

**MINUTES OF THE REGULAR PLANNING COMMISSION MEETING**

**PLANNING COMMISSION/  
BOARD OF ZONING APPEALS**

**May 20, 2008**

**Commissioners Present:** Cowman, McLean, Gage, L. Smith, Bonner, Wrischnik, King  
**Commissioners Absent:** None

**Others Present:** Justin Givens, Amy Barenklau, Brian McCauley, Megan McFarland, Bob Herlitty, Gayla Consiglio, Jackie Horvath, Gerald Barenklau, Rich Lentz, and others

**Item 1: Consider minutes from the April 15, 2008 meeting**

Chair Cowman called the meeting to order with the first order of business the consideration of the minutes from the April 15, 2008 meeting.

*Commissioners Gage and Cowman made a motion to approve the minutes with the noted change. All Commissioners voted in favor.*

**Item 2: Public Hearing** – Consider an application from Gerald Barenklau at 24870 West 327<sup>th</sup> Street for re-zoning 29 acres from Business Park to Suburban.

*Commissioners Gage and Bonner made a motion to open the public hearing with all Commissioners voting in favor.*

Planner Givens presented the staff brief. Gerald Barenklau has submitted an application for re-zoning 29 acres on 327<sup>th</sup> Street between Hospital and US 169. This area has traditionally been agricultural and farm land but when the LDO was adopted, a significant portion of the North West corner of Hospital and 327<sup>th</sup> going west was rezoned to Business Park. Many of the property owners in this area were unaware that their property is zoned Business Park. It is anticipated that if this request is approved several property owners will request the same re-zoning.

**Analysis:**

A Business Park District does not allow for residential dwellings. Mr. Barenklau removed a dilapidated structure some years ago and now would like to have the option of building a new residence on the property or marketing the property in a manner that would reflect that a residence could be built on the property.

Section 21.211 provides standards for which a Zoning Map Amendment shall be considered:

- A. The proposed change is consistent with the City’s Comprehensive Plan and the purposes of this Ordinance. In areas of new development, consistency with the Comprehensive Plan shall be considered to meet the standards in B., C., and D. below, unless the proposed amendment would threaten public health, safety, and welfare if so designated as planned in the Comprehensive Plan.
- B. The proposed change is consistent with the character of the neighborhood.
- C. The extent to which the property is consistent with the zoning and use of nearby properties.
- D. The suitability of the property for the uses to which it has been proposed or restricted.
- E. The extent to which the proposed use would substantially harm the value of nearby property.
- F. The length of time a property has remained vacant as zoned, where the zoning is different from nearby developed properties.
- G. The gain, if any, to the public health, safety and welfare due to denial of the proposed amendment as compared to the hardship imposed upon the landowner, if any, as a result of denial of the proposed amendment.
- H. Recommendations of permanent or professional Staff.
- I. In approving a Zoning Map Amendment which is inconsistent with the Comprehensive Plan-a finding should be made that one (1) or more of the following applies:
  - 1. **Mistake.** The Comprehensive Plan contains a mistake. More specifically, the assumptions about the property, surrounding uses, population forecasts, the rate of land consumption, or other factors were in error. Therefore, the amendment is justified to correct the mistake.
  - 2. **Changes.** The assumptions on capital investments, road locations, population trends, land committed to development, density, use, or other Comprehensive Plan elements have changed and justify the amendment.
  - 3. **Plan Amendment.** A Comprehensive Plan amendment has occurred. Therefore, the amendment renders the Zoning Map consistent with the Comprehensive Plan.

The above items as well as additional information are addressed in further detail in the Re-Zoning Review sheet provided by staff.

**Issue:**

Does the Planning Commission wish to recommend approval of this Re-Zoning Request to the City Council?

**Actions:**

The Planning Commission may:

- Recommend the Site Plan to the City Council
- Not recommend the Site Plan to the City Council

Table the matter for further study

**Recommendation:**

It is staffs recommendation that this request for re-zoning be approved and recommended to the City Council contingent upon an additional 10' of Right-of-Way being dedicated to the County.

Commissioner Gage asked for clarification as to whether it would allow one residential structure or if only single family homes would be allowed. Planner Givens stated it would allow for one residential structure.

There were no comments from those in attendance.

*Commissioners Gage and Cowman made a motion to close the public hearing with all Commissioners voting in favor.*

Commissioner Cowman inquired about locations of business park zoning and if this was the main area for that zoning district. Planner Givens explained that typically a business park zoning is closer to highways, which means there is less traffic going through residential districts. It appeared that when the zoning maps were adopted in 1997 the zoning districts in this area were reversed. Planner Givens stated some of the business park zoning districts make sense; this is not one of them. The area zoned business park further north on Hedge Lane is more suitable for this zoning and other areas that are zoned business park are a better fit.

Commissioner Cowman verified that since this property is in the city's growth area that the county would need to approve as well.

Commissioner Smith asked if thoroughfare access zoning had been considered. Planner Givens stated that the property in question and those surrounding are more suburban in nature as they are larger tracts of land. He said he felt TA zoning could get out of control. He stated that with the character of the land that it is wiser to steer development in other areas.

*Commissioners Gage and Cowman made a motion to recommend approval of the re-zoning request for 24870 West 327<sup>th</sup> Street. All Commissioners voted in favor.*

**Item 3:       Public Hearing** – Consider an application for a variance from the minimum setbacks for a commercial communications tower at 902 N. Pearl.

*Commissioners Gage and Smith made a motion to open the public hearing, with all Commissioners voting in favor.*

Planner Givens presented the staff brief. Representatives from Selective Site Consultants, Horvath Communications and AT&T were in attendance. At the April Planning Commission meeting, Horvath Communications did submit a preliminary site plan for approval by the

commission and the City Council. At that time it was determined that a variance would be required from the minimum setbacks for a commercial communication tower. The LDO requires that a commercial communication tower have a setback from the property line of the tower height plus 20'. The applicant is requesting a tower that is 190 feet tall.

**Analysis:**

Section 03.334 D. of the Paola Land Development Ordinance provides that "the minimum setback from adjoining property lines shall be the height of the tower plus 20 feet. Setbacks may, on a case-by-case basis, be considered for a variance." Section 21.150 provides standards for variances for the Planning Commission to consider, they are as follows:

- A. Under no conditions shall a variance permit a use that is not otherwise permitted in the district. The applicant shall be instructed to submit a zoning change request (Section 21.210) or a beneficial use appeal (Division 21.400), which are the only ways such a change of use may occur.
- B. Special circumstances or conditions exist peculiar to the land or building for which the variance is sought that do not apply generally to lots, land, or buildings in the neighborhood.
- C. The special circumstances and conditions have not resulted from any act of the applicant subsequent to this Ordinance's adoption.
- D. The special circumstances and conditions are such that strict application of this Ordinance's provisions would deprive the applicant of the reasonable use of the land or building.
- E. Granting the variance is necessary to relieve the applicant of an unnecessary hardship imposed by the regulations.
- F. The variance granted is the minimum necessary to relieve the unnecessary hardship and permit a reasonable use of the land.
- G. Granting the variance will not be injurious to the neighborhood surrounding the land where the variance is proposed, and is otherwise not detrimental to the public welfare.
- H. Granting the variance is in harmony with this Ordinance's purposes and intent.
- I. Granting the variance is not inconsistent with the Comprehensive Plan.
- J. Variances on natural resources shall not be permitted; standards for mitigation are contained in Division 05.200. If relief is requested, the applicant shall be required to submit an application for beneficial use determination (Division 21.400).
- K. No variance shall be granted for development in the floodplain or floodway. In the event a landowner in Paola or Paola's Community Growth Area is of the opinion beneficial use of the landowner's property has been denied by applying this Ordinance, a remedy can be sought by following the procedures listed in DIVISION 21.400 BENEFICIAL USE APPEAL AND DETERMINATION.

The above are addressed in detail on the review sheet provided.

**Issue:**

Does the Planning Commission wish to recommend approval of this variance request to the City Council?

**Actions:**

The Planning Commission may:

- Recommend the variance to the City Council
- Not recommend the variance to the City Council
- Table the matter for further study

**Recommendation:**

It is staffs recommendation that the planning commission recommend the variance to the City Council.

Mr. Bob Herlitty, Selective Site Consultants, explained that the height of the tower is needed to obtain maximum efficiency and that other carriers would be allowed to co-locate on the tower. The tower has been placed to utilize the property as much as possible, yet keep it away from surrounding property owners.

Commissioner Cowman asked for verification that the tower is designed that if the tower collapses, if breaks in half; he also inquired if anything would be hit in the event it did collapse. Mr. Herlitty confirmed that the monopole tower is engineered to fall at half the height of the tower. He stated that it should not fall onto the train tracks, but might hit some of the warehouse of the property owner.

There were no comments from those in attendance.

*Commissioners Cowman and Bonner made a motion to close the public hearing, with all Commissioners voting in favor.*

*Commissioners Gage and Smith made a motion to recommend approval of the variance from minimum setbacks for a commercial communications tower at 902 North Pearl. All Commissioners voted in favor.*

**Item 4:**       **Final Site** – Consider a Final Site Plan for a Commercial Communications Tower at 902 North Pearl.

Planner Givens presented the staff brief. At the April meeting, Horvath Communications submitted a preliminary site plan for a new commercial communication tower to be located at 902 North Pearl. This new monopole tower will replace an existing communication tower located on the property. At that meeting, the Planning Commission and subsequently the City Council did approve the preliminary site plan contingent upon:

1. A two hundred foot area map showing locations of buildings to help determine the impact of this structure on the neighboring property.
2. Acceptable fencing with an opacity of 1.00, which would include vinyl or wood privacy.
3. Testimony of an RF Engineer, or other Licensed Professional Engineer, substantiating the need for the requested height.
4. Assurances that the tower and accessory equipment must meet all requirements of the Federal Communications Commission and the Federal Aviation Administration
5. Assurances that any tower that is not operated for a continuous period of two years shall be considered abandoned and the owner of such tower shall remove the same within 90 days of a receipt of notice from the City Council notifying the owner of such abandonment. If such tower is not removed within 90 days, the City may remove the tower at the owner's expense
6. That as shown on the site plan the compound is graveled.

It was also determined that a variance would be required for the property as the tower would not meet the required setbacks of the tower height plus 20'. Horvath has applied for that variance and if granted the final site plan would meet all other requirements.

**Analysis:**

Horvath has provided a final site plan that reflects all of the required changes for the project. Section 03.334 of the Paola Land Development Ordinance provides additional requirements for Commercial Communication Towers, they are as follows:

- A. Applicants must provide documentation acceptable to the Planning Commission that existing structures within an appropriate one-mile radius of the proposed location are not available for co-location.
- B. All proposed towers 150 feet or less, not including lightning rod, shall be designed to accommodate at least one additional PCs/Cellular platform. All proposed towers in excess of 150 feet shall be designated to accommodate at least two additional PCs/Cellular platforms.
- C. Any application for a tower in excess of 150 feet in height shall include testimony of an RF Engineer, or other Licensed Professional Engineer, substantiating the need for the requested height.
- D. The minimum setback from adjoining property lines shall be the height of the tower plus 20 feet. Setbacks may, on a case-by-case basis, be considered for a variance.
- E. The tower and accessory equipment must meet all requirements of the Federal Communications Commission and the Federal Aviation Administration.
- F. Any tower that is not operated for a continuous period of two years shall be considered abandoned and the owner of such tower shall remove the same within 90 days of a receipt

of notice from the City Council notifying the owner of such abandonment. If such tower is not removed within 90 days, the City may remove the tower at the owner's expense.

- G. The City shall have the authority to require the applicant to file and maintain a surety bond, letter of credit or other security acceptable to the City. The security shall be equal to 20% of the cost of construction of the tower as disclosed by the applicant. The security shall be used to pay for removal of the tower if the owner fails to remove the tower as provided in (F.) above. The security shall be returned to the applicant upon proper removal of the tower.
- H. Pad sites and guy wire location must be surrounded by a minimum of a six-foot tall fence which has an opacity of 1.00

As reflected in the Final Site Plan all of the above have been provided as well as additional items that the Planning Commission and City Council felt were appropriate for this project.

**Issue:**

Does the Planning Commission wish to recommend approval of this Final Site Plan to the City Council?

**Actions:**

The Planning Commission may:

- Recommend the Site Plan to the City Council
- Not recommend the Site Plan to the City Council
- Table the matter for further study

**Recommendation:**

It is staff's recommendation that the Planning Commission recommend the approval of the Final Site Plan to the City Council.

*Commissioners Cowman and Gage made a motion to approve the final site plan for a commercial communications tower at 902 North Pearl. All Commissioners voted in favor.*

**Item 5: Re-Plat** – Consider an application for re-platting Lot 89 of Rockwood Estates.

Planner Givens presented the staff brief. Blue Sky Development has submitted a request to re-plat Lot 89 in their Rockwood Development. Currently, the property is one residential lot with a small area of open space abutting it. There have been several re-plats in this sub-development, as builders look closer at the building lots.

**Analysis:**

Tract E, an open space tract, will be incorporated into Lot 89. Tract E is part of the calculated open space for the development. In conjunction with this re-plat the developers have agreed to abandon a flag lot dividing the pole portion of the lot between the adjacent owners and the flag

portion of the lot will become restricted open space under the care of the Home Owners Association, thus increasing the total amount of open space for the entire development. I have included the staff review sheet with commentary for this re-plat.

**Issue:**

Does the Planning Commission wish to recommend the approval of this re-plat request to the City Council?

**Actions:**

The Planning Commission may:

- Recommend the re-plat to the City Council
- Not recommend the re-plat to the City Council
- Table the matter for further study

**Recommendation:**

It is staffs recommendation that the Planning Commission recommend the approval of this re-plat to the City Council.

Commissioner Cowman stated that it looked like better use of the land. Planner Givens agreed it would be better open space.

*Commissioners Cowman and Gage made a motion to approve the re-platting of Lot 89 of Rockwood Estates. Commissioner Bonner abstained. All other Commissioners voted in favor.*

**Item 6: Staff Items**

Planner Givens informed the Commissioners that staff was updating the flood plain regulations and that new maps would be effective in August. He indicated there are some changes, such as the state now requires a variance for beneficial uses on property. If state approves changes, it might come to the June meeting.

KDOT is currently working on a five county study for a transportation plan for our area. There will also be a K68 meeting in Ottawa this week and anyone can attend as they are public meetings.

Staff is working to resolve the text amendment issue with the county. A supplement to the interlocal agreement would have all Conditional Use Permit applications go to county staff for review before coming to the Planning Commission meetings, so any concerns or additional requirements could be appropriately addressed.

The Ursuline Advisory Committee is working on a marketing document which should be completely soon.

**Item 7:        Items from Commissioners**

Commissioner McLean asked about the construction entrance to Rockwood being blocked and the issue of safety for residents in case of an emergency.

Commissioner Bonner explained that it was actually going through a lot and that the developers were working to purchase land north of the development and move the construction entrance to that property.

**Item 8:        Adjournment**

*Commissioners Smith and Cowman made a motion to adjourn with all Commissioners voting in favor.*