MINUTES OF THE REGULAR MEETING OF THE AVON LAKE MUNICIPAL COUNCIL HELD OCTOBER 25, 2010

The regular meeting of the Avon Lake Municipal Council was called to order on October 25, 2010 at 7:30 P.M. in the Council Chamber with Council President Zilka presiding.

Mr. Bucci led the Council, staff, and public in reciting the Pledge of Allegiance.

Present: Council Members Dan Bucci, Jennifer Fenderbosch, David Kos, Larry Meiners, Martin O'Donnell, Timothy Rush, Gregory Zilka, Mayor Zuber, Law Director William Kerner, Engineering Department Manager Joseph Reitz, Finance Director Nancy Bryan, Clerk of Council Barbara Dopp.

APPROVAL OF MINUTES

The minutes of the October 4, 2010 Special Council Meeting and the October 12, 2010 Regular Council Meeting were approved as prepared and published.

CORRESPONDENCE

Mrs. Fenderbosch received a letter announcing her appointment as the Lorain County representative to the Great Lakes Energy Development Task Force.

MAYOR'S REPORT

Nancy Bryan, the newly appointed Finance Director, began work on October 25, 2010.

On October 19, 2010, Mayor Zuber attended the Small Business Seminar at the Lake House presented by COSE and the Avon Lake Economic Development Advisory Board. The next seminar is scheduled for November 23, 2010 at the Lake House at 7:00 P.M.; the topic is "Banking and Accounting."

The City received a 6% rebate on Workers Compensation for a total of $13,000.

Leaf pick-up has begun. The schedule is posted on the Avon Lake website.

COUNCIL PRESIDENT'S REPORT

Mr. Zilka made the following announcements.

The next Collective Committee meeting is scheduled for November 1st. The next regular meeting of Council is scheduled for November 8th.

There will be a vacancy on the Zoning Board of Appeals beginning January 1, 2011. Anyone interested in serving on the Board should submit a letter of interest and resume

to the Clerk of Council at 150 Avon Belden Road or e-mail to bdopp@avonlake.org. All members of the Board, at the date of their appointments, shall be and shall have been for the two years past qualified electors of the City.

An amendment to Charter Section 59A will appear on the November 2nd ballot as Issue 20. The amending language will bring consistency to the Charter regarding the solicitation of bids and quotations for services and purchases.

There will be a change in the sponsor of Temporary Legislation #9730R. Mr. Kos will sponsor the legislation instead of Mrs. Fenderbosch.

ENGINEERING DEPARTMENT REPORT

The Engineering Department Update was distributed. The last paving work related to the Jaycox Sewer Project will begin November 1, 2010.

LAW DIRECTOR'S REPORT

The Law Department Update was distributed. There may be new litigation with the City of Elyria regarding the LORCO project. The City of Elyria has threatened to arrest the excavators on the job. The Utilities Department is preparing to file suit in Common Pleas Court to obtain an injunction against the action of the City of Elyria. Law Director Kerner is anticipating an item on the November 1, 2010 CCM regarding his representation in this matter.

FINANCE COMMITTEE REPORT

Mr. Zilka reported on the following items discussed at the October 18, 2010 Finance Committee Meeting; the City's investments with Fifth Third Bank; the August and September financial statements; and the financial audit of the Finance Department.

PUBLIC SERVICE COMMITTEE REPORT

A Public Service Committee meeting is scheduled for Thursday, October 28, 2010 at 6:30 P.M. in the Engineering Conference Room. The Service Department is working in the following areas; catch basins and storm drainage on Inwood, Electric, Tomahawk, and Bleser Park; street and bike path sweeping; crack sealing on Crestwood, Cambridge Circle, Country Club; and pavement grinding and concrete repairs in the Westwinds Subdivision.

PUBLIC UTILITIES COMMITTEE REPORT

Mr. Kos discussed a letter dated October 15, 2010 from NOPEC which was mailed to residents. NOPEC has selected First Energy Solutions, a subsidiary of First Energy Corporation, to supply electric generation to residents and small businesses in the NOPEC communities starting with the January 2014 meter readings.

SAFETY COMMITTEE REPORT

A Safety Committee meeting is scheduled for October 26, 2010 at 6:00 P.M. at the Safety Center.

SEWER COMMITTEE REPORT

A Sewer Committee meeting is scheduled for October 27, 2010 at 4:30 P.M. at the Municipal Utilities Building.

ECONOMIC DEVELOPMENT COMMITTEE

The Economic Development Committee met October 18, 2010 and discussed the reauthorization of the Community Reinvestment Area and the withdrawal of one of its participants.

PLANNING COMMISSION REPORT

Mrs. Fenderbosch stated that she withdrew her name as the sponsor of Temporary Legislation #9740, approving a conditional use permit and site plan for a monopole wireless telecommunications tower at the Learwood Square Shopping Center.

Mr. Kos asked Law Director Kerner to clarify the setback requirements for the proposed Clear Wire tower on the 407 Lear Road parcel. Law Director Kerner made the following comments. A question arose as to whether or not the Meadow Vistas residential property would be the setback point for the proposed monopole. In his review, that section regarding the setback requirement only involved the setbacks from the adjoining properties. In this case, the setback is supposed to be 75% from the adjacent residential property which is 112 feet. This monopole will be setback 138 feet from the residential boundary line according to calculations by the Zoning Administrator in accordance with the setback requirements.

Mrs. Fenderbosch made the following comments. The property to the north of the parcel for the proposed tower is zoned B-1, Business; the property to the east, the American Legion and Harbor Court, is zoned residential.

ZONING BOARD OF APPEALS REPORT

The Zoning Board of Appeals is scheduled to meet on October 26, 2010 at 7:00 P.M. in the Council Chamber.

PARKS & RECREATION COMMISSION REPORT

The Parks & Recreation Commission is scheduled to meet October 27, 2010 at 7:00 P.M. at the Lake House.

ENVIRONMENTAL AFFAIRS ADVISORY BOARD REPORT

Mrs. Fenderbosch reported on the industry updates and recycling projects discussed at the Environmental Affairs Advisory Board meeting held October 6, 2010.

CABLE TELEVISION ADVISORY COMMISSION REPORT

The Cable Television Advisory Commission is scheduled to meet October 28, 2010 at 7:15 P.M. at the Avon Lake Public Library.

RENEWABLE ENERGY TASK FORCE REPORT

Mrs. Fenderbosch reported on the following items discussed at the October 14, 2010 meeting: RFP language for solar array bidding for City buildings; and language for the solar array ordinance.

AUDIENCE PARTICIPATION

The following individuals expressed their opposition to the proposed telecommunications tower at 407 Lear Road.

Barbara Vorhees, 373 Lear Road, Avon Lake
Cynthia Clementson, 373 Lear Road, Avon Lake
Carol Wagner, 371 Lear Road, Avon Lake
Don Goedde, 396 Harbor Court, Avon Lake
Chris Keim, 400 Harbor Court, Avon Lake
Bob Bushok, 407 Long Pointe, Avon Lake
Gerald Phillips, 461 Windward, Avon Lake
Weldon Rice, 406 Harbor Court, Avon Lake
Michael Summerfield, 407 Harbor Court, Avon Lake

Benjamin Ockner, 3733 Park East Drive, Beachwood, outside Counsel for Clear Wire, referred to the Avon Lake Planning & Zoning Code's definition of zoning lot, and stated that Clear Wire has complied with all Codified Ordinances. He made the following comments. Council violated the Codified Ordinances by hiring a consultant after Planning Commission unanimously approved Clear Wire's proposed tower, and after Council had already considered the proposal. Council hired a biased consultant who had prejudged Clear Wire's application. Council treated Clear Wire differently from and unequal to other wireless telecommunication providers who built towers on City owned property. This violated Clear Wire's due process rights under the State and Federal Constitutions. Clear Wire was required to pay $10,500 in consultant fees in addition to the usual application fees. The consultant requested Clear Wire to produce documents that were not required by the Avon Lake Code. The consultant gave advice on co-location, which would require Clear Wire to build at the minimum height necessary, which is not provided in the Code. The consultant based his analysis on assumptions from cellular phone technology which does not apply to Clear Wire's technology.

MOTIONS

Mrs. Fenderbosch moved to permit Mr. Meiners to abstain from voting on Temporary Legislation #9730R. Mr. Meiners will abstain from voting due to a potential conflict of interest.

Yes: Bucci, Fenderbosch, Kos, Meiners, O'Donnell, Rush, Zilka
No: None
Motion carried.

Mr. O'Donnell moved to reject the bids for fiber optic based telephone, internet, and metro Ethernet systems. The Engineering Department Manager determined that the bids received had inconsistencies. The bid documents have been revised for a base bid with alternates.

Yes: Bucci, Fenderbosch, Kos, Meiners, O'Donnell, Rush, Zilka
No: None
Motion carried.

Mr. O'Donnell moved to re-advertise for bids for fiber optic based telephone, internet, and metro Ethernet systems.

Yes: Bucci, Fenderbosch, Kos, Meiners, O'Donnell, Rush, Zilka
No: None
Motion carried.

LEGISLATION

Third Readings:

Temporary Legislation #9730R, AN ORDINANCE APPROVING A CONDITIONAL USE PERMIT AND SITE PLAN TO CONSTRUCT A 150 FOOT TALL MONOPOLE WIRELESS TELECOMMUNICATIONS TOWER AT LEARWOOD SQUARE SHOPPING CENTER, AND DECLARING AN EMERGENCY, was read by title only.

Mr. Kos moved for passage of Temporary Legislation #9730R.

Mr. Kos read a letter from Glenn and Luciana Sonnenlitter, 33703 Lake Road, expressing their opposition to the telecommunications tower constructed in Ward IV. Mr. Kos made the following comments. In the past ten months City Council has unanimously approved two cell towers; one on Miller Road, and one at City Hall. The Miller Road tower will sit 348 feet from Beach Park Towers. Council did not consider the effects of the potential harmful waves on the residents of Beach Park residents. Council passed a 130 foot monopole tower behind City Hall. This location was nearly identical to a cell tower that was defeated by the voters of Avon Lake. A group led by Jack Koch

presented City Council with graphs, charts, zoning regulations, and verbal testimony as to why the tower behind City Hall was not needed. The pole behind City Hall sits 190 feet from the homes on the corner of Electric and Avon Belden, 189 feet from homes on Avon Belden Road, 200 feet from two daycare centers, and a few hundred feet from the Avon Lake High School. There are four or five houses that are closer to the City Hall tower than the closest Harbor Court resident is to the Lear Road tower. No one expressed concern about the fall zone of the City Hall tower. The Safety Center tower stands feet behind the Police and Fire Departments where employees are present 24 hours a day seven days a week. The Safety Center tower sits 350 feet away from Ward IV homes and 230 feet from the Mitchell property. They have not been given the same protection and consideration as the Meadow Vistas and Harbor Court residents. Ward IV property values, health risks, safety risks were not considered when the tower was approved. Failure to pass this ordinance will probably result in a costly lawsuit. The only way Avon Lake will be able to overcome a tough economy is to stay on the cutting edge of technology. Being able to provide 4G service would be a plus to economic development. Mr. Kos stated that he will support this legislation to be consistent with his past voting on telecommunications towers.

Mrs. Fenderbosch read her statement explaining her reasons for voting to deny the Clear Wire application for a conditional use permit and site plan approval (statement attached.)

Mr. Ockner, outside counsel for Clear Wire, asked that Mrs. Fenderbosch recuse herself since she revealed that she performed outside research that Clear Wire has not seen, and therefore violates due process rights.

Law Director Kerner stated that Mr. Ockner's objection is duly noted. He further stated that Mrs. Fenderbosch's comments are part of a discussion session that should continue.

Mr. Bucci made the following comments. The proposed location of the tower is in a B1 Business district. In 1996 Planning Commission and Council provided for a conditional use permit for Maximum Independent Living to construct single level apartment residential dwellings on commercial property. The apartments, known as Meadow Vistas, are subsidized by the U.S. Department of Housing and Urban Development and are utilized by physically disabled residents. The conditional use allows for a residential area to be located upon a commercially zoned parcel. Mr. Bucci referred to Section 1256.04 (a) (3) (D) regarding setback requirements for towers. Meadow Vistas is a provider of human services according to statements made by Mr. Hansler of HUD at the Planning Commission meeting held July 16, 1996. The intent of the above referenced Code Section is to provide residents with a certain base level of protection when towers are constructed. Meadow Vistas residents should not be denied protection because they reside on the commercial parcel where the proposed tower is to be located. The Meadow Vistas residents are entitled to a 150 foot setback which is the length of the tower. The intent of Code Section 1256.04 9a) (4) (E) is to provide a base level of safety and security. They should not be afforded less protection because their

residence is located on a business parcel rather than next to it. Mr. Bucci referred to the Telecommunications Act and stated that City Council is the final arbiter of where towers can be located. Mr. Bucci stated that his vote to deny the Clear Wire application is based on location and height of the tower.

Mr. Rush stated that he is basing his vote to deny the Clear Wire application on Planning & Zoning Code Section 1256.02 (c) and (d).

Mr. O'Donnell made the following comments. Each issue must be taken on its own merit. His decision to deny the Clear Wire application is based on Code Section 1256.11, Demonstration of Necessity, the McKenna report, the minutes of the October 4, 2010, and petitions signed by residents. Meadow Vistas should be considered as a human services facility.

Mr. Zilka made the following comments. The Meadow Vistas facility should not have less status regarding setback requirement because it is located on the parcel and not adjacent to the parcel. He stated that he agrees with Mr. Bucci's comments and interpretation of the setback requirements.

Yes: Kos
No: Bucci, Fenderbosch, O'Donnell, Rush, Zilka
Abstention; Meiners
Motion failed.

Temporary Legislation #9741, AN ORDINANCE APPROVING AN AMENDMENT TO THE CONTRACT FOR THE 2010 CONCRETE STREET PROGRAM, AND DECLARING AN EMERGENCY, was read by title only.

Mr. O'Donnell moved for passage of Temporary Legislation #9741. The contractor requested an extension to the project completion date due to reorganization within the company. The new projected completion date is November 30th. The contractor is working to meet the original completion date.

Yes: Bucci, Fenderbosch, Kos, Meiners, O'Donnell, Rush, Zilka
No: None
Motion carried.
Ordinance No. 109-2010 adopted.

First Readings:

Temporary Legislation #9751, AN ORDINANCE AMENDING ORDINANCE NO. 155-2008 AWARDING A CONTRACT FOR THE PURCHASE OF COMPREHENSIVE INSURANCE COVERAGE FOR THE CITY OF AVON LAKE, OHIO, AND DECLARING AN EMERGENCY, was read by title only.

Mr. Zilka moved for suspension of the rule requiring three readings.

Yes: Bucci, Fenderbosch, Kos, Meiners, O'Donnell, Rush, Zilka
No: None
Motion carried.

Mr. Zilka moved for passage of Temporary Legislation #9751. This is the third year of the contract for comprehensive insurance coverage. This ordinance provides for an adjusted premium of $129,706.00 due to the new aquatic center and new fire engine.

Yes: Bucci, Fenderbosch, Kos, Meiners, O'Donnell, Rush, Zilka
No: None
Motion carried.
Ordinance No. 110-2010 adopted.

Temporary Legislation #9752, AN ORDINANCE AUTHORIZING THE PURCHASE OF THREE CRUISERS FOR THE POLICE DEPARTMENT, AND DECLARING AN EMERGENCY, was read by title only.

The Police Chief recommended the purchase of three 2011 Ford Crown Victoria police cruisers from Statewide Ford through the State Purchasing Program in the amount of $70,362.00.

Temporary Legislation #9753, AN ORDINANCE AUTHORIZING THE FUNDING OF THE COST OF THE PURCHASE OF TRANSDERMAL ALCOHOL MONITORING DEVICES, AND DECLARING AN EMERGENCY, was read by title only.

The Judge of the Municipal Court recommended the purchase of 12 transdermal alcohol monitoring devices which are funded from the Court's Indigent Drivers Alcohol Fund which is funded through the collection of fees from OVI offenses. The total purchase amount is $33,600.00.

MISCELLANEOUS BUSINESS AND ANNOUNCEMENTS

T-shirts are being sold to raise funds for Officer Soto who was seriously injured on Route 83. Automotive Specialists of Avon is offering an oil change package to customers who purchase the t-shirts.

Mr. Kos will take part in the Marine Corps Marathon on October 31st.

Trick or Treat will be celebrated in Avon Lake on October 31st from 6:00 – 7:30 P.M.

PUBLIC INPUT

Gerald Phillips, 461 Windward Way, Avon Lake, advised Council of legal options available regarding litigation and zoning laws.

The following residents commended Council on passage of Temporary Legislation #9730R.

Steve Vas, 646 Bridgeside, Avon Lake
Chris Keim, 400 Harbor Court, Avon Lake
Michael Summerfield, 407 Harbor Court, Avon Lake
Weldon Rice, 406 Harbor Court, Avon Lake

Neil Weinberger, 3333 Richmond Road, Beachwood, property owner of Learwood Square Shopping Center, asked Council for consideration of future development of his property. He commented on the everyday safety concerns for the residents of Meadow Vistas.

Mr. Kos clarified his statements which appeared in the newspaper regarding Ward I residents and the Clear Wire tower.

Jean Sekulic, 68 North Point Drive, Avon Lake, commented on Congresswoman Betty Sutton's recent visit to the Ford plant.

Mr. O'Donnell moved for adjournment.

Yes: Bucci, Fenderbosch, Kos, Meiners, O'Donnell, Rush, Zilka
No: None
Motion carried.

Adjournment: 9:55 P.M.

Approved: _____
Council President

Attest: _____
Clerk of Council

October 25, 2010

To: Barbara Dopp

From: Jennifer Fenderbosch

Temporary Legislation 9730, approving a conditional use permit and site plan to construct a 150 foot tall monopole wireless telecommunications tower at the Learwood Square Shopping Center involves a number of stakeholders, i.e. property owner, applicant, City, and residents.

The property owner wants an income from the lease of a telecommunications tower without it negatively affecting the property value of his property. As a property owner he has rights to the use of his property. The applicant wants an installation on the parcel to supply 4G wireless internet along with services offered from his partnering businesses that grants a competitive advantage in the free market. The City wants the most sophisticated technology available that is aesthetically pleasing for the neighborhood; yet, meets the public's demand for the use and convenience of wireless personal cellular telecommunication services. The City wants to ensure that a broad range of services are provided to serve the residents, businesses, public sector and visitors to the City. The closest residents to the proposed installation location want to be safe in and around their home. The 2nd and 3rd tier residents want to ensure that towers and antennas are configured in such a way as to minimize adverse visual impact by design, careful siting, camouflage and innovative techniques to preserve their property values. Working toward meeting these needs, one must return to the application packet and examine what information the Zoning Administrator, Planning Secretary, Department Heads and the Planning Commission had before them in order to make the decisions that brought us to this moment when Council needs to decide to approve or deny Planning Commissions approval of a site for an application for a 150 foot wireless tower and antennas at Learwood Square. **1256.01 PURPOSE**

(a) The purpose of this chapter is to provide for the common good and preserve the enjoyment of private property through the regulation of the construction, placement and modification of wireless telecommunications systems, including telecommunications towers and associated facilities, while ensuring the ability of the consumer to use and enjoy telecommunications services of all types, and to protect the right of private and public enterprise to exercise free trade.

(b) To the extent permitted by law, the City shall apply the regulations set forth in this chapter to specifically accomplish the following:

(1) Accommodate the need for wireless telecommunications towers and facilities to meet the public's demand for the use and convenience of wireless personal cellular telecommunications service, while regulating their location and number in the City;

(2) To encourage the location of towers and facilities on nonresidential land;

(3) To minimize the total number of towers and facilities;

(4) To ensure that towers and antennas are configured in such a way as to minimize adverse visual impact by design, careful siting, landscape screening, camouflaging and innovative techniques brought about through the advance of science and technology;

(5) To avoid damage to adjacent properties from tower failure through competent engineering, construction and erection of towers;

(6) To ensure that a competitive and broad rage of wireless personal communications services and high quality telecommunications infrastructures are provided to serve the residents, businesses, public sector and visitors to the City;

(7) To create and preserve a wireless telecommunications facilities system which will serve as an effective part of the City's emergency response network; and

(8) To accommodate the public's demand for present day wireless personal communications services through these standards, so that changing technologies will continue to serve these needs, while concurrently preserving the City's aesthetic and ecological integrity, so that residents of the future may continue to enjoy the comfortable living standards of the Avon Lake community.

(Ord. 90-98. Passed 5-18-98.)

The following evidence will lead us to understand that the Zoning Administrator, Planning Secretary, Department Heads and members of the Planning Commission did not have a complete packet due to the omission of information from the applicant. Thus, the approval of the application by the Planning Commission was flawed:

1) The application stated that it was by Clear Wireless LLC. **Exhibit A**. Within the application it was not openly revealed that Sprint holds majority stock of Clear Wireless LLC**. Wall Street Journal Exhibit B**. It was not openly revealed that Clear Wireless' business partners include Comcast, Intel, Time Warner, Google and Bright House. **Clear Wireless' website Exhibit C. 1256.07 REGISTRATION OF WIRELESS TELECOMMUNICATIONS PROVIDERS.**

All wireless telecommunications services providers, including governmental, public and quasi-public providers, who operate or propose to operate within the corporate limits of the City, shall register with the Planning Commission Secretary on forms and in a manner as prescribed by the Planning Commission Secretary. At a minimum, the following information shall be required:

(a) The identity and legal status of the provider, including business affiliations.

(d) A description of the wireless telecommunications and related facilities in the City and elsewhere.

It was not revealed in the application that these business partners will not need to co-locate to use Clearwire's 4G services to provide voice over applications, streaming, web browsing, downloading music videos on cell phones, and downloading extensive business application files. Only those services that don't have a business agreement are candidates to co-locate. **This question was answered by David Konecny at the CCM on October 18, 2010 and through the letter from Attorney Ben Ocher, Exhibit D.** It also was not revealed and I quote from Clear Wireless' website that: "We are an early stage company with a history of operating losses and we expect to continue to realize significant net losses for the foreseeable future. Our current and future plans are subject to a number of conditions and uncertainties, including among other, our ability to manage ongoing market development activities (including the development of over 10,000 sites), our performance in launched markets and our access to additional funding." The Department Heads and the members of the Planning Commission did not have complete information when they made their decisions.

2) The application by Clear Wireless LLC which the Department Heads and members of the Planning Commission reviewed had a number of errors or omissions:

a) Stating that the location was on the "west side of the City" instead of the "east side of the City". **Exhibit E.**

b) Not showing both Meadow Vista apartment buildings on the vicinity map which is supposed to show the immediate surrounding area. **Exhibit F; 1217.06 (c) (3), (4)**

c) Letter dated July 28th, 2010 from David Konecny, RF Engineer did not provide a statement listing what steps Clear Wireless would take to avoid interference with established public safety telecommunications. **Exhibit G; 1256.17 4D**

d) Clear Wireless did not show scale, sign or date the design engineered drawings. **Exhibit H; 1256.17 4A** 1256.17 4D1257.17 APPROVAL PROCEDURE.

(a) Applications for approval to locate towers, antennas and related wireless telecommunications facilities shall be controlled as set forth for conditional uses in Chapter 1250, and the applicant-provider shall apply for a zoning permit as set forth for the site plan review in Section 1217.03. This requirement shall not apply to the collocation of antennas and wireless telecommunications equipment upon wireless telecommunications facilities as set forth in division (c) of this section.

(b) In addition to the requirements set forth in subsection (a) hereof, the following shall be submitted in an application for approval:

(4) A report from a certified, structural engineer which:

C. Documents what steps the applicant will take to avoid interference with established public safety telecommunications;

D. Certifies that the tower is structurally sound and, if it should fail, under what conditions it might fail and the likely result thereof; and

E. Includes the structural engineer's stamp and registration number.

e) Clear Wireless did not list from their structural engineer under what conditions the proposed tower may fail and what the likely results thereof. **Exhibit I 1256.17 4D**

f) Siting a parking lot for Clear Wireless' vehicles in the eastern Meadow Vista apartment. **Exhibit K 1256.09 STREETS; PARKING.**

(a) All zoning lots on which are located towers and related wireless telecommunications facilities shall abut a public right-of-way.

c) If available, existing parking shall be used and not expanded. Each zoning lot on which is located a tower and related wireless telecommunications facility shall have sufficient parking to accommodate service of the site. A minimum of one parking space and a maximum of three parking spaces shall be provided. Parking shall appear on the site plan for the wireless telecommunications facility as regulated pursuant to Chapter 1217 of this Code, and as regulated in bulk pursuant to Chapter 1264 of this Code.

(d) If the wireless telecommunications facility is fully automated, a maximum of two parking spaces shall be required for maintenance workers. If the site is not fully automated, a maximum of three parking spaces shall be permitted. Parking specifications shall be as regulated in Chapter 1264 of this Code.

(Ord. 90-98. Passed 5-18-98.).

g) Clear Wireless indicated on an overall site plan that they were going to cut through the parking lot of Learwood Square from Lear Road headed east with their utility easement, ripping up the asphalt as they approached the front of retail stores. Working north around the closed hardware store then to the back of the retail stores, they would then cut across the pavement to the site location with construction equipment. **Exhibit J Overall Site Plan C-1** What Clear Wireless and the parcel owner, JND, failed to point out to the Department Heads or to the Planning Commission was that in tearing up the pavement and pulling the utility runs, contractors would be in the only designated lanes of travel for the residents with disabilities who live in the Meadow Vistas apartments. Electric and manual wheelchairs are no match to construction equipment. Residents are prohibited from wheeling past the back of Giant Eagle due to the semi trucks that deliver stock goods, meat, and produce to the delivery docks. **1252.08 (f) GENERAL SITE DEVELOPMENT CRITERIA.** *Pedestrian Circulation. An interconnecting walkway system shall be designed to promote easy and direct barrier free access, using accepted criteria, to all areas of the development in a carefully conceived total service plan while also considering the security of the residents in the design. Wherever possible, the vehicular and pedestrian circulation patterns shall be completely separate and independent of one another.*

Exhibit J 1256.03 LOCATION CRITERIA.

(a) Wireless telecommunications facilities, towers and related structures may be located in any zoning district with the exception of that territory zoned R-1B, as established in Chapter 1230 and defined at Section 1240.01(c) of this Code, and located according to the Official Zoning Map as a conditional use pursuant to Chapter 1250. Generally, wireless telecommunications towers are objectionable in residential areas because their use is industrial in nature, and may be objectionable in the community at large because they are frequently considerably taller than surrounding structures, causing them to be seen from long distances. Their location is therefore regulated as permitted by the Telecommunications Act of 1996, as may from time to time be amended.

(b) In order to accommodate the communications needs of residents and businesses while protecting the health, safety and general welfare, the City recommends and encourages the placement of wireless telecommunications facilities and towers in nonresidential areas, in the following order of preference:

(1) City-owned property, except parks;

(2) Industrial areas;

(3) Quasi-public property;

(4) B-2 Zoning Districts;

(5) Other nonresidential districts deemed appropriate by review of the Planning Commission and approval of Council.

h) Clear Wireless did not submit a written document which certifies that the applicant shall locate no tower in violation of laws governed by the FAA. **1256.57 (a) (3)**

i) Complete propagation maps were not included in the application packets sent to the Department Heads and the Planning Commission for review of demonstration of necessity. Clear Wireless failed to show that they explored less obtrusive siting locations and design. Thus, one concludes that the decisions made by the Department Heads and the members of Planning Commission were not based on complete information.

3) Because this was the first time that a telecommunications tower and antennas were proposed to be installed within 60 feet of residents, Council authorized the Mayor to enter into contract with a consultant. The task was to evaluate the need for a tower, antenna and related wireless telecommunications facilities at a particular location per **1265.11**. The consultant reviewed the application packet and concluded that "the propagation maps are incomplete and should contain a scale and legend; signal strength in -dBm; propagation maps at the proposed 150 foot height and 10 foot less increment; a propagation map for the proposed site at 50 feet above grade; propagation maps generated using the maximum ERP as is calculated per the attached propagation study data sheet. Additional sheets should be attached as there are more than 3 adjacent sites in existence; identify if the propagation maps are for in-vehicle or in-building coverage, and a narrative addressing objective for coverage from the subject size. Because there are no buildings that are over four story within the proposed area of coverage, the consultant believes that in-building coverage can be attained with -85dBm signal strength. If the applicant believes that a stronger signal is required, he needed to submit a detailed explanation and proof is required. The Consultant made a site visit and requested drive test data, certified plans, exhibits A and B from the ground site lease agreement that were not included in the application. On September 23, 2010 based on the documents submitted, the applicant in the consultant's opinion, failed to adequately demonstrate the City's objectives regarding aesthetics and necessity with the proposed wireless facility. The application does not address any of the methods for minimizing, "adverse visual impact by design, careful siting, landscape screening, camouflaging and innovative techniques brought abut thorough the advance of science and technology" other than a flag

pole. **Exhibit L 1256.01 (b) (4) and 1256.01 (b) (8)j; 1250.02 GENERAL CRITERIA FOR ALL CONDITIONAL USES.**

(b) The establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health. safety or general welfare;

(c) The conditional use will be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not essentially change the character of the same area;

(d) The conditional use will not be hazardous or disturbing to the existing and future use and enjoyment of property in the immediate vicinity for the uses permitted, nor substantially diminish or impair property values within the neighborhood;

Whenever there is a difference between the provisions of the conditional use regulations and the district regulations, the more restrictive provisions shall prevail.

Nothing in these regulations shall prohibit the Planning Commission and Council from prescribing supplementary conditions and safeguards in addition to these requirements in order to achieve the objectives established in Section 1250.02.

4) The applicant submitted additional information. On October 11, 2010 the consultant reviewed the information submitted and once again concluded that the applicant has failed to adequately demonstrate that they require a 150 foot facility at the proposed site. Exhibit M. **1256.11 DEMONSTRATION OF NECESSITY.**

(a) To assure that the City's and the public's objectives are achieved, the wireless telecommunications service provider requesting permission to locate a tower and related wireless telecommunications facility shall produce written evidence of contact with all wireless telecommunications service providers who supply service within the distribution sphere of the proposed facility. The applicant-provider shall inquire about potential collocation opportunities at all technically feasible locations in, or which could service, the City.

(b) To evaluate the need for a tower, antenna and related wireless telecommunications facilities at a particular location, the City may contract with a competent expert to assist in making such a determination. If requested by the City, the applicant-provider shall deposit with the City the estimated reasonable fee for such professional consultation. Such deposit shall be made prior to the application being considered by the City. Any unused amounts on deposit shall be refunded to the applicant-provider.

After this time the applicant submitted additional information and narratives but never answered the original questions:
1) A certified electrical engineer must list what steps Clear Wireless would take to avoid interference with established public safety telecommunications.
2) A certified structural engineer did not list under what conditions the proposed tower may fail and what the likely results thereof. Residents in CCM and Council meetings provided examples of telecommunications towers that fell and burned. One they highlighted was the US Army Cold Regions Research and Engineering Laboratory provided a study of failed communication towers. The record contains failures dating back to 1959. They found that more fail in the north than the south. One third of them are under 300 feet. Most of the failures occurred in the Midwestern northern states. Twice as many towers fell in four times as many storms in the northern US compared with the southern US. It was discovered that March ice storms cause the most failures.... not wind. **Exhibit N**

5) There is also a concern about the safety of the residents in Meadow Vistas apartments regarding tower failure and giant ice sheets dropping off the tower. Even though the apartment complex, Meadow Vistas, is presently zoned B-1, it is within 60 feet; thus, it is the closest structure to the proposed telecommunications tower if it is constructed 13 stories high at 150 feet. Meadow Vistas

is an apartment complex designed to provide independent living to people with mobility disabilities. The buildings and land are owned by the parcel owner who has a contract with the applicant. The buildings are managed by Maximum Accessible Housing of Ohio and are subsidized by the US Department of Housing and Urban Development. During the appraisal and property condition assessment, the market value and acceptability of the property is evaluated. The HUD appraiser must indicate whether the dwelling or related property improvements are located within the easement serving a cell tower. If the dwelling or related property improvements are located within such an easement, the DE Underwriter must obtain a letter from the owner or operator of the tower indicating that the dwelling and its related property improvements are not located within the tower's engineered fall zone. **Exhibit O**

My no vote is not a vote to prevent the applicant from doing business in Avon Lake. It is sending a message that we can do better. The applicant prefers another location on the parcel, the owner does not want to place it in the front landscape but there may be an architectural solution that would benefit both parties. I invite them to consider other options *because 4G is coming to Avon Lake.* **Design Requirements for Towers and Facilities.**

(2) Towers and antennas, as well as all wireless telecommunications facilities, shall be designed and situated upon a lot so as to minimize their visibility and to the greatest extent possible to blend into the surrounding environment.

(3) Towers shall be designed, constructed, erected and maintained with the utmost care for the safety of persons and property.

6) On June 30, 2010 Clear Wireless submitted an application for building permits to install antennas on the Avon Lake Municipal water tower at the corner of Walker and Moore Roads and on the water tower on Division Road without applying first to the Zoning Administrator or the Planning Secretary per the Code. This was prior to the application for the tower location at 407 Lear Road was presented to the Planning Commission on August 3, 2010. Clear Wireless then proceeded to pay the fee for the building permits at the Building Department for the water towers on August 9, 2010 prior to the vote on October 18, 2010 by the Avon Lake Municipal Utilities to accept their leases. I support these camouflaged sites knowing that they are part of the 4G network. However, I also support vetoing the building permits and starting over. Clear Wireless must honor the City's Code by presenting the application to the Zoning Administrator and processing the application through the required channels.

To summarize, the application was not complete when the Zoning Administrator, Planning Secretary, Department Heads, or Members of Planning reviewed it. Thus, the decision made was based on faulty information. The information from the consultant confirmed that we do not know what we do not know. The ideal time for a consultant to enter into the process is at the beginning when the telecommunications applicant first contacts the Planning Secretary. **1256.08 DESIGN CRITERIA.**

(a) Camouflaging of Towers.

(1) Towers shall be located in a landscaped setting pursuant to Section 1256.05(a). The Planning Commission may require additional landscaping. Camouflaging of towers is especially encouraged only if logical and technically feasible. Such camouflaging may take the form of erecting a tower which resembles or mimics another object, such as a tree or flag pole. Camouflaging may also consist of placing antennas on existing structures such as water towers or buildings in such a way that they are not easily detected and cannot be seen by the naked eye from a long distance.

(2) If antennas are collocated on existing structures which are not towers as defined by this chapter, it shall be presumed that such antennas are camouflaged unless their positioning and placement causes them to be easily seen and discerned by a reasonable person as being wireless telecommunications antennas.

(3) Antennas may be placed on trees, if technically feasible, and is such placement would provide wireless telecommunications services to the residents and businesses of the City equal to that if such antennas were placed on towers. If antennas are placed on trees, they shall be camouflaged.

(4) A building or other structure may be a prop only, which is unused and unusable as anything but a device to camouflage an antenna. It shall be aesthetically pleasing and maintained continuously.

(5) Camouflaging, whatever variety and however employed, shall be of a type compatible with the immediate surrounding area and the City at large in color, design, material, appearance and its method of mimicry. For example, an artificial oak tree 100 feet in height would satisfy this requirement. An artificial palm tree would not.

(6) Antennas may be placed on facades of buildings if colored and designed to match the color, texture and style of the building to which it is attached, and shall be attached at least twenty-five feet above grade.

(b) Color of Towers. All towers of any type shall be of a color which blends into the natural color of the immediate area or skyline, but shall not be painted at all if, by coloring the tower, it would be more visible to the naked eye from a long distance than if it were erected in the ordinary tone of it construction materials, such as the grayish color of galvanized steel. If towers are painted, they shall be maintained within the requirements of the City's property maintenance ordinance.

(Ord. 90-98. Passed 5-18-98.)

1256.21 VIOLATIONS.

Whoever intentionally violates this chapter shall be guilty of a misdemeanor.

(Ord. 90-98. Passed 5-18-98.)