

TOWNSHIP OF LOWER MAKEFIELD  
PLANNING COMMISSION  
MINUTES – DECEMBER 8, 2008

The regular meeting of the Planning Commission of the Township of Lower Makefield was held in the Municipal Building on December 8, 2008. Chairman Bush called the meeting to order at 7:30 p.m.

Those present:

Planning Commission:        Tony Bush, Chairman  
   Karen Friedman, Vice Chair  
   Dean Dickson, Secretary  
   Mark Fried, Member  
   John Pazdera, Member

Others:                             Nancy Frick, Director Zoning, Inspection, and Planning  
   John Donaghy, Township Solicitor  
   Carrie Konnovitch, Township Engineer

APPROVAL OF MINUTES

Mr. Pazdera moved and Mr. Dickson seconded to approve the Minutes of October 27, 2008 as written. Motion carried with Mr. Fried and Ms. Friedman abstained

#595A – CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS,  
1000 STONY HILL ROAD T.P.N. 20-16-41-5 – CONDITIONAL USE APPLICATION

Gavin Laboski, attorney, stated this is a Conditional Use Application pending before the Township to co-locate some antennas on the existing monopole located at Stony Hill/332 and I-95 behind the office building. He stated they propose an extension of the tower by approximately 12' to 14' to the top of the antenna and a modest expansion to the existing compound to accommodate Verizon's equipment. The monopole is located in the Township's Overlay District. He added the site acquisition consultant and engineer are also present to answer any questions.

Mr. Laboski noted the CMX review letter dated 11/4/08. He stated subsequent to the issuance of that review letter, the Applicant's engineer submitted revised Plans, additional construction drawings, and a structural report; and these will be made part of the Conditional Use record along with other evidence and testimony to support the Township's Ordinance criteria. He stated they feel this material is responsive to the engineer's comments in the 11/4/08 review letter, and they will comply with all comments in that letter.

Mr. Fried noted the structural analysis report, page 2 at the top which states, “the maximum structure usage is 100%,” and he asked if that means that with this addition, they are at 100% of the potential usage of the pole. Mr. Ron Igneri, engineer, stated this means that the tower is at its maximum capability. Mr. Fried also noted Page 1 of that report and asked about the wind speed and ice used for analysis and asked if these are standard, and Mr. Igneri stated TIAEIA is the industry standard. Mr. Fried stated he assumes there have not been any problems until now and asked if the 14’ extension will create any problems based on these standards; and Mr. Igneri stated based on the structural analysis, there should not be a problem. Mr. Fried noted the analysis which looked at the electro-magnetic emissions and stated on the second page at the top it states, “continuous exposure at 100% of FCC limit is considered by the scientific community to be just as safe as a continuous exposure at 1%,” and asked what is the percentage of the FCC emissions that is going to be produced by the tower. Mr. Laboski stated according to the summary of the findings it is 400 times less than the FCC limits. Ms. Friedman asked if this relates to the part that they are responsible for or for the entire tower working at one time with all of the units emitting, and Mr. Wild stated it is for the entire tower with all units working and it is still 400 times less than the FCC limits.

Mr. Pazdera stated the engineer raised the issue of 120’ versus 118’ and he asked if they have determined the true height of the tower. Mr. Igneri stated there are a number of Plans existing, and the structural analysis indicates that the tower is 118’ and their Plan depicts the existing tower at 118’. He stated he worked along with American Tower Corporation and through a number of techniques, they feel that what they have on the drawing is an accurate depiction of the antenna locations and the spacing between them; and it has been agreed to by American Tower that these numbers are accurate.

Mr. Dickson moved, Ms. Friedman seconded and it was unanimously carried to recommend to the Board of Supervisors approval of the Conditional Use Application subject to compliance with the CMX letter dated 11/4/08.

#### #592 – KRAMER/CINO – LOT LINE CHANGE RECOMMENDATION

Caroline Edwards, attorney, was present representing the Applicants, Mr. and Mrs. Cino. She stated this is a lot line change between the Cino property and the Kramer property. She stated she was last before the Planning Commission on November 10, and at that meeting some issues were raised in the CMX review letter dated 10/21/08 that the Planning Commission asked that she address. She stated the purpose of the lot line change is to address the fact that a portion of the driveway of one property is slightly on the corner of the neighbor’s property, so they decided to do a lot line adjustment to address this. Ms. Edwards stated the Planning Commission raised the issue that the lot to be retained by Mr. and Mrs. Kramer would be undersized under the Zoning Ordinance.

The lot would be 12,500 square feet, and the minimum lot area under the Ordinance is 16,500 square feet. She stated the Kramer property is made up of three Tax Parcels, and one of them is being subdivided to create this lot line change. There is an additional one adjacent to that and the larger parcel which contains the Kramers' residence. She stated she is proposing that the lot which is being created by the Subdivision would be merged with the adjoining lot which would make a lot of 17,500 square feet which would exceed the minimum lot size under the Ordinance.

Ms. Edwards stated the other issue related to Item 1B in the CMX review letter which was "that restrictions in the Deed affecting the subdivision or development of the property including easements or rights-of-way must be submitted." She stated they had originally requested a Waiver of this; however, based on discussion with the Planning Commission at the last meeting, she requested that a Title Report be prepared, and this was done and submitted to Mr. Donaghy on 11/25/08. The Title Report did not show any restrictions that would adversely affect the subdivision of the property, and Mr. Donaghy agreed.

Ms. Edwards stated the other Waiver requests remain, and they would agree to comply with Item 2 in the review letter which was to revise the Zoning chart to show that the minimum lot area is 16,500 square feet as it currently shows 16,000 square feet.

Mr. Bush asked when the Kramers anticipate consolidating their lots, and Ms. Edwards stated this would have to be done after the Subdivision Plan was Recorded and there would be a Deed of Consolidation probably at the same time the Deed to the Cinos would be Recorded conveying the parcel that is being subdivided off. Mr. Donaghy stated if the Subdivision is approved by the Supervisors, they would require that an executed Deed of Consolidation be submitted and held for Recording by the Township after the Subdivision Plan is Recorded. Ms. Edwards stated that would be acceptable.

Mr. Donaghy asked that the Planning Commission be shown on the Plan what is being proposed and where the consolidation is proposed. Ms. Edwards showed on the Plan the parcel being subdivided and where the Subdivision line will be. She stated when they merge Parcel #1 with the adjoining parcel 20-37-1, it will make a parcel that is 17,500 square feet and will exceed the Township requirements. Ms. Friedman stated this will result in two parcels as opposed to the three they currently have, and Ms. Edwards agreed. Mr. Donaghy asked how the small parcel 20-37-1 is currently used, and Ms. Edwards stated she does not feel it has a separate use. Ms. Frick stated at the last meeting, they indicated that it is used as part of 20-37-1-1.

Mr. Donaghy stated he feels the easiest way to proceed would be to revise the Plan to show how the new lot will be so that they can show this on the Final Plan submitted to the Board of Supervisors. Ms. Edwards stated their intention was to have the engineer revise this to show the change, but they did not want to do this until they brought it before the Planning Commission.

Ms. Friedman asked if there is an issue they need to address because there is a Tax Parcel that is completely landlocked; and if there is any future development or it is sold separately, is there something the Planning Commission should be considering at this time. She stated there is no way to access that lot unless there were easements from the surrounding properties. Ms. Frick stated the Ordinance states that you must front on a public street. Mr. Donaghy stated there are already two lots that are landlocked without this change. He stated they would not be able to develop that lot unless they have access to street frontage either through easements or through the procedure in Pennsylvania law where you could have a private condemnation of adjoining land. Ms. Edwards stated when they had the Title Report run, it did say that it was a landlocked parcel. Mr. Donaghy stated it would be different if they were creating something that did not already exist as far as being landlocked; but in this case, it is already landlocked and currently there are two parcels which are landlocked. He stated they will need two Deeds of Consolidation, and Ms. Edwards agreed.

Mr. Dickson moved, Ms. Friedman seconded and it was unanimously carried to recommend to the Board of Supervisors approval of the Lot Line Change, Plan dated 3/31/08 conditioned upon one deed that will consolidate the area subdivided from what is shown as Lot #1 (35' by 100') with the Cino property Tax Parcel #20-34-72. The other Deed of Consolidation will be the remaining portion of the subdivided lot, Tax Parcel #20-37-1-2 along with Tax Parcel #20-37-1 for a total of 17,500 square feet. The Plan will be revised to show how the new lot will appear before submission to the Board of Supervisors. There will be a Deed executed to consolidate the lots before submission to the Board of Supervisors. Also approval is subject to compliance with the CMX review letter of 10/21/08. The Planning Commission agrees with the Waivers listed in the CMX review letter A through H with the exception of B that is no longer needed.

## OTHER BUSINESS

### Frankford Hospital Discussion

Ms. Friedman stated she has been attending the Zoning Hearing Board meetings with regard to the Frankford Hospital and a lot of information has come out since Frankford Hospital was before the Planning Commission. She stated when they were before the Planning Commission and questions were asked of the representatives, they indicated they did not have the information available at that time. She stated there was no traffic

study and very limited access to any numbers other than some employment numbers. She stated she also asked about helicopter access on the roof, and they indicated they were not considering it at that time. She stated all this information has now come out at the Zoning Hearing Board, and she questions how they have all this information within one month since they were before the Planning Commission. She stated she does not feel the Planning Commission was able to give a proper recommendation to the Zoning Hearing Board or make a proper evaluation, and she would like to testify at the Zoning Hearing Board that they are not upholding the Ordinance as the Planning Commission was not able to review the Plans. She stated she feels the Planning Commission should consider what items they would want addressed and who should testify. She stated she feels Frankford should come back before the Planning Commission and review the traffic patterns from the traffic report.

Mr. Bush stated he felt they were before the Planning Commission for a very limited purpose which was a recommendation on the request for Special Exception.

Mr. Donaghy agreed and stated the Planning Commission recommended against it and indicated that they did not have sufficient information. He stated the procedure to be followed is very specific, and the Planning Commission made the determination that they could not make a recommendation for approval based on the fact that they did not have sufficient information.

Ms. Friedman asked if they would not want to make a more clear recommendation; and Mr. Donaghy stated this is not the procedure. He stated the Planning Commission also has a specific period of time after the Application is filed in order to make the recommendation. Mr. Donaghy stated by not covering everything, the Applicants did not get a positive recommendation from the Planning Commission. He stated part of the legal argument is how much evidence they have to put on record, and the Applicant's position is that it is limited as to what they have to establish in order to get the Special Exception. He stated the Township's position is that they have to meet a more exacting standard. Mr. Donaghy stated individuals could testify, but it would have to be on their own, and not as a representative of the Planning Commission.

Mr. Fried asked if there is any recourse if it appears that an Applicant has not been forthcoming with information that they may or may not have possessed adding that the Planning Commission was up against a time line. Mr. Donaghy stated it might have been a different situation if the Planning Commission had recommended approval based on the information they had and then a lot of additional information came out; but this was not the case in this situation. Mr. Fried asked if there is an opening in the Township Code in that there is not a standard of basic information that would have to be presented to the Planning Commission. Mr. Donaghy stated he does not feel there is such an opening. He stated the Planning Commission gives an advisory opinion only for Special Exceptions and Conditional Uses. He stated the Applicants have a specific standard that has to be met; although in this case, there is an argument as to how specific they have to

be on the standards. He stated the Planning Commission has only 30 days to provide a recommendation, and they are only to look at some of the planning aspects that arise. He stated not every Municipality requires that the Planning Commission reviews Special Exceptions.

Ms. Friedman asked if the Planning Commission felt what they were proposing was a re-location or an expansion, and those present stated they felt it was a re-location and not an expansion. Ms. Friedman stated she feels the matter was totally misrepresented as it is an expansion. She stated she understands that they will retain the old facility and use it as offices and satellite medical areas which was not discussed with the Planning Commission. Mr. Bush stated when they were before the Planning Commission, they indicated they did not know what they were going to do with the current building.

Mr. Fried asked if they will have to come back to the Planning Commission if they get approval from the Zoning Hearing Board, and he was advised they will. Mr. Donaghy stated Special Exception approval just gives them the ability to start the Land Development process, and the items that are being discussed now such as traffic and site issues could be reconsidered by the Planning Commission and Board of Supervisors at that time. He stated they will not be able to decide at that time on the ability to use the property as a Hospital.

#### Amateur Radio Ordinance Discussion

Mr. Bush stated since this matter was last before the Planning Commission in September, Mr. Donaghy provided him with a copy of the Bill passed by the State in September which is to take effect sixty days from September 23. He stated he feels this will enable someone to apply for a Building Permit to put up a 65' antenna in any Residential District in the Township without any exceptions as of now since there is no Ordinance in place limiting this activity. He stated this Statute indicates that the Municipality cannot restrict below 65' but also states the Municipality can impose restrictions regarding safety of the structures, preservation of historic districts, and health, safety, and aesthetic objectives. Mr. Donaghy stated this is interesting in that typically you cannot use Zoning Ordinances for aesthetic purposes. Mr. Bush stated he feels it is incumbent on the Planning Commission to move this matter forward as soon as possible.

Mr. Donaghy stated he does have another Draft to submit. He stated while this will become Statutory interpretation, he feels that what they are saying is wherever you allow antennas, you have to permit them to be 65' but you could control where they are located and in what Districts. Mr. Bush stated previously they had discussed that they would not allow an antenna to fall and land on a neighbor's property as they felt this was a safety issue. Mr. Donaghy stated he feels they will have to remove the restriction they had considered on the Conditional Use requirement for anything between 35' and 65'

although they might be able to put restrictions on height based on property size. Ms. Friedman stated she felt the size of the lot would provide a restriction as to height because if it were to fall, it could fall on their neighbor's home. Mr. Donaghy stated this is presuming that the interpretation is correct that this is a legitimate safety basis for restricting the height of the tower.

Mr. Dickson asked if a Homeowners' Association set of regulations supersede this, and Mr. Donaghy stated it would because this only applies to Municipalities although it is not up to the Township to enforce the regulations of the Homeowners Association.

Mr. Bush stated he is concerned about other Residential Districts in addition to R-4 as he feels a 65' high antenna would be inappropriate for a Residential District and will be of concern to many people if one of these were put in their neighborhood. He feels limiting the restrictions to R-4 would be a mistake.

It was agreed that this matter should be put on an Agenda for the first meeting in January which will be the next meeting of the Planning Commission.

There being no further business, Mr. Dickson moved, Mr. Pazdera seconded and it was unanimously carried to adjourn the meeting at 8:25 p.m.

Respectfully Submitted,

Dean Dickson, Secretary