

NEW CASES:

**CASE NO. 023-08
T-MOBILE WIRELESS
TELECOMMUNICATION TOWER
CONDITIONAL USE SITE PLAN
(PUBLIC HEARING)**

**REQUEST OF T-MOBILE, 7425 ROYALTON
ROAD, NORTH ROYALTON, FOR
RECOMMENDATION OF APPROVAL OF A
SITE PLAN TO CONSTRUCT A WIRELESS
TELECOMMUNICATION TOWER WITHIN
AN EXISTING HIGH TENSION POWER
TOWER. THIS PROJECT IS LOCATED IN A
LI LIGHT INDUSTRIAL ZONING DISTRICT.**

Mr. Reitz stated this request is to install a 156 feet high telecommunications tower within an existing tower for high tension lines. The tower is west of Avondale Avenue midway between Lake Road and Walker Road. The tower access will be through an unimproved paper street off of Avondale or from Walker Road through the property owned by Reliant Energy for the coal storage area.

This project is a Conditional Use and requires a Public Hearing by Planning Commission. Notice of the meeting has been posted on site, advertised in a newspaper, mailed to properties within 300 feet and posted at various locations within the City.

Since this project is a Conditional Use it will require final approval by City Council.

Mr. John Sindyla, T-Mobile, was present tonight to represent this case and answer any questions the commission may have.

Mr. Sindyla explained the site plan and where the antenna would be located. All electrical will be underground and antenna will be just above the high tension towers.

Mr. Fell opened the meeting to the public. There were no public comments; Mr. Fell closed the public portion of the meeting.

Mr. McNamara asked what kind of transmission the antenna would give.

Mr. Sindyla stated the antenna would be for cell phone coverage only. The antenna will be attached to the existing high tension towers.

Mr. Simonovich stated this is a great multi-use.

Mr. Fell asked about the height, one plan stated 165 feet and one stated 156 feet.

Mr. Sindyla stated that the existing tower is 155 feet. The antenna would be an additional 10 feet making the pole 165 feet total.

Mr. Fell asked if there would be a light on top of the poles.

Mr. Sindyla stated that there are no lights. The lights are not required on these high tension lines.

Mr. Fell stated that because of the absences of members tonight all four members must grant approval to be forwarded on to City Council.

Mr. Simonovich moved to approve the request of T-Mobile, 7425 Royalton Road, North Royalton, for recommendation of approval of a Site Plan to construct a wireless telecommunication tower within an existing high tension power tower. Mr. McNamara seconded the motion.

AYES: All

NAYS: None

**CASE NO. 024-08
MOORE ROAD LLC
LOT SPLIT
SITE PLAN**

REQUEST OF THE MOORE ROAD LLC, 5200 OAKS ROAD, BRECKSVILLE FOR A RECOMMENDATION OF APPROVAL OF A LOT SPLIT FOR VACANT INDUSTRIAL LAND ON THE WEST SIDE OF MOORE ROAD. PLANNING COMMISSION MUST CONSIDER APPROVAL OF THIS SPLIT BASED ON THE CONDITIONS THAT IT WILL CREATE A NON-CONFORMING PARCEL AS THE REMAINDER. THE REMAINDER SHALL HAVE 80 FEET OF FRONTAGE INSTEAD OF THE 200 FEET OF FRONTAGE REQUIRED BY THE CODIFIED ORDINANCES.

Mr. Reitz stated this property split will create a new 3.54 acre parcel and leave a 72.13 acre remainder. The issue in the comments is the 80 feet of frontage on Moore Road for the remainder parcel. The intent of the remainder parcel is to extend Pin Oak Parkway west. The 80 feet width would then be the new right-of-way. Should Pin Oak Parkway be extended the 3.54 parcel would be a corner lot.

Mr. Walt Nickel, Nickel Engineering and George Popo, Kresco Realty was present tonight to represent this case and answer any questions the commission may have.

Mr. Nickel stated that the lot split is to create an eventual industrial complex. The property to the west will be extended and the lot that is non-conforming now will be a conforming lot when the extension goes through.

Mr. McNamara moved to approve the request of Moore Road LLC, 5200 Oaks Road,

Brecksville for a recommendation of approval of a Lot Split for vacant Industrial Land on the west side of Moore Road. Mayor Zuber seconded the motion.

AYES: ALL

NAYS: NONE

**CASE NO. 025-08
GRAMERCY PLACE
PHASE NO. 1
FINAL PLAT**

**REQUEST OF GAMELLIA CONSTRUCTION,
32745 WALKER ROAD, FOR A
RECOMMENDATION OF APPROVAL OF THE
PLAT FOR THE FIRST PHASE OF THE
SUBDIVISION. THIS SUBDIVISION IS
WITHIN A R-1 RESIDENTIAL ZONING
DISTRICT.**

Mr. Reitz stated this phase of the subdivision will create 11 sublots within the 6.9 acre first phase. The plans submitted have been reviewed and wording has been added to preserve the buffer areas called for as part of the Preliminary Plan. The applicant and the Engineering Department have worked out the issues of the riparian setbacks and easement enforcement/restrictions. I appreciate the willingness of the applicant to resolve the wording issues prior to the submission to Planning Commission.

Mr. Jim Gamellia Jr., Gamellia Construction was present tonight to represent this case and answer and questions the commission may have.

Mr. McNamara asked if all issues have been taken care of on the comments from department heads.

Mr. Reitz stated that all comments and concerns have been taken care of.

Mayor Zuber thanked Mr. Gamellia for all the hard work and effort put forth on the St. Jude Home Giveaway.

Mr. Reitz thanked Mr. Gamellia for the drainage that was put in for the adjacent properties drainage problems.

Mr. Fell moved to approve the request of Gamellia Construction for a recommendation of approval of the Plat for the first phase of the subdivision. Mr. Simonovich seconded the motion.

AYES: All

NAYS: None

Mr. Fell stated that the case will now be forwarded on to City Council for approval.

**CASE NO. 026-08
REBECCA LANE
TIME EXTENSION FOR
FINAL PLAT**

**REQUEST OF RANGEMAX PROPERTIES, 2
BEREA COMMONS, SUITE 1, BERE A FOR A 24
MONTH ADDITIONAL TIME EXTENSION TO
PLAT THE APPROVED SUBDIVISION. THIS
REQUEST IS FOR A P.U.D., IN AN R-1
RESIDENTIAL ZONING DISTRICT. A
PREVIOUS EXTENSION WAS GRANTED AS
CASE 005-07 IN MARCH 2007.**

Mr. Reitz stated per the Planning and Zoning Code Section 1216.08(b)(3) an applicant has 18 months from the Preliminary Plan approval, in this case a General Development Plan, to submit an application for plat approval. Under 1216.08(b)(1) this submittal shall be after improvements have been satisfactorily installed. At this time no improvements have been started on this site.

The applicant had received an additional 18 month time extension from the approval date of 9/19/2005 by City Council. The current deadline to Plat the subdivision is 9-19-2008.

Mr. Tom Simon, RangeMax Properties and Todd Hunt, 1301 E. 9th Street, Cleveland, Attorney for RangeMax Properties were present tonight to represent this case and answer any questions the commission may have.

Mr. Hunt stated that the applicant is asking for a 24 month extension to the plat. The market is the worst it has been in 50 years and due to the changes in the adjacent property we would like to wait an additional 24 months to see what the changes in the market will bring. We cannot see starting a development right now with the way the housing market has been. The approval process for the development took approximately five years to get through and we do not want to start the whole approval process all over again. The plans were designed with a lot of input of the adjacent property homeowners association. Litigation was an issue at one point.

Mr. Simon, RangeMax Properties stated that a lot of work has gone into the approved plan, we had to purchase property to provide access to Route 83. We thought we had put together a nice plan, landscaping and access. This plan took approximately 5-6 years to get through approvals. Those 6 years were probably the best 6 years of housing that happened in Avon Lake. About the time we got approvals is the time that the market started to falter. The approvals that are in place are very important to us. We would like to keep the approvals that are in place. The acquisition of the property to Route 83 and the property itself was made based upon the approvals that are in place. We previously came before you for an extension and it was granted. We would like to keep the approvals in place until such time that the market starts to pick up, so the improvements that will be made to the property are not put in while the property sits vacant. I have well over one million dollars into the property as it stands now. The codes that were in place when the approvals were made are still in place today. There have been no changes in the code, except that the zoning on some adjacent properties have changed. We did apply for R-2 zoning, but that plan was turned down. We then asked for R-1A and R-1B and were turned down. We feel that even though we were turned down for the zoning approvals, we did end up with a plan that

would work for the area and the adjacent property owners. The comprehensive land use calls this area a transitional area, due to the industrial property adjacent to the south.

The light industrial to the south and the industrial to the west are being developed now. I wish that I did not have to be here tonight, but unfortunately with the market the way it is, I feel it necessary. I did put calls in to the City Council members, but calls were not returned except for Greg Zilka, who on the phone did say that he was in favor of the plan.

Mr. McNamara stated that you could have taken the trees down, clear cut the property and put the road in and left it sit vacant for the last three years. I think that this could have been done and would have been an eyesore.

Mr. Simon stated that this could have been done, I could have put the road in, clear cut the trees and left the road vacant. The cost to have done this would have been very high and the property would have been left an eyesore for the neighbors.

Mr. McNamara asked the Law Director if there are any codes or regulations that stipulate the amount of times an applicant can ask for a time extension.

Law Director Kerner stated that he has reviewed the plans, codes and charter. I see no reason that the extension could not be granted. It is solely up to the commission at this point.

Mr. McNamara asked if Planning Commission approves the plan could City Council turn it down when it gets to them for their approval.

Law Director Kerner stated that the extension would not have to go before City Council.

Mr. Simonovich stated that going through the whole process of these approvals, I have no comment at this time.

Mayor Zuber stated that Mr. Hunt had mentioned that this case had gone before litigation on this issue. I do not believe that this issue had gone to litigation.

Mr. Hunt stated that yes the case was filed and had gone to litigation and the case had been filed with the court but was dropped when the approval when through.

Mayor Zuber stated that I have some concerns about this approval. I was at the meetings when this approval process was going through, and at the meeting when the first time extension was granted. I thought at that meeting even though the minutes do not reflect the conversation that with that approval there was an understanding that there would be no further extensions.

Mr. Brightwell stated that he too felt that at the time of the last extension there was an understanding and conversation that no further time extensions would be granted. I am with the Mayor that this approval should not be granted.

Mr. Fell said that he was not under that impression. I do not remember any conversation that no further extensions would be granted.

Mr. Simon stated that at the last extension meeting I had originally asked for the 24 month extension. At that meeting the commission decided that an 18 month extension would be better, I still wanted the 24 months, but agreed to the 18 month extension.

Mr. Fell asked Mr. Simon if he had conducted any market research studies specifically for Avon Lake to see if the market could handle this subdivision being put in.

Mr. Simon stated that he is constantly doing research for the area. Believe me, it is not affordable for me to sit on a million dollar project. I cannot control the market, nor the opinions of the commissions of the City. I would love to be able to build and sell the houses that are planned for this area, unfortunately I cannot at this time.

Mr. Fell stated, I am in favor of this extension. I believe that we have not seen the worst of the market yet and I am surprised that we have not seen more developers in here asking for extensions. I would rather see the trees and woods than a vacant street sitting.

Mr. Reitz invited Mr. Simon to stay for the work session meeting following this meeting. The item being discussed is the adjacent property to the south of Mr. Simon.

Mr. McNamara asked if the lots are sold or if this extension does not get approved then what? Can this area be changed all around? Would we be starting all over again?

Mr. Simon stated that he has loads of money into this plan. I had to purchase property for access to Route 83 that the Planning Commission made me get, I had to purchase an easement for the property that was \$10,000.00. My options are very limited, I feel my only option would be to go to court and ask for the highest density possible. We have all worked very hard to get all these approvals.

Mayor Zuber asked when ground would be broken if this approval is given.

Mr. Simon stated that it is very hard to determine, it would depend on the market. Our hope is for the fall, but I doubt it. As soon as the market is stable enough for this development.

Mr. Hunt stated that Mr. Simon owns other properties in other communities, he is very aware of the market.

Mr. Fell asked if the other communities he owns are selling or just sitting.

Mr. Simon stated that nothing is selling right now, most of the properties are just sitting. We have improvements that are in, but the lots are not selling.

David Davis, 32820 Titus Hill Drive, I, like that the mayor and other members, remember that at the time of the extension there would be no further extensions allowed. I also seem to remember that if the property was not developed the property would revert back to the R-1. If this property would have been developed as the R-1 he wouldn't have needed all the variance requests and would have been able to develop and sell the lots.

Mr. Bernie Backa, 32814 Titus Hill Drive, I have three concerns and an observation. A deal is a deal. This thing has been going on for years and years and years. We are here again, first an 18 month extension, now looking for a 24 month extension. When is it going to stop? Are things in the economy really going to change that much in the next 24 months, are we going to be back here again in 24 months asking to postpone again, will he be asking for a rezone? I have seen construction and building going on for Gamellia, Kopf and others in this community. We have sold three houses this year in Titus Hill, I think Avon Lake is beating the market. My other concern is that I have sat here tonight and heard nothing but financial concerns of Mr. Simon. I have concerns that Mr. Simon may have financial problems that would not allow him to build a development that would meet the expectations of Avon Lake. My final observation would be that I have a problem that council members would give opinions on a case to the applicant without hearing from the audience members.

Mr. McNamara stated that he has concerns about not granting the approval and Mr. Simon suing us and getting a higher density, especially since we just rezoned the area to the west R-2. If we don't do anything and let the courts decide we could end up getting something much less than what was approved now. We could end up with zoning that would allow government housing, and I am sure that is not what the residents really want. For right now the zoning is an R-1 and if we do nothing for 24 months it remains woods like it has been for the past years. He could technically put the improvements in and let it sit vacant for 10, 20 years. It would probably be worth it for the neighbors to let this approval go through, even though they think at the 18 month extension that no more approvals could be put through for extension. The worse that could happen is that it remains a wooded tree filled area.

Law Director Kerner stated that the commission does have the legal right to grant an extension. We do have a strong inclination that there is a possibility the applicant will sue the city if approval is not granted, but I cannot give the commission an opinion on whether the applicant would win the suit. The commission does have the privilege to approve or deny.

Mayor Zuber stated that we can grant an extension for any time frame that we see fit. We can grant a six month extension that would bring your original request up to the original 24 month extension.

Mr. Fell stated that we worked hard over the years to come to this solution. Mr. Simon was unrealistic when he came in. We did ask for the extension to Route 83 that he did get, we felt this was the best compromise after years of working on it. It was not the greatest situation, but it was a fair situation. We have already approved this as a compromise, the housing market is terrible, I don't see any problem with this solution. I don't see any way to resolve this issue by just saying, no we won't extend it for no particular reason. The proof is out there that the housing market is in a bad situation. I think the gentleman has a right to ask for an extension. The extension is only going to mean a possible year or two of woods over there and if we don't do it, we could come out with a lesser resolve. I don't worry about a law suit, that doesn't bother me at all. I just think the plan is the fairest and the best situation. I can't see going through this now and turning around in six months and doing this all over again, that doesn't make any sense to me. The housing market, the gentleman in the audience mentioned Mr. Kopf and the Legacy

Development. I personally have spoken to Mr. Kopf and he told me this is the worse he has seen the housing market, he is having a terrible time. He hasn't come in for an extension, but has verbally told me he is having terrible time and the market is the worst he has ever seen. Under the circumstances I think we would be remiss not to consider an extension.

Mr. Bernie Backa, 32814 Titus Hill, stated that he was happy to hear Mr. Fell state that he was not worried or afraid of a law suit. The commission shouldn't feel forced into decisions.

Mr. Fell stated that the board has a strong bond and doesn't concern itself with law suits. We look strictly at the facts and circumstances on our decisions.

Mr. Simon clarified himself on the issue of the law suit. I did not threaten the law suit. I was asked, and I simply stated the facts of what my options are for the development.

Mr. Ray Stangiono, 32859 Titus Hill Drive, I was here for all the meetings for this development. I was under the impression at the last meeting that no other extensions would be granted. I was at the meeting where Mr. Simon and his attorney did threaten litigation to the commission and the plan that was brought in that night was approved unanimously. The market is at an all time low and they say it is nowhere near being over. So then what, do we just keep extending the approval until Mr. Simon is ready? I don't want any building going on back there. I do not feel the plan that was approved is what we want. The density is too high, and I do not like the fact that Mr. Simon has to threaten the commission in order to get his approvals.

Mr. Fell stated that at the time Mr. Simon brought his attorney in and received an approval, the plan that Mr. Simon brought in was a completely different plan than we had ever reviewed. The approval was not a rubber stamp approval, but at that time the plan he brought in was a fair compromise for all parties involved, the commission, the applicant and the adjacent neighbors.

Mr. Knilans arrived to the meeting at 8:30 p.m.

Mr. Knilans abstained from commenting on the case because he was not present for the applicant and audience participation.

Mr. Simonovich moved to approve the request of Rangemax Properties, 2 Berea Commons, Suite 1, Berea, for a 24 month additional time extension to Plat the approved subdivision.

Mr. Fell moved to approve the request to have Mr. Knilans abstain for the vote for Case No. 026-08 Rebecca Lane Subdivision Time Extension. Mr. McNamara seconded the motion.

AYES: All NAYS: None

Mr. Fell seconded the original motion to approve Case No. 026-08.

AYES: Simonovich, Fell NAYS: McNamara, Zuber, Brightwell

INFORMATIONAL ITEM

None

DISCUSSION ITEM

Mr. Reitz discussed the informational item sent out to Planning Commission members in reference to the time lines for submittals to the Planning Commission.

No members had comments.

Mr. Reitz discussed the informational item sent to Planning Commission members in reference to the EPA, Wetlands, and Stormwater Management.

No members had comments.

GENERAL PUBLIC COMMENT

None

ADJOURNMENT

Mr. Fell stated that following this meeting Planning Commission members will go directly into the Work Session Meeting.

Mr. Knilans moved to adjourn at 8:39 p.m. the July 1, 2008 Planning Commission meeting. Mr. Fell seconded the motion.

AYES: All NAYS: None

The next regular meeting of the Planning Commission will be on August 5, 2008.

Gary Fell, Chairperson



Coleen M. Spring, Recording Secretary