

Clearwater Township
Planning Commission
Regular Meeting of June 3, 2019
As approved July 1, 2019

Call to Order, Pledge of Allegiance:

Chair Backers called the meeting to order at 7:03 p.m., and opened with the Pledge of Allegiance.

Roll Call of Members and Recognition of Visitors:

Commissioners present: Backers, Cassasa, Fields, Von See.

Commissioner absent-excused: Eldridge.

Township official: Zoning Administrator Parzych.

Public: James Bargy, Charlie Klingbier, Coreen Reed, Ruthann O'Brien, Karen Mackenzie, Lynne Budya, Larry Opelewski. Robert Bergmann, Mike Gaylord, Terry Wheelock, Sandra Wheelock, David Barton, James French, Thomas Crisci, Mike Bieniek, Sherry Boucher, John Boucher, Mel Cooke, Greg Hanlin, Kim Hanlin, Carol Backers, Pam Weisler, Gary Stosio, Jule Moore, Jim Leffew.

Approval of Agenda:

MOTION by Von See, second by Casassa to accept the agenda as presented. Motion carried.

Call for Disclosure of Conflicts of Interests:

Chair calls for commissioners to disclose any real or potential conflicts of interests. All commissioners declared having none.

Approval of Minutes:

MOTION by Casassa, second by Von See, to accept the minutes of May 6, 2019, as presented. Motion carried.

Public Comment for Matters Not on the Agenda:

There was none.

Commissioner Comment for Matters Not on the Agenda:

There was none.

Correspondence Received:

The only correspondence received is the letter from Larry Opelewski, representing American Tower, in opposition to the proposed text amendment to be considered at this public hearing.

Public Hearing: to consider a petition from Tillman Infrastructure, acting as agent for property owners James and Denise Bargy (property located at address 5378 Townline

Road, Williamsburg, MI 49690, with property tax ID# 4-004-033-007-15), for a text amendment of Ordinance 22 (Zoning Ordinance), Sections 24.09.A.02 and 24.09.A.11, concerning the required dimensional setbacks and distance to residences, for telecommunications towers

Chair Backers opened the public hearing at 7:12 p.m., and explained the procedure to be followed. Speakers are to address the Chair, limit speaking time to three minutes, and avoid repeating what has already been presented by others. Jule Moore agreed to be the time-keeper.

The proposed text amendments are hereby incorporated into the record by reference, and are attached to the permanent copy of these minutes as [Att A].

Applicant presentation:

Mike Bieniek – of LCC Telecom Services, representing Tillman Infrastructure, is the applicant proposing these amendments. He requested permission from the Chair to have to opportunity, following the opposing comments to offer a rebuttal. Mr. Bieniek stated that the amendments proposed did not substantially change the ordinance language, that no text had been removed or substituted. Rather, the same language was added to each of the two subsections.

He read the first proposed amendment (to 24.09.A.02 - Setbacks), which called for the applicant to provide an official document from a certified Michigan Engineer, demonstrating that the tower is designed to collapse onto itself in the event of a failure.

He read the second proposed amendment (to 24.09.A.11 – Spacing - Residences), which added the same requirement for an official document demonstrating that the tower is designed to collapse onto itself in the event of a failure. It also borrowed language from existing Section 24.09.A.02, to authorize the Planning Commission to reduce the spacing requirements if the goals of the ordinance would be better served thereby.

Mr. Bieniek remarked that in the written applicant submission, they indicated how they believed they met all the Zoning Ordinance standards of review as well as the goals and objectives of the Master Plan. He especially lifted up the section indicating that the Township would benefit from a robust wireless communications network.

He stated that as the rules are written, there is no land parcel within the “Search Ring” that can accommodate the proposed new tower. That, he said, “Flies in the face of the Telecommunications Act that says you cannot preclude a carrier from providing ample coverage for their needs.”

In conclusion, Mr. Bieniek made clear that the proposed text amendment would allow the Planning Commission to waive the tower spacing requirements with regard to the residences nearby. He said it would not automatically grant such a waiver to the tower company, but put the “onus” on the Township. He further stated that, “The way your ordinance is worded, it really is right on the edge of being in violation of the Telecommunications Act.”

Those speaking for:

James Bargy – said he supports the amendment.

Those speaking against:

Larry Opelewski – stated that he had timely submitted a letter to the Planning Commission, in opposition to the proposed text amendments. He pointed to the criterion concerning setting a precedent, and cautioned against allowing something to be done illegally and then getting the ordinance changed to fix it. He commented that the Township provides more than one route for possible relief from strict enforcement of the ordinance, making it unnecessary to amend the ordinance.

Greg Hanlin – stated that this is the third attempt by Tillman and the Bargys to make this illegal project legal. The ZBA has already determined that the project did not meet the first standard for a variance. He stated that the residents of this Township would prefer to see the ordinance tightened up rather than relaxed for the benefit of telecommunications tower projects. He spoke in favor of an amendment that would avoid the clustering of telecommunications towers. He said he hoped the Commission would look hard at the situation and work on how to prevent this kind of mess from happening again.

Chair Backers indicated to Mr. Hanlin that he can, personally, initiate a Zoning Ordinance amendment, himself.

John Boucher – stated that although he does want good telecommunications, he does not want corporations to come in and violate the rules, then try to get the rules changed. He questioned whether this was the first time this corporation had had this kind of issue, calling attention to the “expensive attorneys” hired by the applicant corporation.

Sandra Wheelock – challenged the need for increased telecommunications service, saying that the service in the area is already quite good, provided by AT&T from the existing tower. She agrees with those who have already spoken against allowing projects to be initiated without following the rules and then get forgiveness afterward.

Coreen Reed – stated she had similar concerns to the ones already expressed. We all have to follow the rules. Others should also have to. If any improvement is needed, why shouldn't it be on the existing tower?

Lynne Buday – says she is also concerned about this, that there's a need to limit the number of towers here. The Master Plan makes specific reference to this particular section of M-72, as among our Township's best features that should be “faithfully preserved.” Most of the people in attendance are neighboring residents who do not want the tower here, and want the Township to heed the language of our controlling documents, to protect against potential adverse impact on residential areas.

Pam Weisler – agrees that we do need to space things out and preserve the pristine appearance that we have. Although not a resident on M-72, she is in support of those neighbors – the next tower could be in her neighborhood.

Rebuttal by Mike Bieniek – stated that this text amendment is not specific to this tower, it applies to the whole township. It does not provide *carte blanche* to the tower company. “This is not us coming in and trying to circumvent the process.”

[Scribe's note: the title page of the application says "Application for a text amendment approval for the proposed new tower at 5378 Townline Road, Williamsburg, MI 49690, Tillman/AT&T site #-14362172."]

Carol Backers – state that it “boggles the mind” the amount of money being spent by AT&T on this project, when there are much better sites on property owned by the township where it could have been placed and wouldn't interfere with the neighbors. She stated she vehemently opposes this text amendment. She also expressed dismay at the amount of time and money this project was costing the Township.

Chair Backers closed the public hearing at 7:39 p.m.

Commission Deliberations:

Chair Backers expressed his opinion concerning the purpose of the proposed text amendment. He said that because the tower is “supposedly internally collapsing,” and can be so verified by an engineer, this amendment would be a first step to getting a variance that would allow them to site this tower in the original place on M-72. He also expressed his opinion that all of the difficulties could have been avoided if the applicants had done their due diligence and read our ordinance prior to submitting their application rather than after they were advised they had a problem.

Standards of Review – proposed amendment to 24.09.A.02 Setbacks

29.03 FACT FINDING

In reviewing any petition for a zoning amendment, the Planning Commission shall identify and evaluate factors relevant to the petition and shall report its findings in full, along with its resulting recommendations (including any recommended modifications to the petition) for the proper disposition of the petition to the Township Board. Facts to be considered by the Planning Commission shall include, but shall not be limited to the following:

- A. What, if any, conditions related to the petition have changed which justify the amendment?

Discussion: Chair Backers commented that the only change he sees is the claim that the tower will collapse on itself, although he is aware of a similar tower that collapsed across a highway this winter in Alabama. Von See said he did not see any changes in conditions to justify the amendment. Casassa said she didn't either, and she challenged the petitioner's claim that our ordinance is overly burdensome in terms of spacing. Backers stated that such an amendment would essentially expand the permissible tower height, and would give an applicant a basis to argue against the setbacks. But, there is a reason for the setbacks. Fields said that the proposed amendment would essentially remove the spacing requirement differences between sub-sections .02 and .11 of this section. But, there is a reason for the differences – to protect the residences. Backers continued that it would make the limitations negotiable. The authority to waive some of the distance limitations for ordinary setbacks (24.09.A.02) is not granted in the stringent limitations for where there are residences, road rights-of-way, or places where people would gather (24.09.A.11).

Roll call vote on fact A to be considered:

Von See – no, for reasons already stated;
Casassa – no changes to conditions, and the ordinance is not overly burdensome;
Fields – no, for reasons already given;
Backers – no, for reasons previously discussed.

The Commission finds that standard A is not met

- B. What, if any, error in judgment, procedure, or administration was made in the original Ordinance which justifies the amendment?

Discussion: Commissioner Von See finds no error in judgment in the original Ordinance. Commissioner Casassa finds no error in the original language. Commissioner Backers says that the original language has served the township well for twenty-five years, and it is there for a reason – there is no error. Commissioner Fields said she agreed with her colleagues that there is no error of judgment, procedure, or administration in the original Ordinance providing a reason for this amendment.

Roll call vote on fact B to be considered:

Von See – no, for reasons already stated
Casassa – no, for reasons already stated
Backers – no, for reasons already stated
Fields – no, for reasons already stated.

The Commission finds that standard B is not met.

- C. Would the approval or denial of this petition set a precedent? If so, what possible effects might result from this?

Discussion: Commissioner Von See commented that approval of this amendment might indicate willingness to let parties do something illegal and then seek an ordinance amendment to fix it. Township Attorney Wendling cautioned the Commission to deliberate only on the impact of the language, not on the details of this particular project's history. Casassa said it would set a precedent of coming in to change the rules to fit a project. Backers said that were it not for the timing – in that the applicant is in the middle of a special use permit application – this would have nothing to do with the location or the purpose of the tower. The timing sets a precedent. Fields said it would set the precedent of towers being too close to residences. The existing rules are for the public safety.

Roll call vote on fact C to be considered:

Von See – yes, approval would set a precedent
Casassa – yes
Backers – yes
Fields – yes.

The Commission finds that approval of the amendment would set a precedent with potential hazardous results.

- D. If approved, what impact would the amendment have on the ability of the Township and other governmental agencies to provide adequate public services and facilities, and/or programs that might reasonably be required in the future?

Discussion: Von See finds it would have no impact on the Township's public services and facilities. Fields, Backers, and Casassa concur with Von See. This language would not have any appreciable impact now or in the foreseeable future.

Roll call vote on fact D to be considered:

Von See – no impact
Casassa – no impact
Backers – no impact
Fields – no impact.

The Commission finds it would have no significant impact on the Township's ability to provide adequate public services, now or in the future.

- E. On a rezoning petition, how would it affect the environmental conditions or value of the surrounding property if approved?

This is not a rezoning petition.

The Commission finds that fact E for consideration is not applicable.

- F. Are there any significant negative environmental impacts which would reasonably occur if the petitioned zoning change were approved and the resulting allowed structures were built? Such as:

1. Surface water drainage problems;
2. Waste water disposal problems;
3. Adverse effect on surface or subsurface water quality; and
4. The loss of valuable natural resources such as forest, wetlands, historic sites, wildlife, mineral deposits or valuable agricultural land.

This is not a rezoning petition.

The Commission finds that fact F for consideration is not applicable.

MOTION by Casassa, second by Von See, to recommend to the Township Board denial of the proposed amendment language to 24.09.A.02. Motion carried unanimously.

Roll call vote:

Von See – yes
Casassa – yes
Fields – yes
Backers – yes

Standards of Review – proposed amendment to 24.09.A.11 Spacing - Residences

29.03 FACT FINDING

In reviewing any petition for a zoning amendment, the Planning Commission shall identify and evaluate factors relevant to the petition and shall report its findings in full, along with its resulting recommendations (including any recommended modifications to the petition) for the proper disposition of the petition to the Township Board. Facts to be considered by the Planning Commission shall include, but shall not be limited to the following:

- A. What, if any, conditions related to the petition have changed which justify the amendment?

Discussion: Chair Backers asked what conditions have changed that would justify changing the prescribed distances from residences, rights-of-way, churches, etc. Commissioners Von See, Casassa, and Backers all stated that no conditions related to the petition have changed to justify the amendment. Fields concurred with her colleagues and reiterated that there's a reason for the more stringent spacing requirements around residences, etc., and conditions have not changed to eliminate that reason.

Roll call vote on fact A to be considered:

- Von See – no, for reasons already stated;
- Casassa – no changes to conditions, and the ordinance is not overly burdensome;
- Backers – no, for reasons already given;
- Fields – no, for reasons previously discussed.

The Commission finds that no conditions have changed to justify the amendment – standard A is not met

- B. What, if any, error in judgment, procedure, or administration was made in the original Ordinance which justifies the amendment?

Discussion: The Commissioners all found that there was no error in judgment, procedure, or administration made in the original Ordinance to justify the amendment. In fact, the wisdom of the original language was lauded.

Roll call vote on fact B to be considered:

- Von See – no, for reasons already stated;
- Casassa – no;
- Backers – no;
- Fields – no.

The Commission finds that standard B is not met.

- C. Would the approval or denial of this petition set a precedent? If so, what possible effects might result from this?

Discussion: The Commissioners all found that approval of this petition would set a precedent with serious consequences.

Roll call vote on fact C to be considered:

Von See – yes, it would set a precedent;
Casassa – yes, a serious precedent;
Backers – yes, for reasons already stated;
Fields – yes, for reasons already stated.

The Commission finds that approval of the petition would set a precedent with potential hazardous results.

- D. If approved, what impact would the amendment have on the ability of the Township and other governmental agencies to provide adequate public services and facilities, and/or programs that might reasonably be required in the future?

Discussion: The Commissioners all found that there would be no impact on the Township's abilities, just as found in the prior discussion.

Roll call vote on fact D to be considered:

Von See – no impact
Casassa – no impact
Backers – no impact
Fields – no impact.

The Commission finds it would have no significant impact on the Township's ability to provide adequate public services, now or in the future.

The Commission finds that facts E and F for consideration are not applicable, because this is not a rezoning petition.

- E. On a rezoning petition, how would it affect the environmental conditions or value of the surrounding property if approved?
- F. Are there any significant negative environmental impacts which would reasonably occur if the petitioned zoning change were approved and the resulting allowed structures were built? Such as:
1. Surface water drainage problems;
 2. Waste water disposal problems;
 3. Adverse effect on surface or subsurface water quality; and
 4. The loss of valuable natural resources such as forest, wetlands, historic sites, wildlife, mineral deposits or valuable agricultural land.

MOTION by Casassa, second by Von See, to recommend to the Township Board denial of the proposed amendment language to 24.09.A.11. Motion carried unanimously.

Roll call vote:

Von See – yes
Casassa – yes
Backers – yes
Fields – yes

Deliberations closed 8:16 p.m.

Following the close of deliberations, Chair Backers asked whether the commissioners would like to postpone the rest of the regular business until the July 1 meeting, or to take a break and reconvene at 8:30 p.m. to continue. The consensus was to postpone.

Adjournment:

MOTION by Casassa, second by Von See, to adjourn. Adjournment at 8:18 p.m.

Assignments:

- Fields to communicate to the Township Board, the recommendations of the Planning Commission regarding the proposed amendments to 24.09.A.02 and 24.09.A.11 of Ordinance 22, the Zoning Ordinance.

Next Meeting: July 1, 2019, 7:00 p.m., at the Clearwater Township Community Center (aka the Little Red Schoolhouse).

Respectfully submitted,



Tina Norris Fields
Secretary

**Proposed Text Amendments submitted on behalf of Tillman Infrastructure
to the Clearwater Township Ordinance 22 – the Zoning Ordinance,
Sections 24.09.A.02 and 24.09.A.11**

The existing text is in black. The proposed additional text is in red.

24.09.A.02. Setbacks. The following setback requirements shall apply to all towers for which a special use permit is required; provided, however, that the Planning Commission may reduce the standard setback requirements if the goals of this ordinance would be better served thereby. **The applicant shall provide evidence demonstrating the tower will be designed to collapse onto itself and the given radios within which it will collapse. The evidence shall be provided in a signed and sealed structural letter from a certified Michigan Engineer. The Township may at their discretion, hire a qualified engineer, of their choosing, to independently verify the information provided by the applicant. The cost of which shall be borne by the applicant.**

- a. Towers must be set back a distance equal to at least one hundred percent (100%) of the height of the tower from any adjoining lot line.
- b. Guys and accessory buildings must satisfy the minimum zoning district setback requirements.

24.09.A.11 Spacing-Residences. A tower shall not be located within two hundred feet (200') or three hundred percent (300%) of the height of the tower, whichever is greater, of a park or public right of way, or of a single-family or multiple family dwelling unit, church, school, or other structure normally used and actually used for the congregation of persons. Distance for the purpose of this section shall be measured from the base of the tower structure to the lot line of the park, right of way, single-family or multiple family dwelling unit, church, school, or other structure normally used and actually used for the congregation of persons. **Provided, however, that the Planning Commission may reduce the spacing requirements if the goals of this ordinance would be better served thereby. The applicant shall provide evidence demonstrating the tower will be designed to collapse onto itself and the given radios within which it will collapse. The evidence shall be provided in a signed and sealed structural letter from a certified Michigan Engineer. The Township may at their discretion, hire a qualified engineer, of their choosing, to independently verify the information provided by the applicant. The cost of which shall be borne by the applicant.**