked that all consider attending the Mother's Wish Run/Walk on October 6, 2012.

15. COMMISSIONERS' COMMENTS

Commissioner Barnett congratulated Mr. Bob Smith as the official Township Fire Chief.

Commissioner Walker thanked all for the support for Dragon-on-the-Lake and the Art Center.

16. ADJOURNMENT

Moved by Commissioner Barnett, supported by Secretary Christie to adjourn at 8:58 p.m. **Motion carried 5-0** (Zande and Steimel were absent).