

NEW CASES:

**CASE NO. 026-09
VERIZON WIRELESS
MONOPOLE CELL TOWER
CONDITIONAL USE SITE PLAN
(PUBLIC HEARING)**

**REQUEST OF THE VERIZON WIRELESS
C/O SCHNELZ WELLS, P.C. 280 N. OLD
WOODWARD, SUITE 250, BIRMINGHAM,
MICHIGAN FOR APPROVAL OF A
CONDITIONAL USE SITE PLAN FOR A
MONOPOLE WIRELESS
TELECOMMUNICATION TOWER ON
MUNICIPALLY OWNED PROPERTY AT
THE SOUTHEAST CORNER OF
WATERBURY AND DURRELL. THIS
PROJECT IS LOCATED IN AN R-1A
RESIDENTIAL ZONING DISTRICT.**

This request will require a waiver to the following code section: Waiver to 1240.06(d) for the fence height in a residential district.

Mr. Reitz stated this request is for a project on property owned by the City of Avon Lake and controlled by Avon Lake Municipal Utilities east of Miller Road on the southeast corner of unimproved Durrell Avenue and Waterbury Avenue. This unimproved property is currently wooded and is immediately adjacent west of the sewage treatment plant. Due to the need for security the applicant is requesting approval to install fencing more in accordance with an industrial use but which matches the adjacent plant fencing. Technically this project is on a corner property with two front setbacks. Enclosed in the packets are copies of the approved lease agreement with ALMU and answers to the various code requirements for approval. This project requires a Public Hearing by Planning Commission. Notice of the hearing has been posted on site, mailed to properties within 300 feet, advertised in a newspaper and posted at various locations within the City.

Mr. Steven Wells, Schnelz Wells, P.C. 280 North Old Woodward Avenue, Birmingham, Michigan, Regional Manager, David Walter and James Wells were present tonight to represent this case and answer any questions the commission may have.

Mr. Wells stated that on July 27, 2009 the applicant filed a very complete zoning application with ten exhibits. We also filed on July 7, 2009 a request for a waiver as stated by the recording secretary. I would like those adopted into the record at this time. I have some blow ups, tonight, to kind of help us to get a better view of where this proposed cell tower is going to be located and those will also be marked and later entered into the record, as I use those.

In our application for conditional use approval, we looked very hard all over the city, we have a very large coverage gap around Lake Road and Miller Road, as well as the boat ramp area of Miller Park. The first thing we do is, we look to collocate, we look to collocate on any other carrier towers as well as ours. We have a tower at your safety center, and no other structures would work for the area we need to cover.

This property is city owned property and is for the expansion of the waste water treatment plant.

Working with Mr. Kniepper and his team and members of the city staff, we were able to find this location. The waste water treatment area is fenced with barbed wire on top.

The application we request would be a 180 foot monopole tower, with room for two additional carriers to co-locate in the future per your ordinance. The tower will be deep into the wooded area and per your ordinance is allowed on city property in a residential district. But, technically this isn't really a residential district, it has been an area that is wooded across from the Illuminating Company and in an area designated for a water treatment plant. We notified all the people in the area, including the people on Lake Road. We worked with Joe Reitz and Coleen Spring to make sure that more than the 300 feet surrounding were notified. We notified 500 feet surrounding the property to make sure we included the residents in the close vicinity.

We are proposing a monopole tower, along with a small equipment shelter, in a 43 by 45 foot area and the equipment shelter would be inside that area. The shelter is 11 ½ by 30 and a parking space. We are 439 feet to the closest single family residential property, and 631 feet to the closest single family home. I am very pleased with this site because this is a long way away from residential property and is in a heavily wooded area and will not be seen. The tower has been configured in such a way to minimize any adverse visual impact and is 439 feet to the closest single family residential property and over 631 feet to the single family home and has sufficient screening with the heavily treed area.

This area abuts the city's waste water treatment facility to the east which is zoned industrial and it offers the best solution for Verizon's coverage needs since there are no other tall structures or towers in the area for Verizon to collocate on.

We will be asking for an eight foot fence, where normally it's a six foot fence in a residential area, but we're asking for an eight foot fence, plus an additional one foot to put barbed wire on. Inside the fence is our equipment shelter and then there is our ice bridge that our wire run out from. The tower is a monopole tower, the most stealth design. The tower is designed, if there ever were a problem with falling, to fall like a flower, it would fall into itself. We have no concerns about it falling, but if it ever were a problem it would collapse into itself. There will be no trespassing signs put up, and per the FCC we will post our license. Because of the height, the tower will not require a light.

Mr. Fell stated that this case is open for a public hearing.

Mrs. Luciana Sonnenlitter, 33703 Lake Road stated the she lives right in front of where they want to put the tower. I am concerned with health issues. My husband and I scouted out and walked the area and it looks to be right behind our home. We are newly married and we just have concern about any of the wave forms that will be coming through. Even though this is a wooded area, we're just worried for the sake of our children. We have the power plant right down the street from us now.

Ms. Spring notified the commission that Mrs. Sonnenlitter had delivered a letter to the planning office and a copy of the letter was delivered to each member tonight for review.

Mr. Wells stated that there is a Federal Statute, right on point that says, with regards to wireless towers, that any type of health affects or concerns cannot even be raised or deemed to be part of a decision because the FDA and the Federal Government have both deemed this to be safe. This is a safe thing, we're not putting up a microwave tower or anything else, the Federal Statute speaks right on it.

Mr. Al Whitney, 165 Miller Road stated that he has a couple of comments. One, is the city going to spot rezone from R-1? This is a residential area even though it is not built up. So I want to make that plain. I heard several times that it's not a residential area, it is a residential area. Now, from what I understand about these telephone signals, they are a line of sight. Putting this tower up where they are putting it is right behind the CEI stack. If you go out from that point where they put it, they're cutting out a big pie shaped area, where the signal will not be reached. An emergency or a fisherman out on the lake, in that blind spot, this tower is going to be useless. We need a tower for the boat ramp. Are there other sites, I understand why CEI doesn't want it on their stack. There is a tower on Pin Oak Parkway, that is much taller than this 180 feet that they want to put up. With the taller tower, they put their antennas up higher, they can get greater power to the lake and they could probably also get Avon and the boat part. I do not have cable TV and I do not have a dish, I have an antenna and I rotate it around to pick up my TV. How is this tower going to affect my TV reception? I get shadows off the stacks at the power plant. Is this going to interfere more with my reception? Is there an expert here on antennas that can answer that question?

Mr. Wells stated the antenna reception and our frequencies are two totally different frequencies, they're not on the same frequency band or anything else, therefore, there is no interference. I would just like to briefly state he made a point about the residential zoning district. I did not mean to say that this is not residentially zoned, but I would just refer you to your ordinance 1256.04(b)(4) and it says, the city may locate wireless telecommunication towers and related facilities in residential zoning districts, but only on publicly owned property. That is exactly what we're following the ordinance to the letter.

Mr. Fell stated, just to follow up, will CEI block frequencies coming from you tower to people that in that area?

Mr. Wells stated that the tower would not interfere with any CEI stacks.

Mr. Whitney asked how close to the Ford sewer are they building the tower? The big sewer that goes right past there.

Mr. Reitz stated the sewer goes to the property line and I believe on their site, it did show up on that plan. It is going to be west of the sewer, it's not going to be on top of it, the fence doesn't obstruct the sewer access.

Mr. Fell closed the public portion of the meeting.

Mr. Brightwell asked what color the post would be? Does it have color or just a galvanized metal?

Mr. Wells stated that the pole would be a sky or misty grey color. It would blend in the best.

Mr. Fell stated there's an area that has a dead area on Lake Road getting up around Jaycox getting up near Lear Road. Does this cover that area or help with that area from what you know?

Mr. Walter stated that the site is designed to cover up along the lake, from the pole where we are proposing it now, to the east along the shoreline. We're painfully aware of the dead areas that you have in the city. We are able to control the direction and the distance of the signals. And this one will be designed specifically to head up along the shoreline.

Mr. Fell asked if you would comment on why you did not choose the cell tower on Pin Oak Parkway?

Mr. Walter said the one on Pin Oak Parkway is really too far south for us to be able to use it. We actually are on the T-Mobile Tower at the fire station, which is to the north, and we would be trying to broadcast the signal over the top of that, which just doesn't work.

Mr. Fell stated that he is glad to see that you do have co-location on your tower and I hope that it gets used. I do like the monopole not the lattice cell tower and the fact that you're coloring it. Other than the two, barbed wire and the height, there's no other variances that you need for this particular case?

Mr. Wells said, not that we are aware of.

Mr. Knilans stated that he did not have any problem with the height of the fence or of the barbed wire. It's kind of back there all by itself, I can understand the need for a little security.

Mr. McNamara asked how far east the signal goes in miles.? One mile? Four miles?

Mr. Walter stated that it is variable. We need to coordinate this tower with our other sites. We have other sites that would be east of it, that are directed with their signal to the west. I'm not exactly sure where the next site would be to the east, but we need to coordinate those, so I think that this tower is scheduled to go east of Avon Belden Road right now, but I am unsure how far past Avon Belden, maybe 1000 to 1500 feet, something like that.

Mr. Fell said it doesn't fill the gap that we talked about earlier. Up around Lear Road and Lake Road.

Mr. Wells showed the maps and the coverage areas.

Mr. McNamara asked if there are any websites or anything that we could, if people call and ask to find out about the governmental, okaying of the frequencies or health hazards.

Mr. Wells stated that there is a couple of reports and documents that the FCC has. They could go to the FCC website.

Mr. Zilka referred to the Arcadis report. Page two refers to presumptive soil and submitting documents for a soil report from a licensed technical engineer and it gives you a code standard for presumptive soil. Do you anticipate any problems with the soil and will it support this tower, is this going to be a problem?

Mr. Wells stated that No, we do not anticipate any problems whatsoever. What we have done is a soil test on the site. We submit a standard structure of standard soil report as a preliminary to the city. Once approved the soil reports will be done and submitted for the building permits. Building permits cannot be issued without the soil reports. We are generally familiar with the soil conditions here in the Avon Lake area. We really don't anticipate any particular problems in the soil bearing capacity.

Mr. Whitney stated the he has lived on Miller Road since 1965 and I know what goes on back in the woods, there are a lot of vandals back there. I'm constantly chasing them out. One other thing that I want to question is what happens to the tower if this location is eventually abandoned. Do they have to remove it and restore the property in a very quick time, rather than letting it drag out over the years.

Mr. Wells stated that in the contract it states the time line of having it taken down, as well as it is in the city ordinances to remove it when done.

Mr. Knilans moved to recommend approval to City Council the request of Verizon Wireless c/o Schnelz Wells, P.C. 280 N. Old Woodward, Suite 250, Birmingham, Michigan for approval of a Conditional Use Site Plan for a monopole wireless telecommunication tower on municipally owned property at the southeast corner of Waterbury and Durrell, and will include a waiver to 1240.06(d) for the fence height of 8 feet with 1 foot of barbed wire on top of the 8 ft. fence. Mr. McNamara seconded the motion.

AYES: All

NAYS: None

Mr. Fell stated this case has passed and will be forwarded on to City Council for readings and approval.

**CASE NO. 027-09
PEMBROKE KIDS CHILD
DEVELOPMENT CENTER
GROUND SIGN**

**REQUEST OF JAMBETH, LLC, 32900 PIN
OAK PARKWAY FOR A
RECOMMENDATION OF APPROVAL TO
INSTALL A FREESTANDING
IDENTIFICATION SIGN FOR PEMBROKE
KIDS CHILD DEVELOPMENT CENTER.
THIS PROJECT IS LOCATED IN A LI LIGHT
INDUSTRIAL ZONING DISTRICT.**

Mr. Reitz stated this case is for a recommendation of approval to install a 12.5 square feet freestanding sign along Pin Oak Parkway. This sign is a two-piece sign that will be installed in a landscaped bed 12 feet from the right-of-way. The sign shall be a sandblasted high density foam board with cultured stone pillars on either side.

Mr. Stephen Caris was present tonight to represent this case and answer any questions the commission may have.

Mr. Caris stated that the same sign face would be used from his previous site on Avon Belden Road. The signs will be placed on the brick pillars shown in the package.

There were no questions regarding this case.

Mr. Fell moved to approve the request of Jambeth, LLC, 32900 Pin Oak Parkway for a recommendation of approval to install a freestanding identification sign for the Pembroke Kids Child Development Center. Mayor Zuber seconded the motion.

AYES: ALL NAYS: NONE

Mr. Fell stated this case has passed.

INFORMATIONAL ITEM

Mr. Fell stated that a Minor Alteration was in the packets for a 4' tall chain link fence at 33760 Lake Road – Miller Road Park.

There were no comments on the Minor Alteration.

DISCUSSION ITEM

Mr. Fell stated that the Comprehensive Land Use Plan is scheduled for an update. We received a copy of the plan at the last meeting.

Mr. Zilka stated, I looked at the plan and the comments I had are the addition of the Cottage District in the 45 area of the City, the Lear Nagle Exchange that will be added in Avon on Lear Road and how that will affect our City, and the update of the Master Thoroughfare Plan.

Mr. Fell stated that on page 50, the Cottage District needs to be added or looked at being added in that section. Page 39 & 41, the Save the Woods area needs to be looked at and possibly added and the Lear Nagle Intersection in the Master Thoroughfare Plan and maps need updated. I would suggest that the updates be discussed at a work session following next month's regular meeting.

Mr. Zilka stated that the whole plan may be too much to look at in one meeting. We may want to break it up into a couple of meetings if the discussion becomes too much for one meeting. This is a lot of information for one sitting.

Mr. Reitz stated that he would update the maps and have a tentative write up for the next meeting. The other area that I thought would have an impact on the plan would be the area that Mr. Kos is looking at redistricting. Mr. Kos has been in discussion with Mr. Knilans on redistricting in his ward and it would have a major impact on the area if it is indeed changed.

Mr. Knilans stated that he has not talked to Mr. Kos in awhile, but the discussion of the redistricting could be a long way off. This would have to go before the legal department, planning and zoning.

Law Director Kerner stated that in the midst of a recession and the census information coming up, it may be wise to wait with all the changes that may occur.

Mr. McNamara stated that the census will be out in 2010 with the results in 2011. This should be looked at now, by the time the changes are done and the recession is over, even though we should not be taking finance into account it will be time for a revision again.

Mr. Reitz stated the plan is supposed to be reviewed every five years. It doesn't mean that we have to make any changes, it just needs to be reviewed. I can change the maps, statistics and add the cottage district, save the woods and the Krebs Walker areas with the interchange addition.

Mr. Zilka agreed. The plan must be reviewed every 5 years. As soon as we make changes new items will arise. It happens all the time. We can look at the revisions that we suggested now and the other items that change will be looked at again in five years unless we decide to look at the plan early.

Mr. Reitz stated he would get the plan ready for a work session next month.

GENERAL PUBLIC COMMENT

Mr. Zilka asked about the Pin Oak Parkway Cell Tower and the status.

No comment was made on the cell tower.

Mr. Reitz stated he has nothing new and has not heard from Mr. Scarpelli.

Mayor Zuber stated that he has nothing new on the tower.

Mr. Zilka commented on the temporary classrooms that went up at Erieview School. In a month all kinds of things have happened. The individuals were notified and we did comply with the code, but most people did not understand what that was. As soon as the equipment got there to install the classrooms, we got all kinds of outrage and so forth. Reading the minutes Mr. Brightwell and Mr. McNamara's comments really did ring true. People felt they were not given

sufficient opportunity to know about the situation, Perhaps we should look at what we send out to make it more average citizen friendly so that residents are given some warning. The people that are upset, they would have objected even to the 40' side yard setback. It really does come very close to their property, and they are very frustrated. The only thing we can tell them is that this may well be a temporary thing, as short as two years, based on what the school board is doing and looking at. There has been some bad feeling there, talking to Mr. Ludwig, who was here for the meeting and talking to Mr. Scott we are trying to commit them to putting some landscaping in to try to tone down the visual obstructions and make it look a little better for the individuals.

Mr. Zilka commented on the waiving of the Planning Commission Fees. Mr. McNamara spoke to that at the last meeting. I did bring that up to City Council, and we do need look at and establish a policy and decide what we want to do. Is that something that we want to do, waive fees for various groups and organizations, if so they need to be put in a category and we need to do that in a very even handed manner. The board of municipal utilities has a very strict policy, they waive nothing, including two requests from the St. Jude Organization. They just don't waive fee's period. This is always an uncomfortable thing, but we need to discuss this here and at City Council.

Mr. Fell stated that we can discuss this issue at the work session. Mr. Fell asked Joe Reitz to add that to the work session agenda as well.

Mr. Fell asked about the form that was passed out by Law Director Kerner regarding the public notices and public hearings of Planning Commission.

Law Director Kerner stated that he put together the form to show you what our ordinances say and what needs are to be met with public notices. I think it is consistent with the state codes and any other ordinances that you may look at. We need to give people notice and an opportunity to be heard. We do not need to give them a complete plan on the case. I sympathize with you Mr. Zilka, I think in some cases you can give them the whole plan and they still wouldn't be satisfied. You always have a dilemma in these kinds of things, you can continuously put more burden on your administrative people to put out notices and tie up City resources when 90% of the people won't even bother to look at them. People have obligations as citizens to find out what is going on and if it is going to affect them. We should be careful or mindful at least of putting a little more information in the notices that we send out and post. And I would remind you that one of the things that we can do in these situations, if there is enough time, is to not act immediately on the case. You can see what the public notice was and then decide the case or table the case to a future meeting and send out another notice.

Mr. McNamara stated that the public notice code states: prescribed in the code which states the subject matter to be heard. That is pretty much someone's definition there or vague. It is not specific enough. Secondly, I understand that we did the notice by the letter of the law but the reason that I voted against this is I think our duty as elected officials by our own residents is to look out for them. We should not be above reproach, we shouldn't be the ones that go "Well we did it by the letter of the law- we just skated it through." If a corporation did this we would be pounding these guys.

Law Director Kerner stated that this is a body of seven members where majority rules. There are seven people here with probably seven different opinions on what would be or not be sufficient. All I am suggesting is that we have a system in place that conforms with the law and you have a cross check on it, especially if there is enough time given, where you can see what the notice was and you as a body can decide to table the case and look at it further or move the case along.

Mr. Fell stated that the only problem is that you get people here pressing you to get the cases through in a timely manner.

Mayor Zuber stated that we all have sat here in this chamber packed with people when a case comes up. People see the notice, they find out what's happening and they come and look at the case. It is not our fault when someone doesn't look into the notice when it is sent. If they would have called the Engineering Office about it we would have explained what was going on and where the trailer was going and so on. I don't think it is our responsibility to go out and tell everyone what is going up in their backyard. We have seen plenty of people come when they have seen a public notice.

Mr. Fell asked Mr. Zilka if he had any thoughts on how we could have done a better job notifying the people at this site.

Mr. Zilka stated that part of this is the fault of the members of City Council. Perhaps we should have gone down there or called these folks and reminded them of what was going on. If council people would get more involved in this, which isn't necessarily a good thing. The schools put themselves in the time frame bind, it is not like they just said "oh my we have all these students", they knew that, they did the study, they knew they needed additional classrooms a long time ago. They were slow in getting things together, and at the last minute they need to get things done real quickly. I am glad that we did it, because it is in the best interest of the community to do so, but when people petition this body, they also have rights and we did follow the procedures. Like I said the residents wouldn't have been happy with the 40' setback either, but the City did change quite a bit from what the City standards are from 40' down to 18' and then you now have the stairways there too. It really is quite shocking to look at the thing from the people's back yard.

Ms. Spring stated that she would add the public notices in the members packets from now on. It is not a problem to put more information on the notice, but we have always put enough information on the notice that people know what the meeting is about. In this case 100 notices were sent out and not one person came in to look at the plan or called the office or showed up at the meeting. The people that did call the day after the trailers were delivered stated that they did receive the public notice and that they knew about the meeting, but did nothing.

Mr. Reitz stated that for an example, the cell tower that was on the agenda tonight. There were no residential houses within the 300 feet surrounding the site, but when the Mayor and I met with the applicant we knew this was a sensitive area and told the applicant we want you to send notices to the residential area. We did half the number of notices that we did for the modular classrooms and we had almost a dozen people come in from the same type of notice.

Mr. McNamara stated that he thought everything was done properly, but are we giving them enough information. Are we telling them about setbacks, front yard, side yard etc. It may make sense to us, but may not make sense to them.

Mr. Fell told the commission to think about this, if we have any more ideas on this then we can discuss this at the work session following the next meeting.

Mr. Knilans stated that he remembered the Tom Simon case that was on Route 83. We had a lot of people show up for those meetings that were never even notified. A lot of the cases we get more people from word of mouth than we do from notices. I think it depends on the case on how the neighbors get involved. In some cases we could send them a color picture and tell them exactly where it is going to be and half will throw it away. I understand, but don't know what we could do to change the process, other than sending Coleen and Joe down the street to tell everyone.

Ms. Spring stated that any public hearing case has an ad in the Morning Journal, notices posted at the Library, Post Office, City Hall, Giant Eagle and we use to do Tops until they closed, and notices are posted on the site and sent to property owners 300 feet surrounding the property.

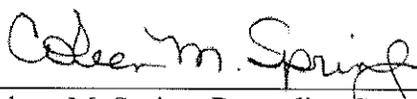
ADJOURNMENT

Mr. Knilans moved to adjourn at 8:40 p.m. the August 4, 2009 Planning Commission meeting. Mr. Zilka seconded the motion.

AYES: **All** **NAYS:** **None**

The next regular meeting of the Planning Commission will be on September 1, 2009.

Gary Fell, Chairperson



Coleen M. Spring, Recording Secretary