

**WATERVLIET CHARTER TOWNSHIP  
PLANNING COMMISSION  
REGULAR MEETING AND PUBLIC HEARING MINUTES  
APRIL 26, 2022**

Present: Louis Nordell, Deane Fizzell, Linda Rizzo, Scott McKee, Deanna Heminger, Joseph Stepich.

Also Present: Rob LaBelle, Craig McGrew, Ron Redick, Jessica Fette, Darrell Stanford, Leslie Jackson, Martin Teresko, Robert Tregoning

Chairperson Heminger called the meeting to order at 2:03 p.m.

Roll Call was taken.

The minutes of the March 1, 2022 meeting were read. S. McKee made a motion to approve the minutes as read. L. Rizzo seconded and the motion carried unanimously.

During the initial attendee comment period, the Chair recognized M. Teresko who stated that he owns property across the street from the property under consideration for a requested rezoning at 4350 N. County Line Rd., and stated that he is in favor of and supports the request to rezone the property.

**Special Land Use Permit Request at 3860 Hennesey Rd.**

At 2:06 p.m. Chairperson Heminger requested a motion to close out of regular session and enter the scheduled public hearing for a request for a Special Land Use Permit at 3860 Hennesey Rd. for the location of a communication tower by Parallel Towers. L. Rizzo motioned to close out of the regular meeting and enter the scheduled public hearing. D. Fizzell seconded and the motion carried unanimously.

In the public hearing, the Chair first recognized R. LaBelle, legal counsel for Parallel Towers. LaBelle began by stating that, although this is a reenactment of the original public hearing and decision conducted at the February 1, 2022 Planning Commission meeting, he noted that there has been no changes with the site plan originally submitted at the first hearing or with the location of the tower. He noted that, contrary to the objection submittal issued by the Mika Meyers law firm on behalf of their client SBA Infrastructure, the proposed tower, as noted at the first hearing, is fully compliant with the Zoning Ordinance.

LaBelle addressed the concern cited in the Mika Meyer submittal that the proposed leased area must comply with the Land Division Act. LaBelle stated: "As legislated, the Land Division Act was not intended to apply to this." He added that a cell tower has to be thought of as infrastructure and that the land division act was never intended to regulate land use for anything like this or any other utility. He added that; "We have

towers in hundreds of places in Michigan and no one has ever had us do anything like this.”

LaBelle continued by noting that SBA, once they acquire a tower has the tendency to lose carriers due to raising rents to use the towers and reasoned that is why SBA is here today to fight it. He noted that AT&T is the last carrier located on the mast out of a total of four at one time. He stated that the Ordinance does not put the Planning Commission in the position of regulating competition. He concluded by saying that the bottom line is that, “we meet your ordinance and we’re looking for your approval.”

The Chair then recognized R. Redick who noted that he was an attorney from the law firm of Mika Meyers and is representing SBA Communications. He asked the Planning Commission to deny the request for the Special Land Use Permit based on the fact that the proposed tower is, “...a wholly duplicative tower that is only 783 feet away” from the existing SBA tower. After Redick verified that all of the Planning Commission members were given copies of the objection, he went through it so all the facts would be on the record. He noted that AT&T was approached in the past by SBA concerning the renegotiation of the lease agreement, however, AT&T did not respond and, as such, they (AT&T) self created the economic hardship they are experiencing now.

Redick went on to say that if there was no tower currently at the location and the township residents were being denied a service that a tower would provide, then the Planning Commission would be on good ground to approve the Special Land Use Permit, as submitted. However, he went on, that service is being provided with the current SBA tower. Redick asked the Commission if there was an essential township service being provided with a redundant tower in the exact same location. He also noted that two towers in that close of proximity would not be harmonious with the surrounding area. Redick, addressing the Master Plan noted that the Plan places emphases on the preservation of agricultural open space and said that one tower with an offsetting service would be acceptable, but not two. Redick ended by telling the Commission that due to everything noted they should recommend denial.

R. LaBelle, re-addressing the Commission, stated that the germane point of this entire discussion is that the request meets all of the requirements of the Zoning Ordinance and challenged the assertion that if there were no other facilities on the site then it would comply with the review criteria of the Zoning Ordinance and stated that, in the text of the ordinance, there is no such requirement. LaBelle noted that SBA’s attorney cited AT&T numerous times, however, he noted, AT&T is not the applicant asking for the Special Land Use Permit, but Parallel Towers is the applicant. LaBelle returned to the argument that the tower site would have to go through, and meet the requirements of, the land division act and explained that the tower should be considered a utility use only and not something real like a building of some sort. He reiterated that at no time has any other municipality in Michigan required Parallel to comply with the Land Division Act and further stated that this was not the spirit or intent of the Act.

R. Redick, addressing LaBelle’s last statement said that if the tower were a permitted use then there would be, or could be, a challenge of the request. However, Special Land Use Permits are discretionary and subject to reasonable restrictions. He went on, that if there were no other towers at the site then putting one there would provide a benefit to the community but constructing another one at the same location and in such close proximity

that does not provide any additional benefit would be a blight to the surrounding area and, as such, would make the issuance of the permit worthy of denial.

R. Tregoning was next recognized by the Chair. Tregoning stated that, in that area, they have to contend with three gravel pits, the noise from Interstate - 94, the smell generated by the dump and the view of the two existing towers at the location. He further stated that he did not want to have to look at one more and explained the health hazards associated with the new 5-G networks. D. Heminger told Tregoning that she lives right across the street on Ryno Rd. from the tower site where she, too, has to look at them every day. Tregoning inquired if she did not mind it. She replied that she did not have a choice in the matter adding that she was in that residence before the landfill was built but still has to endure it. She further stated that if the application meets the requirements of the Zoning Ordinance then they really have no option but to approve it.

With there being no further comment to come before the Planning Commission, L. Rizzo made a motion to close the public hearing and reenter the regular meeting. D. Fizzell seconded and the motion carried.

The public hearing was closed at 2:39 p.m.

Back in regular session, J. Stepich stated that the first approval of the Special Land Use Permit was not based on economic consideration and; "We're not going to do it this time." Going through a run-down of the General Standards in the Zoning Ordinance under Sec. 10.03 Basis of Determinations, the first one reviewed was:

1. "The special land use shall be designed, constructed, operated and maintained in a manner harmonious with the character of adjacent property and the surrounding area. The commissioners agreed this would be achieved judging from the submitted site plan. J. Stepich reasoned that there is already a tower at the location and didn't feel one more would be damaging. D. Heminger noted she agreed with that statement.

2. The special land use shall not inappropriately change the essential character of the surrounding area.

The commissioners felt that would not be the case in this instance.

3. The special land use shall not interfere with the general enjoyment of adjacent property.

They reasoned that it would not and that this item fell in line with items 1 and 2.

4. The special land use shall represent an improvement to the use or character of the property under consideration and the surrounding area in general, yet also be in keeping with the natural environment of the site.

The commissioners agreed that the addition of the tower would improve service to the local community and it would be in keeping with the natural environment of the site.

5. The special land use shall not be hazardous to adjacent property, or involve uses, activities, materials or equipment which will be detrimental to the health, safety, or

welfare of persons or property through the excessive production of traffic, noise, smoke, odor, fumes or glare.

The commissioners agreed that no nuisances or ill effects would be realized through the location of the tower.

6. The special land use shall be adequately served by essential public facilities and services, or it shall be demonstrated that the person responsible for the proposed special land use shall be able to continually provide adequately for the services and facilities deemed essential to the special land use under consideration.

The commissioners agreed that the use would more than adequately be served by existing public facilities.

7. The special land use shall not place demands on public services and facilities in excess of available capacity.

The commission agreed this consideration was covered under item 6.

8. The special land use shall be consistent with the intent and purpose of this ordinance and the objectives of any currently adopted Township Development Plan.

The commissioners agreed that it was consistent with the ordinance and the Township's Master Plan.

L. Rizzo stated at the conclusion that the Commission found that the request met the ordinance criteria the first time and that it does this time. D. Fizzell concurred with that remark. L. Nordell in post discussion did express a concern with item 3 and how it related to R. Tregoning but stated he did not know where Tregoning lived in relation to the proposed tower site.

Heminger asked Zoning Administrator R. Lohr how the chance that this use may need a land division would fit in with a decision. Lohr stated that the Commission could make a recommendation to approve the Special Land Use Permit contingent upon Parallel obtaining the required two acres of land which is the smallest division that can be made in the ag district for non-residential use. After a period of discussion between the attorneys and the zoning administrator regarding the date of the SBA tower's construction and the application of the Land Division Act adoption in 1997, Township legal counsel J. Fette recommended that the Planning Commission make a recommendation to approve contingent upon her submittal of an opinion.

J. Stepich made a motion to recommend the approval of the Special Land Use Permit contingent on the reception of an opinion by township legal counsel addressing the land division issue. D. Heminger seconded. A roll call vote is as follows: D. Fizzell, yea; S. McKee, yea; L. Rizzo, yea; L. Nordell, yea; J. Stepich, yea; D. Heminger, yea. Motion carried unanimously.

#### **Rezoning Request of Property at 4350 N. County Line Rd.**

D, Heminger, recognizing D. Stanford, asked if there was any new information regarding the rezoning request. Stanford stated there was not but reiterated that he has been operating a farm at the site for nine years and stated that none of the neighbors had

been bothered by the operation. He added that he has had good reviews, after inspections, from the Department of Agriculture and the Michigan Dept. of Environment, Great Lakes and Energy. He added that he has spent \$71,000 in cleaning and restoration of the property since his family purchased it.

J. Stepich told Stanford that at the March 1, 2022 meeting and hearing, a suggested course of action was to procure legal counsel that would guide them through the process of submitting a conditional rezoning request and if they had began that process. Stanford did invite his attorney to attend the hearing and requested that she address the matter. Stanford's attorney stated that the applicant needed the property rezoned to Industrial zoning to facilitate his intended grow operation. She added that once rezoned he would go through the required application process for the Special Land Use Permit and then he would be able to apply for the proper licensing for the intended grow operation. She said that Stanford was in contact with the surrounding property owners and explained what his intentions were.

D. Heminger stated that her concern is that by rezoning this property to Industrial would be tantamount to spot zoning, adding that this is a zoning practice the township does not permit. Stanford's attorney said that she was confused by the previous statement since the adjacent property is currently zoned Industrial. Stepich interjected by stating that was not accurate. The property she was referring to is shown to be Industrial in the Township's Future Land Use Plan and, he added, that was only forecast as such for those areas contiguous to Interstate - 94. He noted that at one time there was intent to extend Arnt Blvd. to connect with County Line Rd. and develop that land as industrial or commercial property as the I-94 Corridor Development.

L. Rizzo reiterated that she doubts the Township Board would be comfortable with spot zoning a property that is currently shown in the Township's Future Land Use Map as remaining agricultural especially with the Township's emphasis, as stated in the Master Plan, of preserving agricultural land. D. Stanford, citing the solar field to the west of his property, is, in his opinion, an industrial application and, as such, he inquired why that did not lend viability to his request. He was told that the American Electric Power solar field, as are all renewable energy applications, permitted in the agricultural zone with a Special Land Use Permit.

With no other comment from the audience, L. Rizzo made a motion to recommend denial of the request to rezone parcel 11-21-0024-0014-04-9 from AG-Agricultural to M-1 Industrial. S. McKee supported. A roll call vote is as follows: D. Fizzell, yea; S. McKee, yea; L. Nordell, yea; L. Rizzo, yea; J. Stepich, yea; D. Heminger, yea. Motion carried unanimously.

**Amendment of Zoning Ordinance No. 77, Sec. 20.02, (A) Accessory Structures.**

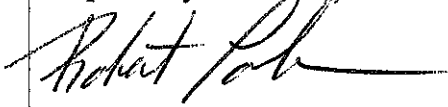
A zoning amendment was presented to the Planning Commission proposing an exception in the zoning ordinance of the ban on shipping containers in any zone. The exception would permit shipping containers with a Special Land Use Permit in the Industrial Zoned Districts when used as an apparatus for the training of established municipal fire departments or emergency first responders. The Commissioners agreed to set the public hearing date for June 7, 2022 at 2:05 p.m. at the Township Hall.

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With there being no further business before the Commissioners D. Fizzell made a motion to adjourn. L. Rizzo seconded and the motion carried unanimously.

The meeting was adjourned at 3:36 p.m.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Robert Lohr", with a long horizontal flourish extending to the right.

Robert Lohr  
Zoning Administrator