TOWN OF ELSMERE
PLANNING COMMISSION
MEETING MINUTES
January 7, 2014
6:30 P.M.

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PLEDGE OF ALLEGIANCE:

CALL TO ORDER:

ROLL CALL:

CHAIRMAN	CHARLES LINDELL	PRESENT
COMMISSIONER	ROBERT ANDERSON	PRESENT
COMMISSIONER	LEON BACKER	PRESENT
COMMISSIONER	ANDREW FAVREAU	PRESENT
COMMISSIONER	ERIN L. HURST	PRESENT
COMMISSIONER	MARIANNE SKIPSKI	EXCUSED
COMMISSIONER	ROBERT SWAIN	PRESENT

APPROVAL OF MINUTES:

Approval of the Minutes from the November 5, 2013 Planning Commission Meeting

ACTION: Commissioner Backer made a motion to approve the Minutes from the November 5, 2013 Planning Commission Meeting. The motion was seconded by Commissioner Favreau.

VOTE: 6-0 Motion carried

Lindell – Yes, Backer – Yes, Swain – Yes, Anderson – Yes, Skipski – Absent, Hurst – Yes, Favreau – Yes

OLD BUSINESS:

None

NEW BUSINESS:

Review Petition 13-10 Tax Parcel # 1900-500-173

Jonathon Jordan, Esquire, of Riley Riper Hollin & Colagreco, spoke on behalf of the Petitioners, Eco-Site, Inc and AT&T Mobility. Mr. Jordan introduced potential witnesses who were present to speak for the Petitioner: Mr. Brock Griffel, a radio frequency engineer; Mr. Mario Calabretta, a civil engineer; and Doug Cowan, a site acquisition representative.

Mr. Jordan presented Exhibit 13-10AY, overhead photo of 203 S. Dupont Rd and Exhibit 13-10AZ, sideview photo of the building at 203 S. Dupont Rd. Mr. Calabretta spoke for the petitioners. Mr. Calabretta described the location of the property and referred to Exhibit 13-10AF. He stated that the petitioner proposes to fence an area in the rear of the property behind the building, which is approximately 30 ft by 60 ft. The fenced compound area will include the proposed 100 ft monopole. At the base of the monopole, there will be room for additional carriers. The current proposal includes AT&T as the first carrier at this location. AT&T will install a small shed to house their equipment. The shed is 12 ft by 20 ft. He stated that the site would be remotely monitored with a technician coming to the site every five to six weeks.

Mr. Griffel spoke for the petitioner. He referred to Exhibits 13-10AS "AT&T's Existing Reliable Coverage" and 13-10AT "AT&T's Proposed Reliable Coverage." Commissioner Backer asked why other technology could not be used instead of constructing a new tower. Mr. Griffel stated that due to "clutter," housing, trees, etc. that blocks the signal from line of sight, other technologies would not provide reliable service. Mr. Griffel stated that 90% of the area shown on 13-10AT would have reliable coverage.

Chairman Lindell stated that there is an existing cell tower on B & O Ln, which is about one half mile from the proposed site, and appears to have space for another carrier. He asked if the Petitioner was familiar with this tower. Mr. Griffel stated that he was not aware of it. Code Officer Brian Swift pointed out the location of the tower on B & O Ln on Exhibit 13-10AS. Mr. Griffel stated that he could investigate the feasibility of this site. However, looking on the map, it would appear that customers to the east of the B & O Ln location would receive less reliable coverage than with the proposed site.

Chairman Lindell read §225-28(A)1-4 Special Exception Uses, the four conditions that a public utility must meet and referred to Exhibit 13-10C.

Chairman Lindell opened discussion of §225-28(A)(1). There were no comments either from the petitioner or the commission.

Chairman Lindell opened discussion of §225-28(A)(2). Commissioner Backer stated that the petitioner has not provided information about the construction of the building and has not met this requirement yet.

Mr. Calabretta described the construction of the prefab concrete shed that AT&T is proposing. He stated that other carriers may differ. Commissioner Backer inquired if this will impact the amount of pervious surface. Code Officer Swift stated that there would not be any impact to any pervious surface. Mr. Calabretta referred to Exhibit 13-10AY and stated that the site was chosen because the Petitioner felt it had the least amount of impact to the surrounding area. Commissioner Anderson asked how it would impact real estate values in the area. He also asked about the diameter of the pole. Mr. Calabretta responded that the pole has not been designed yet pending the commission's decision, a geo-technical study, etc. He stated that it will probably be three to five feet in diameter at the base and 18 to 24 inches in diameter at the top. The pole will have a galvanized finish. When asked he stated that he did not recommend a finish to try to disguise it.

Chairman Lindell asked how often the height of their poles are expanded vertically. Mr. Griffel stated that their poles are frequently designed to be expandable. If another carrier wants to place an antenna on the pole, then they may need to extend the pole. He stated that carriers usually want to separate themselves by at least 10 feet apart when they co-locate on the same pole in order to prevent interference from different carriers.

Mr. Jordan stated that in his experience if another carrier wanted to co-locate on the same pole, then they would have to apply to the Commission for a separate special exception.

Commissioner Backer inquired how the proposed height is measured. Mr. Calabretta answered that it is measured about 6 to 12 inches from grade.

Chairman Lindell asked Code Enforcement if there are any flood issues. Code Officer Swift stated there is not.

Commissioner Swain inquired about additional pads in the future referring to Exhibit 13-10AG. Mr. Calabretta stated that there would be one pole and separate pads if other carriers also wanted to use this pole. There would be another shed in the 30' x 60' fenced area if another carrier used this site. He also stated that AT&T has reserved an area on the site for a future possible generator which is not part of the petition being heard. He further stated that there is a possibility that carriers will be required in the future to have a generator. So the space is being reserved in their plan in case that occurs. Currently a portable generator is used to address any power issues at the site.

Chairman Lindell asked if the AT&T would be placing their antenna at 80 feet. Mr. Griffel stated that AT&T would place their antenna at 100 feet. Mr. Jordan stated that the Petitioner will amend Exhibit 13-10AH to show AT&T's antenna placement at 100 feet, which currently shows 80 feet. Town Manager John Giles stated that the town solicitor is not present and he is unsure of the proper procedure for amending an exhibit that has been publicly noticed and presented.

Commissioner Backer inquired about Exhibit 13-10AH that shows a lightning rod that rises four feet above the tower. Mr. Calabretta responded that the lightning rod is an ancillary structure and not part of the Code for the tower height so it is not included in the total height in the petition. Mr. Jordan stated that there is language in the zoning code that excludes spires and ornamental structures from the height requirement. They show the lightning rod on Exhibit 13-10AH but it is not included in the total height of the structure.

Mr. Giles stated that either Code Enforcement or the town solicitor should answer whether or not the Code includes the height of the lightning rod. Code Officer Swift stated that he is not aware of an exclusion for lightning rods.

Chairman Lindell opened discussion of §225-28(A)(3). Mr. Calabretta referred to Exhibit 13-10AZ and stated that there will be a fence behind the structure and the existing building will largely screen the structure.

Chairman Lindell opened discussion of §225-28(A)(4). Mr. Calabretta stated that the petitioner will use the existing parking. Mr. Jordan stated that the strip of land between the rear property line and the highway is owned by DelDOT and they have received a letter from DelDOT, Exhibit 13-10AN, stating that they do not have an opposition to the tower where it is proposed. He further stated that DelDOT has agreed that the petitioner can use this strip of land without objection.

Mr. Giles stated that he does not see where DelDOT has mentioned in their letter that the petitioner can use the DelDOT owned property. Mr. Jordan clarified that DelDOT does not have an issue with the placement of the tower and the rear setback variance. They have not received permission from DelDOT to use their land.

Chairman Lindell opened discussion of the first part of the petition, request for variance to the 35 foot height limitation and asked the Code Enforcement Office for comment. Code Officer Swift stated that with the new information which had been received the previous day and the information received at this evening's meeting had not been reviewed yet. Due to this and the fact that the town solicitor was unable to attend this evening, the Code Enforcement Office requested that the meeting be deferred to another date.

Councilman Jaremchuk, 1st District, a resident of Rosemont Subdivision, spoke about the neighborhood in which the tower would be located, referring to Exhibit 13-10AF. He stated that the homes located there are zoned R-1 and would be negatively impacted. He also stated that there is a permanent easement to the State of Delaware on the property. He asked whether the petition would be an extension of a non-conforming use.

Mr. Giles stated that the town solicitor would have to answer the question of whether it is an expansion of a non-conforming use or not.

Mayor Steve Burg agreed that the town solicitor should review the documents and issues raised at the meeting. He urged the commission to continue the meeting to another date.

Chairman Lindell opened the discussion to public comment relating to the second part of the petition which was a request for variance to the required setback from 20 ft to 2 feet. Mayor Burg spoke and urged the Commission to reschedule the meeting to allow time for the town solicitor to review the issues. Councilman Jaremchuk expressed concern relating to the adverse deed and where the easement exists on the property.

Mr. Calabretta stated that there is a gate on the property that leads to the right of way. He stated that it does not impinge on the area where the tower would be constructed. Mr. Jordan referred to Exhibit 13-10P that shows the adverse deed.

Mr. Giles stated that in order for a variance to a setback to be granted, the petitioner must show a hardship. He further stated that the petitioner has not presented a case for a hardship for the variance. He stated that there is a lot of land on the property where the tower could be constructed that would not require a setback variance.

Mr. Jordan stated that Delaware case law mentions dimensional variances versus use variances. He stated that the standard for a dimensional variance is exceptional practical difficulty. In this case, by moving the pole to the front or side of the building would create more of a visual impact to the community. He stated that it makes more sense to site it behind the building. Mr. Giles stated that having to install the appropriate landscaping around the tower does not seem to create an exceptional practical difficulty.

Commissioner Swain asked about the height of the building on the site. Mr. Jordan stated that it is 29 feet. Commissioner Swain stated that he did not think that the 29 foot building is going to hide a 100 foot tower. Mr. Jordan pointed out that there are other poles in the area.

Chairman Lindell opened the discussion to public comment to the third part of the petition, a request for a special use permit to allow the proposed monopole. Mr. Giles stated that the total height of the structure will exceed the height stated on the petition. He is unsure whether the Town Code allows an exception to including the four foot height of the lightning rod being considered as part of the overall height and stated that the town solicitor should be given the opportunity to review the issue. He recommended that the Commission should postpone a decision.

Mr. Jordan agreed to a postponement of the meeting and stated that possibly the Town and the petitioner can meet prior to the next commission meeting to work out the issues raised. He also stated that if it is deemed that there is no exceptional practical difficulty, then the petitioner could look at a different location on the property.

Chairman Lindell asked Mr. Griffel how much time would be needed to review the location on B & O Ln and provide a coverage map with this other location as well as if

Mr. Griffel would need additional time to present the new potential site to AT&T. Mr. Griffel stated that he would be working with AT&T through the process of creating the new coverage map and no additional time would be needed.

Mr. Jordan stated that there are two issues with the site at B & O Ln: Whether the site works for RF and if the landlord is willing to work with AT&T. Mr. Jordan also stated that he has reviewed the site plan and it would be difficult to find another spot on the property that works as well as the current proposed location should the 2 foot setback not be approved.

Commissioner Anderson asked about the impacts on AT&T customers if the tower is not built. Mr. Griffel stated that the coverage maps provided are generated by a tool that is an industry standard.

Mr. Giles asked if Mr. Griffel was an employee or hired by AT&T. Mr. Griffel stated that he is not an employee of AT&T. He also stated that the coverage maps were developed by him using AT&T's plotting tool. Mr. Griffel also confirmed that the coverage maps are based on AT&T's data.

Commissioner Swain asked who generated the picture in Exhibit 13-10AX and if other photos from other views can be prepared. Mr. Calabretti agreed that it can be done.

Commissioner Swain requested panoramic views from Rosemont, Northern Ave, the dog park, and the residential area from the overpass at Route 100.

Commissioner Backer requested documentation of the prior meeting between the Town and the applicant. He asked for the key points from the meeting.

Mayor Burg spoke in support of a postponement.

Mr. Giles recommended rescheduling the meeting for January 21st. This would allow both the Town and the petitioner to present additional testimony once the Town was able to receive a legal opinion from the town solicitor and the petitioner to answer some of the issues that were raised in this meeting. This would also allow the petitioner to be heard at the Board of Adjustment meeting already scheduled for January 28th.

Councilwoman Frantz, 2nd District, spoke in favor of rescheduling the meeting.

ACTION: Commissioner Backer made a motion to adjourn the meeting and reconvene on January 21 to confer with the town solicitor.

VOTE: 6-0 All-in-favor Motion carried

Lindell – Yes, Backer – Yes, Swain – Yes, Anderson – Yes, Skipski – Absent, Hurst – Yes, Favreau – Yes

At this time, the meeting was adjourned.

These minutes summarize the agenda items and other issues discussed at the January 7, 2014 Planning Commission Meeting. Votes are recorded accurately. The audio tape(s) of this meeting will be available at Town Hall for a period of two years from the date these minutes are approved. The audio tape(s) may be reviewed at Town Hall by appointment and in accordance with the Freedom of Information Act.

CHARLES LINDELL, CHAIRMAN	**LEON BACKER, SECRETARY**