

NEW CASE:

**CASE NO. 009-11
UPDATE TO PLANNING AND
ZONING CODE SECTION 1256.11
WIRELESS TELECOMMUNICATION
REGULATIONS**

**PER THE PREVIOUS DISCUSSIONS AT
PLANNING COMMISSION AND INPUT
FROM CITY COUNCIL ATTACHED ARE
THE RECOMMENDED UPDATES TO
CHAPTER 1256 WIRELESS
TELECOMMUNICATIONS.**

Mr. Reitz stated these revisions are from the previous discussion at Planning and City Council.

Mr. Fell stated that he liked the demonstration of necessity section that was put in.

Mr. Rush asked what the reasoning for striking the evaluation of new technologies.

Law Director Kerner stated that we had submitted the proposal to the Cable Television Industry Association and they came back with information that objected and gave me cases for me to review on the inability of municipalities to direct technology since there is preemption in the telecommunications act. On the basis on the cases that were provided I recommended that what we had here was technology forcing and would not stand. The consensus of the commission was to remove it.

Mrs. Fenderbosch stated that also this can be a negotiable point between the property owner and the applicant that would not need to be in legislation.

Mr. Rush stated that by the time Planning Commission hears the case the owner and applicant generally have a signed agreement in place and the owner may not know about the alternative technologies if it is not spelled out for them somewhere.

Law Director Kerner stated that there could be alternative technologies available for a property owner to choose from, but we as the City cannot tell them what type of tower the owner can propose. Under the telecommunications act we have no power with the applicant or property owner as to what type of technology or tower is put in place unless we are the property owner.

Mayor Zuber stated that technology changes all the time and it is up to the property owner to do their due diligence as a property owner and be aware of the new technologies and the options they have as a property owner.

Mr. Simonovich stated that he still has the letter that the PCIA which is the wireless infrastructure association, in their letter they state that they are the national trade association representing the wireless infrastructure industry. Regarding this item, this section specifies a preference for new technologies and alternative system design for the provision of wireless services in residential areas, this type of preference has been found to be preempted from federal law. Courts have found the local authority over the placement of facilities is not extended to the technical or operational aspects of wireless services.

Mr. Rush stated that he understands what is written and understands the methodology behind it, but if I am a telecommunications company I am going to erect the cheapest possible tower I can build.

Mrs. Fenderbosch stated that as a property owner I think that I would be hiring the very best consultant I could to research the new technologies and tell me what is best for my property.

Mr. Sherban stated that he could probably count on one hand the areas that are still available where there is a gap in coverage where they would like or be able to put a tower on a property, and there is nothing preventing us from anyone of us to speak to those property owners and let them know what is available to them, but we as the City cannot dictate what technology can be used.

Mr. Zilka supports Law Director Kerner and the commission's decision, but you basically have a lobbying group that controls the industry giving you legislation and we are adopting it, that makes me nervous.

Mr. Fell stated that they are not just giving us information they are giving us case law. We know there position is a given.

Mr. Sherban stated that they had given us other opinions on changes that we did not change or take into consideration. This is the only one that we did look at and change.

Mr. Knilans stated that we are requiring a geotechnical report and bearing capacity, is that something that we need before it comes before Planning Commission or should that be at the time of construction.

Mr. Reitz stated that it currently comes thru at the time of construction documents, but since that was discussed in the other tower incident, we thought it would be best to ask for it up front in case towers, buildings or sites had to change because of the report.

Mr. Simonovich asked based on the Walker Road Park possibility what would be the track of this legislation to go forth and what would apply with that going forth.

Mayor Zuber stated that the group that is proposing that tower has agreed that will abide by all the new code ordinances that are proposed, whether the code is in place or not.

Mrs. Fenderbosch asked if an RFP would be in the works for once this code section goes through.

Mr. Reitz stated that once the code goes through an RFP will be put in place. I have already started to work on this.

Mayor Zuber moved to approve the request for the update to the Planning and Zoning Code Section 1256.11 Wireless Telecommunications Regulations. Mrs. Fenderbosch seconded the motion.

AYES: All NAYS: None

Mr. Fell stated this case has passed and will now move on to City Council for three readings.

INFORMATIONAL ITEM

Mr. Fell stated the next Planning Commission Meeting will be on July 5, 2011.

Mr. Fell stated there was a minor alteration in the packet for Athena’s Restaurant, 33446 Lake Road for a dumpster enclosure.

There were no comments on the minor alteration.

DISCUSSION ITEM

GENERAL PUBLIC COMMENT

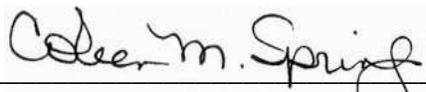
ADJOURNMENT

Mr. Knilans moved to adjourn at 8:07 p.m. the June 7, 2011 Planning Commission meeting. Mayor Zuber seconded the motion.

AYES: All NAYS: None

The next regular meeting of the Planning Commission will be on July 5, 2011.

Gary Fell, Chairperson



Coleen M. Spring, Recording Secretary