

MINUTES
PLANNING COMMISSION
June 24, 2010
7:00 P.M. – COUNCIL CHAMBER

	<u>Name</u>	<u>Attendance</u>
MEMBERS PRESENT:		
	Bob Bucher	(6-0)
	Ann Fisher	(4-2)
	Jerome Goolsby	(6-0)
	Reba Hebert	(4-2)
	Joseph Morrey	(5-1)
	Jason Park	(4-2)
	Bruce Taylor	(5-1)
	Steve Wenger	(5-1)
MEMBERS ABSENT:	Mark Manville	(2-4)

Quorum Present. Five members constitute a quorum.

OTHERS PRESENT: Mike Kellam, City Planner
 Ted Elo, Assistant City Attorney

Call to Order Chairman Wenger read the regulations adopted by the Planning Commission. He stated that there is a certified copy of Chapters 11, 26 and 31 of the Code of Ordinances available for reference if needed. He then called the meeting to order.

Minutes Mr. Wenger asked for corrections and/or additions to the minutes of the meeting of May 27, 2010. Bob Bucher made a motion to approve the minutes as submitted. Jerome Goolsby seconded the motion and Chairman Wenger called for the vote.

VOTE: Bucher – yes, Fisher – yes, Goolsby – yes, Hebert – abstain, Morrey – abstain, Park – yes, Taylor – yes, Wenger – yes.

Ayes – 6, Nays – 0, Abstain – 2. Quorum vote is five votes. Motion passes.

Postponements/Adjustments to Agenda: There were no adjustments to the agenda. Furthermore, there was no business on the consent agenda and no old business.

New Business:

ITEM #1 RUSSELL C. BOOK – Requesting approval of a Conditional Use Permit to give private basketball lessons at 2920 Blackwell Road on property presently zoned R-1A Single Family Residential District.

Staff recommendation: Conditional Approval

Mike said there is nothing to add to the staff report. Staff recommends approval of this request with conditions as follows:

1. The lessons will be limited to 3 days per week.
2. No parking will be allowed along Blackwell Road and all parking shall be within the applicants' property.
3. The applicant's parking lot shall be of an impervious surface as code requires.
4. No outside storage of any equipment will be allowed, all equipment shall be stored inside.
5. The natural landscape buffer shall remain on the property to allow screening for the properties on the west side.

Joseph Morrey asked if there is a limitation on the size and type of building that can be constructed in this neighborhood. Mike said it has to be subordinate to the home in square footage. Mr. Morrey said if Mr. Book ever moves away from this location, the building would remain. Mike said that is correct but the conditional use permit would then be void. Mike also explained that Mr. Book could construct a building of this type and size by obtaining the proper building permits. This request is only for the conditional use permit to give private basketball lessons.

Ann Fisher asked if it would be in the side or rear yard and not on the street. Mike explained that the building will be put in the side and rear yard only. They will be required to provide adequate off-street parking.

Reba Hebert asked if any responses were received from nearby property owners. Mike said no responses were received.

Russell C. Book, 2920 Blackwell Road, said he teaches basketball at a local high school. He thinks our community has a need for this type of one-on-one lesson. In addition, his property seems to be good for this use.

Mr. Wenger asked if Mr. Book is willing to meet the conditions recommended by staff. Mr. Book said yes.

Mr. Bucher asked why there would be a limitation on number of days per week on the operation and if Mr. Book thinks he might need more than three days each week. Mr. Book said he is still a full time teacher and has a young family; he thinks three days a week is all he will be able to handle.

Mr. Wenger asked if Mr. Book plans to offer other athletic training, such as baseball or other sports. Mr. Book said no, and there will be no tournaments. It will only be one-on-one training.

Bruce Taylor asked if anything competitive would be scheduled, i.e., a basketball game. Mr. Book said no, he does not plan to have games or tournaments – there will not really be room outside the court for seating.

No one else appeared to speak in favor of this request and no one appeared to speak in opposition. Chairman Wenger closed the public hearing. There were no further questions from members of the Planning Commission.

Mr. Wenger said he drove by this property and can attest that it is difficult to see anything in the back yard from the street.

Joseph Morrey asked if staff will ensure the off-street parking is in place and functional prior to allowing the use to take place. Mike said the parking area would have to be complete before building permits and a certificate of occupancy would be issued.

There being no further discussion, Chairman Wenger called the question on approval of the conditional use permit with the conditions requested by staff.

VOTE: Bucher – yes, Fisher – yes, Goolsby – yes, Hebert – yes, Morrey – yes, Park – yes, Taylor – yes, Wenger – yes.

Ayes – 8, Nays – 0. Quorum vote is five votes. Motion passes.

This item will be forwarded to the City Council for final action with a recommendation of approval from the Planning Commission.

ITEM #2 SUNSHINE ELECTRONIC DISPLAY CORP. by Terry Steinbecker, agent – Requesting approval of the vacation of the southern half of an alley running north of Sylvania Street between 5th & 6th Street, being approximately 120 feet in length and 20 feet wide.

Staff recommendation: Conditional Approval

Mike Kellam stated that the northern portion of this alley has already been vacated; the southern portion has not. The applicant is requesting the southern portion of this alley be vacated so they can use it as a private drive and create a contiguous piece of property for their future expansion. Staff recommends conditional approval. There are utilities remaining in the alley; therefore, the city will maintain an easement over the entire vacated area. No permanent structures will be allowed to be constructed over that easement. This condition mirrors the condition that was placed on the northern portion of the alley when it was vacated.

Jason Park asked if the applicant owns the property on both sides of the alley. Mike said yes, they own the entire block.

Terry F. Steinbecker, 4718 Brookwood Terrace, appeared representing Sunshine Electronic Display. Mr. Steinbecker said at the time the north part of the alley was vacated, there was a different property owner on the east side of the southern part. They have since purchased that property and now own the entire block. Their intention is to pave the alley.

Mr. Wenger asked if Mr. Steinbecker has reviewed the condition recommended by staff. Mr. Steinbecker said yes, and they are in full agreement.

Ann Fisher asked if there is any traffic in the alleyway. Mr. Steinbecker said they use the northern part to enter the parking lot; he anticipates something similar in the southern part.

No one else appeared to speak in favor of this request and no one appeared to speak in opposition to the request. Chairman Wenger closed the public hearing.

There were no further questions; Chairman Wenger called the question.

VOTE: Bucher – yes, Fisher – yes, Goolsby – yes, Hebert – yes, Morrey – yes, Park – yes, Taylor – yes, Wenger – yes.

Ayes – 8, Nays – 0. Quorum vote is five votes. Motion passes.

This item will be forwarded to the City Council for final action with a recommendation of approval from the Planning Commission.

ITEM #3 US CELLULAR by Lee Marvin, Faulk & Foster, agent – Requesting approval of a conditional use permit for construction of a 105 foot monopole tower at 1215 6th Avenue on property presently zoned R-1B Single Family Residential District.

Staff recommendation: Approval

Mike Kellam said he has nothing to add to the staff report. The project will receive further review when it comes before the development review committee for permitting; additional structural, mechanical, electrical plans will be reviewed. Staff recommends approval of the request because it meets all of the criteria set out in the Zoning Code.

Bruce Taylor asked how close the nearest structure is to the base of the antenna. Mike said the nearest structure belongs to Mr. Miller (property owner at 1215 6th Avenue) and is about 30 feet away from the tower, he is not positive about that, though. Mr. Taylor said that means the residents of the structure are within the fall zone. Mike said that is correct; the owner has agreed to that location. The ordinance only addresses adjoining properties.

Bob Bucher asked if one of the photos is an example of what the structure will look like. Mike said yes.

Joseph Morrey asked if the city has standards for uniformity of appearance in the towers. Mike said yes. He further explained that the monopole design is much less intrusive than the trellis kind. In addition, the code requires that any tower within one-half mile either be used for co-location or a study must be submitted explaining the reason they cannot use it. That study has been provided by this applicant. Staff encourages co-location as often as possible.

Mr. Morrey asked if we should consider not permitting the tower if an inhabited structure is within the fall zone. Mike said the location of the tower is between the property owner and the tenant; if they choose to allow it to be within the fall zone, that would be the right of the property owner. The ordinance is written to protect other property owners who do not have a choice. Mr. Morrey said the towers need to be placed on larger parcels where no structures would be in jeopardy. Mike said by requiring that, we could be restricting the towers to the place where they could not locate in town at all. However, he does not think we have ever had one this close to a residence before, but we have no regulatory authority to require them to move it to a different place on the property.

Ann Fisher asked how large this parcel is. Mike said he thinks it is about two acres in size. Mrs. Fisher said she questions putting the tower in this neighborhood.

Reba Hebert said her understanding is that the tower cannot be taller than the number of feet it is away from the property line. Mike said that is correct. She asked how that is enforced. Mike said

we have a written statement from the applicant that they do not now or in the future intend to extend the pole past 105 ft.

Joseph Morrey asked about the 40 ft. by 60 ft. fence compound they intend to construct. Mike said that will be around the base of the pole. Mr. Morrey said this means they will have a fence very close to the house.

Lee Marvin, 588 Three Mile Road, Grand Rapids, Michigan appeared to explain this request. Mr. Marvin said this is the last of three towers they are putting in this area. The height of this tower is significantly shorter than the other two, which were 165 ft. each, but they could not find a parcel large enough in this area to accommodate the taller tower. He said it is approximately 45 ft. away from the residential structure and the property owners are fine with that. Mr. Marvin explained that monopoles are the most solid structures available.

Bruce Taylor asked who would accept liability if there ever were an accident involving the tower. He also asked if the tower is engineered to collapse downward instead of sideways.

Mr. Marvin said the towers are designed to collapse on themselves instead of tipping over like a tree. Regarding liability, Mr. Marvin said he really does not know who would be liable, although both U.S. Cellular and the property owner have insurance.

Mr. Morrey asked someone to point out exactly where on the property the tower will be located, which they did.

Jason Park asked if U.S. Cellular would allow co-location on their tower. Mr. Marvin said yes.

No one else appeared to speak in favor of this request.

Helen Wall, 3002 North 18th Street, appeared representing Saxton Care Center. Ms. Wall said they oppose the tower. She said they are concerned about the health of their residents who are elderly and have diminished health. In addition, Ms. Wall said there is a controversy over cell towers producing wave lengths that can be dangerous. Mr. Wenger asked how far the proposed tower is from Saxton. She said she would like to know that as well.

Mike Kellam said that legal findings show that RF emissions cannot be considered a factor of approval or denial because they are not a proven fact.

Jon Walts, 2724 North 15th Street, said he is not necessarily for or against this request, but he has several questions and concerns. He stated that his wife's job requires she receive and send transcripts and everything is wireless. He asked if this would interfere. In addition, he has security cameras, phones, satellite and more and will this interfere with those things. Mr. Walts said this is a family neighborhood and he asked if the waves coming and going would be hazardous to the children in the neighborhood. Mike said the RF engineer on the project submitted information in accordance with Section 31-301 which requires no interference. His understanding is that it is on a different bandwidth.

Jim Laulis, 1502 6th Avenue, said in this area, he has already lost huge trees due to heavy wind which he considers a safety problem with the tower. Also, he asked what this tower will do to his property values. In addition, he said there are a lot of children in the neighborhood and there is already a lot of traffic in and out of the area; what will this do to the additional traffic.

Steve Wenger said this will not have any impact on the traffic. Mr. Laulis said they will have to build the tower and maintain the tower. Mr. Wenger said there would not be enough to generate traffic.

Mr. Laulis said this is a residential area. He asked why they want to put a telecommunications tower in a residential area.

No one else appeared to speak in opposition or in favor of this request. Chairman Wenger closed the public hearing.

Lee Marvin said they are licensed within a particular bandwidth that prevents any interference with any other bandwidth. He also said he has never seen a study showing negative property values in a community due to a telecommunications tower. Mr. Marvin said the towers are designed to withstand significant wind gusts. Regarding traffic, the tower will be built within a few days and they only work during regular business hours. Because this is one of the smaller towers, it will not require cranes or other equipment that is sometimes required for larger towers. Maintenance checks are done monthly.

In addition, Mr. Marvin said the Saxton property was their original choice of locations but they could not agree to a specific location on their site; that makes him believe they did not have a big problem with the cell towers.

Bob Bucher asked for an explanation of the collapse of a tower. Mr. Marvin said the towers are engineered with breakpoints, which is a point in the tower that will break first and cause the tower to crumple straight down, collapsing upon itself.

Jerome Goolsby asked if the property owners have approved this application and understand the risk they may be putting themselves in by having this tower on their property. Mike said they have signed a lease contract with U.S. Cellular as well as the application for Conditional Use Permit.

There were no further questions; Chairman Wenger called for the vote.

VOTE: Bucher – yes, Fisher – yes, Goolsby – yes, Hebert – yes, Morrey – no, Park – yes, Taylor – no, Wenger – yes.

Ayes – 6, Nays – 2. Quorum vote is five votes. Motion passes.

This item will be forwarded to the City Council for final action with a recommendation of approval from the Planning Commission.

ITEM #4 JOHNNY ARNOLD – Requesting approval of a zoning district change from R-1A Single Family Residential District and C-3 Commercial District to all R-1A Single Family Residential District at 1909 Oscar Street in order to construct a single family home.

Staff recommendation: Approval

Mike Kellam said he has nothing to add to the staff report. Staff recommends approval. Mike explained that a portion of the lot is zoned C-3 Commercial District and the remainder of the lot is zoned R-1A Single Family Residential District. This request is to change all the zoning to R-1A Single Family Residential District and it is easier and cleaner to change the entire parcel because it is one parcel number and one address.

Johnny Arnold, 3905 Ajax Road, appeared so explain this request. Mr. Arnold said he wants to build a home on this lot. Sewer and water are already available on this lot.

Joseph Morrey asked if there is already a house on this lot. Mr. Arnold said the corner lot of Oscar Street and Savannah Road has the split zoning. Mr. Morrey asked if he intends to remove the existing structure before building the new house. Mr. Arnold said no. Mike explained that the parcel consists of four lots; the existing house is on two lots and the new house will be constructed on the remaining two lots. No platting will be necessary.

Mike said this rezoning is consistent with the Land Use Plan which designates this area as single family residential.

No one else appeared to speak in favor of this request and no one appeared to speak in opposition. The following citizen had questions to ask:

Cassie White, 1910 Oscar Street, said she cannot say she is in favor of this request until she has some questions answered. She asked if the home will be used as a rental property or for Mr. Arnold to use as a residence. She explained that there are several rental units in the neighborhood that tend to gradually deteriorate and devalue the property value of the other properties in the area.

No one else appeared to speak in favor of this request and no one appeared to speak in opposition. Chairman Wenger closed the public hearing. He called Mr. Arnold to respond to Ms. White's question.

Mr. Arnold explained that he will not live in the house and he does not intend to rent it; he is going to build it to sell.

There were no further questions; Chairman Wenger called for the vote.

VOTE: Bucher – yes, Fisher – yes, Goolsby – yes, Hebert – yes, Morrey – yes, Park – yes, Taylor – yes, Wenger – yes.

Ayes – 8, Nays – 0. Quorum vote is five votes. Motion passes.

This item will be forwarded to the City Council for final action with a recommendation of approval from the Planning Commission.

ITEM #5 REPORT FROM CITY PLANNER/GENERAL DISCUSSION

- Mike said that we currently have four items for the July agenda, but since tomorrow is the deadline, there is a possibility we will have more.
- Steve Wenger said he would like to acknowledge Vicki's service and time. With budget and changes, Vicki will be moving on and he wants to acknowledge and thank her publicly and he is sure the remaining Planning Commission members agree that her service was exemplary and appreciated by the Planning Commission and we wish her very well.

Mike said Vicki has expressed her appreciation of this commission and their support. Her last day will be June 30.

- Steve Wenger distributed a copy of a letter he sent to members of the City Council in an effort to position the opportunity to grow the Planning Department; attached to it are some related items.
- Mike expressed his appreciation for the support of the members of the Planning Commission. The level of service we have offered before will not be able to be maintained to that optimum level, but we will do as much as we can do.
- Joseph Morrey said the Planning Commission wants to be in alliance with staff. Hopefully, staff will draw on the Planning Commission to assist staff rather than causing additional work.

On the heels of the discussion about monopoles, he would like to include a provision that the monopole has to be set back fall distance from any inhabited improvements. Mike said he and Ted can research case law or existing zoning authority dealing with this. Mr. Morrey said the issue of safety as a foundation and aesthetics discretionally would not be considered a taking; if your parcel is smaller than 105 ft., you just cannot have one on your property. He asked how the Planning Commission would go about recommending that.

Mike said request the research be done by staff, then determine where it is commonplace and how it has been addressed in other places. After reviewing that information, members of the Planning Commission would determine whether they want to go forward with it to City Council or not.

Jerome Goolsby said Lee Marvin told us that they look for remote areas, but it is all line-of-sight. The goal is to get something higher so the signal is going up and coming down, a signal that avoids buildings and other impediments. There is a possibility that the 6th Avenue address was the only place U.S. Cellular could put the tower without losing the signal. The result would be that a section of town would just not have any coverage. However, he said he agrees with the safety aspect of constructing it so near a residence.

Steve Wenger said this subject will come up again; he asked Mike to do this research.

Ann Fisher asked if this would be handled as an amendment and if we would require a specific amount of ground for placement of a tower. Mike said yes.

Reba Habert asked where she might be able to find a monopole tower to drive by. Someone said there is a good one at Pear and Ajax Road off 22nd Street by Hawk Trucking; also one on County Line Road.

There being no further business, Mr. Wenger adjourned the meeting at 8:25 p.m.

cc: City Clerk
Planning Commission Members
Clint Thompson, P&CD Director
Ted Elo, Assistant City Attorney
Mark Townsend