

**BOONE COUNTY PLANNING COMMISSION
BOONE COUNTY ADMINISTRATION BUILDING
FIRST FLOOR FISCAL COURTROOM
PUBLIC HEARING
MAY 5, 2010
7:30 P.M.**

COMMISSION MEMBERS PRESENT:

Mr. Ben Brandstetter
Mr. Kim Bungler, Secretary/Treasurer
Mr. Mike Ford, Vice Chairman
Mrs. Linda Herald
Mr. Mark Hicks
Mr. Don McMillian
Mrs. Susan Poston, Temporary Presiding Officer
Ms. Lisa Reeves
Mr. Charlie Rolfsen, Chairman
Mr. Bob Schwenke
Mr. Steve Turner

COMMISSION MEMBERS NOT PRESENT:

Mr. Greg Breetz
Mrs. Janet Kegley
Mr. Jim Longano
Mr. Charlie Reynolds

LEGAL COUNSEL PRESENT:

Mr. Dale Wilson

STAFF MEMBERS PRESENT:

Mr. Kevin P. Costello, AICP, Executive Director
Mr. Todd K. Morgan, AICP, Senior Planner

Mr. Charlie Rolfsen, Chairman, called the meeting to order at 7:30 P.M. and introduced the first item on the Agenda:

UNIFORM APPLICATION

2. **Request of David A. Pike, Pike Legal Group, PLLC for New Par dba Verizon Wireless (applicant) for Frederick Blank and Maria Blank (owners) for a Wireless Communications Facility located at 9273 East Bend Road, Boone County, Kentucky. The request is for a 305 foot lattice tower.**

Staff member, Todd Morgan discussed the Staff Report, which included a Powerpoint presentation (see Staff Report). The property is 44.5 acres in size and the tower is located toward the rear of the site. The tower would be located in a 10,000 square foot fenced area and would be located 3,630 feet from East Bend Road, 153 feet from the rear property line, 407 feet from the northern property line and 1,003 feet from the southern property line. Access is proposed from an existing shared driveway. The proposal is for a 305 foot high lattice tower with 10 foot lighting rod on top. They are showing future co-locations. The lease compound would be 100' x 100' in area. There are electric transmission lines on the property. The elevation of where the proposed tower will be located is 772 above sea level. Mr. Morgan then showed photos of the site and surrounding area. The site is heavily wooded on three sides. The tower will be highly visible from KY 18 and KY 338. Mr. Morgan referred to the 2005 Comprehensive Plan where the Land Use Map indicates Developmentally Sensitive (DS) and the text on page 2 of the Staff Report suggests that the "Installation of utilities and development around utilities shall occur in a manner that protects the safety of the general public. Wireless Communications (Cellular towers) and similar facilities shall not be obtrusive to residential or scenic areas, and co-location shall be implemented wherever possible".

Mr. Morgan mentioned that the Zoning Regulations encourage co-location wherever possible. As noted, Page 2 of the Staff Report, the construction of a new tower is preferred in public facility, airport and industrial zones, commercial or office zones and agricultural zones. The Zoning Regulations also requires an applicant to analyze existing towers or other tall structures within a 2 mile radius of the proposed site. Mr. Morgan displayed a map which showed electric transmission towers located on the subject site (0.44 miles to the southeast) and the Crown Castle Tower located on Daniels Lane (1.76 miles to the southeast). There is also an existing monopole outside the 2 mile radius - Hillenbrand farm.

In terms of requirements for towers proposed in the Agriculture (A-1) zoning district, monopole and stealth towers are permitted. These types of towers must be gray or have a galvanized steel finish and must be built to accommodate additional users. In addition, all tower facilities must have a minimum 10 foot setback from all property lines. They must setback at least twice the height of the proposed tower from a residence or residentially zoned property and have a maximum height of 120 feet. However, Section 3197 of the *Boone County Zoning Regulations* allows an applicant to apply for a waiver for height, setback, or construction type. The applicant is seeking a waiver for the tower type (monopole/stealth to lattice tower), height of tower (120 feet to 315 feet) and to eliminate 10' wide landscaping buffer around the fence compound.

In terms to Staff comments, Mr. Morgan first explained that the Planning Commission will take final action on this request. Second, Verizon's stated objective is to cover the KY 18/ KY 338 area and the Ohio River area with the fewest sites possible. The Planning Commission should recall the proposal on Kinman Farms that was presented a year ago as the first of 3 towers that would be constructed in the corridor. This tower has not been built. Today, the Verizon coverage area is limited as indicated by the white areas (little or no coverage) on the map. The planned coverage identified in yellow shows the approved Kinman Farms site, the proposed site (East Bend Road) and a future site (KY 18 and Botts Lane area). The reason there is a difference in coverage is due to the two licenses. One is a cellular license at a 850 megahertz frequency, in which the propagation or coverage area is larger (Kinman Farms site). With the other two sites, the applicant has to use their PCS license. They can't beam their cellular coverage in Indiana. With a 1,800-1,900 megahertz frequency, the propagation or coverage area is much less or smaller. Also, the staff asked the applicant to analyze the visual impact of the proposed tower height versus a smaller tower height. The applicant indicated that to obtain the coverage, they would need six 190 foot towers versus three 300 foot high towers. In addition, the staff requested the applicant to submit a propagation plot showing their coverage if they were to co-locate on the existing electric transmission on the subject site. The submitted propagation map showed coverage breaks in the red circles. The white and green areas on the propagation plot shows that phone calls could drop and it is the reason why they don't want to locate on the electric transmission line.

The applicant has provided approval letters from the Kentucky Airport Zoning Commission and the FAA for the subject site. Mr. Morgan asked the applicant to address the following issues: A) How many carriers can the proposed tower accommodate? B) Have any other carriers stated that they will co-locate on the tower? C) What type of lighting and/or tower markings are proposed on the 305 foot tower? D) When is the 305 foot tower on the Kinman Farm site going to be constructed? Mr. Morgan stated should the Planning Commission approve the request, the Staff would recommend the following conditions: A) the tower shall be able to accommodate at least five (5) carriers, and B) the tower and lease compound shall be removed within ninety (90) days of the termination of the lease.

Mrs. Poston inquired whether she was an adjoining property owner to the request. Mr. Morgan showed the list of adjoining property owners to Mrs. Poston. After reviewing the list and map, it was determined that she was not an adjoining property owner.

Mr. David A. Pike, Pike Legal Group, PLLC stated he is representing Verizon Wireless. Mr. Pike introduced Bob Grant and Tim Pickeral of Pike Legal Group, Eric Nelson, a Verizon Wireless Radio Frequency Engineer, Doug Bartsch, Property Manager at Verizon Wireless and Jason Hillebrand, Site Acquisition Consultant for Verizon Wireless and property owner, Mr. Blank. Mr. Pike explained that the request is deja vu and it is similar to the prior request. It is part of a network deployment and it is a logical extension of the prior disclosure of other towers. We are doing exactly what we said we would do. Because of the height limitations expressed in the regulations, the hilly terrain and the goal of providing state of the art wireless communication services, one would have to build an enormous

amount of towers. Instead of building smaller towers, the Planning Commission previously decided on higher towers, especially for co-location. Co-location on smaller towers would be unuseable due to the lower height of the antenna slots. The lower slots would be effectively useable due to the hilly terrain. The Planning Commission previously approved waivers to grant the construction of a taller self support tower instead of monopoles even though they are more expensive. In many ways, this is "Back to the Future" again as it is exactly the same case as we have presented before. This is a 315 foot self support tower. The proposed tower is engineered to provide for five sets of equipment on behalf of different carriers. Currently, no carriers have expressed an interest in co-location. This is not unusual for a structure that has not been constructed. Verizon Wireless is the largest wireless provider in the United States. It has existing reciprocal master lease agreements with all of the major carriers, which allows co-locations. The site has been approved by the Kentucky Airport Zoning Commission and the Federal Aviation Administration with a dual lighting system - red (night) and white (day) to be compatible with the area. The structure will not be painted a candy striped color. It will be gray color. The proposed tower is not part of the current 2010 budget plan. It could change. It is projected to be built in 2011. It is dependent on zoning approval and the other tower application has yet to be filed. The tower will be removed within 90 days and this could be a binding requirement of the approval. An 8 foot high chain link fence is proposed around the base of the support structure. He stated that his client can install landscaping as required, but the site is completely shielded at the base. It is a farmed area with animals.

Mr. Fred Blank, owner of the property, 9273 East Bend Road, stated he was in favor of the request.

Mr. Mike Shulkins, Attorney, Newport, Kentucky, stated he was representing Clarence and Rhonda Garman, an adjoining property owner. He explained that the Garmans object to the location of the tower. The Comprehensive Plan mentions the aesthetics and the residential surroundings. The caliber of the homes in the area will be impacted by the tower. It is the reason why his clients purchased the property. The tower will interfere with the quiet enjoyment of the property. The Garman property fronts along East Bend Road. The driveway consists of a 40 foot easement. About two years ago, Verizon Wireless approached the Garmans about granting an easement along with the Jansens and Blanks. The Garmans did not do so and they were against the tower back then and now. There is some concern or belief by Verizon Wireless that the Blank and Jansen properties are flag lots. He has copies of deeds which refer to an easement. The final language in the easement says that the property easement shall serve the property for residential and agricultural purposes. His client will not cooperate and will block the application to assert their legal rights to deny access. He is willing to provide deed books, reference deeds as well as the actual access agreement, which are part of the land records of Boone County.

Chairman Rolfsen asked if there was anyone else in the audience in opposition who wanted to make comments? No one came forward. Chairman Rolfsen then asked if any of the Commissioners had any questions or comments?

Mr. Hicks stated when someone has something ugly to be built, it is always built at the property edge. He asked why the applicant couldn't move the tower especially when there is no change in elevation. By moving it, it would prevent it from falling over to the neighboring property.

Mr. Pike responded that the current application meets the requirements. He noted that they could move it from an engineering perspective, but it would be costly. There is no significant advantage from a planning perspective in moving it. Make no mistake about it, this structure will be seen in this area. The structure will be just as visible from adjoining properties if it is moved as suggested. From a safety perspective, the structure will not fall over but will buckle. Mr. Morgan explained that the tower is required to be at least twice the height of the tower from the road and from a residence and residentially zoned property. Mr. Pike stated that the tower is 1,055 feet from the nearest residential structure and 3,500 feet from East Bend Road.

Chairman Rolfsen inquired about the status of the proposed tower on the Kinman Farm? Mr. Pike responded that it is a budgetary issue. These towers will be built in the next year. Ultimately, we prefer they are built in a short period of time. It takes time and money to prepare the applications. It is easier to move them on the budgetary list when they are permitted. The Kinman Farm tower and the proposed tower are planned to be built in 2011.

Mr. Bunger asked Mr. Shulkons to properly locate his client's property. Mr. Shulkons referred to the 2007 aerial photo and located the Garman property. Chairman Rolfsen asked if his client objected to the look of the proposed tower and the easement. Mr. Shulkons replied that when his client purchased their property they were not interested in commercial activities and traffic on the driveway. It is a quiet area. In addition, the easement is for residential and agricultural purposes.

Mr. Ford asked for the location of the gravel lane with regard to the Garman property. Mr. Shulkons indicated the location.

Mr. Pike stated that his client has an adequate full right of access. It is his belief that this private property issue is not an appropriate subject for inquiry for the Planning Commission. This isn't the adjudicated body for that question. Mr. Pike is here prepared to make a lengthy presentation about this issue if necessary. This isn't the province for this Planning Commission and this cell tower review. It is an issue that is discussed with counsel outside this deliberation and to settle the issue amicably or in court. He thought a discussion about the access right and legal access right is not within the Planning Commission purview.

Mr. Bunger asked what is appropriate regarding this issue and what could be brought to the Committee meeting? Mr. Wilson responded that Mr. Pike should bring his representatives to the Committee meeting in case the Committee wants to explore this issue. Mr. Wilson noted that the easement issue is a private dispute between the property owners. If our regulations require some demonstration of access, then the applicant has the burden to prove that he meets the requirement. The applicant has stated they have met the

requirement. If the Committee recommends approval, the Planning Commission may want to consider taking a position in the record of not addressing the private rights easement issue.

Mr. Shulkons reiterated there is no access as the applicant has submitted a document to the Garmans seeking permission to use the easement or granting an easement. The document references their property as grantors. If there is no access to the property, he thought this was important to explain to the Planning Commission.

Mr. Wilson explained that he had no problem if Mr. Shulkons presented this information. It is part of the official record.

Mr. Blank stated when the document was distributed to the neighbors to be signed, he had the understanding that it wasn't necessary as everyone had the legal right to use the access, but Verizon wanted to eliminate any possibilities of neighbors objecting. Using the aerial photograph, Mr. Bank noted that when the Garmans build their house, they would build the house down on the slope and they would view the tower uphill over the barn and over the electric transmission line and trees. He said that he spoke with Mr. Garman at first he said no problem but then he raised a concern about traffic on the driveway with 15 carriers. With the neighbors, there is at least 15 vehicles using the driveway each day. The parcel where the tower is located is a separate parcel he purchased from Ben Shavefield. The tower parcel has an easement or passway through his original property. Mr. Garman hasn't returned his calls and he doesn't maintain the driveway. The three of them contribute funds to purchase gravel. Visually, Mr. Blank thought that Mr. Garman couldn't see the tower. The Garmans don't want pick-up trucks to inspect the tower using the driveway.

Mr. Schwenke stated that in the agricultural areas, you don't put the most unsightly thing close to your neighbors. It is common courtesy regardless of the requirements. Also, would another carrier have the same restrictions with frequency levels like you have from Indiana?

Mr. Pike replied that every carrier is different. The frequency licenses vary from carrier to carrier. His client is obligated to co-locate based on existing contracts and zoning requirements. He stated that his client will explore moving the tower. He also offered to obtain a letter from the adjoining property owner expressing no objection to the placement of the tower.

Mr. Schwenke remarked that the proposed tower is high for a small service area. He stated that he would feel better about the proposal if another carrier would come in and use it without the Indiana limitations so the coverage area would be larger.

Mr. Eric Nelson, RF Manger for Verizon Wireless of Southern Ohio explained that the next generation services (4th generation) allows them to cross over to Indiana, but the existing voice service, which will be in place for awhile, needs to have the contiguous coverage between both sides. There are only 2 blocks of frequencies at this range and when they were purchased years ago, they were disjointed.

Mr. Pike emphasized that Verizon needs some time and eventually the propagation map will show a bigger coverage area. It is possible that the 4th generation wireless system will be deployed when these towers are constructed. It is a fast system. By the time it is built, the yellow area will be larger and it is exactly what you are looking for with this project. It will be much different. All the frequencies will be used in perpetuity and all of the proposed towers are necessary.

Mr. Schwenke asked if there are any other carriers that can use the same frequency to expand coverage on the proposed tower like the Kinman Farms site?

Mr. Eric Nelson, replied that the other carrier which owns the frequency on the Indiana side doesn't own it on the Kentucky side. They are in a similar position as Verizon Wireless.

There being no further comments, Chairman Rolfsen stated that the Committee Meeting for this item will be on June 2, 2010 at 6:00 P.M. in this room. This item will be on the Agenda for the Business Meeting on June 2, 2010 at 7:00 P.M. Chairman Rolfsen closed this Public Hearing at 8:21 P.M.

APPROVED:

Charlie Rolfsen
Chairman

Attest:

Kevin P. Costello, AICP
Executive Director