

**PIKEVILLE/PIKE COUNTY/ELKHORN CITY  
JOINT PLANNING COMMITTEE  
MEETING MINUTES  
OCTOBER 10, 2006**

**BILL BLACKBURN:**

We can have the public hearing and we don't need a quorum for that and go ahead and address the item one there on the agenda for the discussion concerning a cell tower application from New Cingular Wireless at 150 Weddington Branch Road. You've got the floor, sir.

**BOB GRANT:**

Thank you. For the record, I have 20 years of trial work. I don't walk up to a microphone without saying, 'for the record'. You know, when I was in court and start speaking and if I don't say 'for the record' first, I'm just like a fish without a water. Anyway, for the record, my name is Bob Grant and I'm an attorney with Pike Legal Group. Uh, David Pike, and we're here on behalf of Cingular Wireless.

**BILL BLACKBURN:**

Bob, before you continue, I forgot to swear everybody in. Do you have any part in the program tonight or possibly will have or be speaking just raise your right hand. Do you swear or affirm to tell the truth, the whole truth and nothing but the truth? If so, say I will.

**EVERYONE:**

I will.

**BILL BLACKBURN:**

Everyone with their hand raised and did affirm that. I'm sorry, Bob, go ahead.

**BILL GRANT:**

Well we're here on a site that Cingular called as part of their Pikeville Cite. This site has a very checkered history. Uh, David Pike was here in February of '05 and presented an application at that time for a 340 foot self-support tower that was located at 424 Weddington Branch Road on Ramsey Stone Coal Creek property. We ran into some problems there with some mineral rights that are held by William Vanhoose. He did not want us to construct the tower above his mineral rights. He was concerned about the safety of mining underneath it. So we've looked around on that property and other properties within the search area for another site so that we could correct some of the service issues that our customers have in this part of Pikeville. In the meantime, in October of '05, we put up a temporary facility at 150 Weddington Branch Road as a stop gap. Our only intention at that time was to fix some service issues while we continued to look for a permanent site. However, it's been a real challenge for us, uh, this

area, it's been a challenge because of mineral issues that we've faced in the area and it's been a challenge because of other construction issues. It's difficult to find a site, then again where we've got a willing land owner or where it's located in an area over our radio frequency where they feel that they can locate their antennas or to tie in with the rest of the network. It's difficult to find a site where we can get to, we can get access to. There's plenty of mountains around, as we all know, but it's not always easy to get up in one of those. To our engineers' surprise, this facility that we had intended to be temporary at the current location, did a lot of good. It corrected many of the service issues much better than we anticipated. In the meantime, we found it virtually impossible to find another site in the search area, so what we're asking you to do today is to basically convert this temporary facility, this 180 foot monopole that's already constructed, convert that to a permanent facility. The good news is, is that it's a 180 foot monopole as opposed to 340 foot self-support tower. The self-support structures are what you might think of when you think of the Eiffel Tower in terms of what it looks like. A monopole looks like a big light pole on steroids. So it's the type of structure that we would put in any urban setting in any downtown location or a city or small town.

It wouldn't make any difference to us. That's what would normally be installed in one of those types of locations. They, on the drawings that we have here it looks like that this site is primarily a commercial site, there's commercial uses there currently. So this would be a consistent land use with the existing commercial uses, since I think there's a motel there and some other docking areas and in behind it there's some woodland. It will be and has been constructed to comply with all state and local safety standards in terms of it's ability to withstand wind and those other factors as far as stress put on a structure. It's also designed to accommodate three other carriers in the future which of course reduces or eliminates unnecessary tower construction. If you have any questions I'll be glad to answer them.

**DAVID SANDERS:**

Are you gonna be doing any additional construction at all on this site, or are you just basically going to change the delineation of the site from temporary to permanent? Are you gonna leave the tower as is?

**BOB GRANT:**

We're gonna leave the tower as is. There will be no changes.

**DAVID SANDERS:**

So you'll not make any physical changes on

the ground at this point in time?

**BOB GRANT:**

Well it's fully constructed at this point.

**DAVID SANDERS:**

Okay. I guess I would have a question for you, Karen, because Rusty raised the issue of fees with regards, Mr. Pike being the great lawyer that he is, convinced us that a temporary tower did not need to have a fee associated with it since it was temporary. Now our city attorney said that that was not the case. The way he interpreted the statutes, the fees had to be paid. So since they were not paid and we're converting it from a temporary to a permanent, have they been paid?

**KAREN HARRIS:**

Yes.

**DAVID SANDERS:**

Okay. He paid them under this application then. So that would effectively correct whatever default we had?

**KAREN HARRIS:**

Yes.

**BOB GRANT:**

Most of the temporary facilities that we use are housed on drop tower and telescopes out search like they

use for the derby.

**DAVID SANDERS:**

I think that's where we got into the discussion that it ultimately ended up in how do you define temporary as opposed to what you just described and opposed to what was constructed. But I think that, to me, has been resolved to my satisfaction.

**BOB GRANT:**

Our leases are ordinarily going by what you, be considered to have permanent. We're committed to providing service to the community over a long-term period of time. A temporary facility does the same thing, the, we're just gonna be here for a period of a long time. Had we found another location that would have worked for us, this thing would be down long ago and we would be before you with an application for another location.

**BILL BLACKBURN:**

Any other questions or comments or discussion? We will not be able to take any action on this unless we get the quorum later in the meeting. But this would take care of the public hearing as far as that goes and then on the next meeting it would just be on the regular agenda for actions. So we thank you, sir.

**BOB GRANT:**

Okay. Well thank you. Do you know when the next meeting will be? You don't do them on a regular basis?

**BILL BLACKBURN:**

The second Tuesday.

**DAVID SANDERS:**

In December.

**KAREN HARRIS:**

The next scheduled meeting will be the 12th.

**BILL BLACKBURN:**

The 12<sup>th</sup>, I think. We may need to have a meeting before then.

**DAVID SANDERS:**

We've often times not met in December, but since we have so many...

**BILL BLACKBURN:**

We've got several items that are pressing. So we may have another meeting, which is a special meeting which we could notify him, notify you all for the actual action on the...

**BOB GRANT:**

I'm assuming that you have another member that can come in and have a quorum then?

**BILL BLACKBURN:**

We need two more. We actually need two more.

**DAVID SANDERS:**

Not looking good at this point in time.

**BILL BLACKBURN:**

Next, is to consider discussion concerning a request for a zoning change for property located at 571 Cedar Creek Road from C2 to R1T.

**ROBERT SMITH:**

That was not, he did not fulfill the action that he needed to do there. There has been no sign posted. So that, there's no news there. There's no action to take.

**BILL BLACKBURN:**

You pretty much notified him, Robert, he does need to go through that protocol?

**ROBERT SMITH:**

Yes.

**DAVID SANDERS:**

Is that the existing townhome from Cedar Creek?

**ROBERT SMITH:**

That is the existing townhome, yes, sir. We did have a question at one point and I will need to talk to Rusty about it on whether that action needs to be changed.

'Cause it is zoned C2 right now, which if you look at things, does accept townhouses. But I need to get that confirmed by Rusty.

**DAVID SANDERS:**

I thought the route that he was trying to take and he or someone on his behalf had already approached the Board of Zoning Adjustments and got a variance for zero lot lines.

**ROBERT SMITH:**

Yes, sir. That wasn't for zero lot lines, more for - At that point when the subdivision planning thing goes down by the Technical Advisory Committee they asked that it go ahead and be, he asked, they asked that he ask for a zoning change. Since that time I've been in a discussion with Rusty on whether that's really necessary or not.

**DAVID SANDERS:**

Again, I was thinking that was the direction he was going to begin with, was to try to just leave the zone alone, but correct it through the Board of Zoning Adjustments, which would allow him to get a reportable plat.

**ROBERT SMITH:**

Which was done. Yes, the Board of Zoning Adjustments did approve zero lot lines on that.

**DAVID SANDERS:**

Which I would have thought the only action he would have needed to present a certified plat to the Planning and Zoning, which we could approve with, under those variances and everything would be fine.

**ROBERT SMITH:**

That would be good.

**DAVID SANDERS:**

Yeah. I'm a little bit surprised about the zone change. I guess Rusty, the discussion I had with Rusty was, I thought indicated that. This is my vague memory from two months ago or three months ago, four months ago, I don't know.

**ROBERT SMITH:**

That was the intent and, yeah, just like I said when the committee reviewed the plans they said fine, but they suggested a zoning change so Mr. Fields decided to go ahead and do that also.

**DAVID SANDERS:**

What, I wasn't at the last planning and zoning meeting.

**BILL BLACKBURN:**

I missed the last one myself. You talking about the one before that meeting?

**DAVID SANDERS:**

Yeah. I was thinking that a plat was presented of which the minutes said that the zoning committee deferred comment.

**BILL BLACKBURN:**

It was discussed. He had to go through the other protocol.

**DAVID SANDERS:**

Before and then bring it back.

**BILL BLACKBURN:**

It wasn't addressed last meeting, was it?

**ROBERT SMITH:**

Not the meeting I was at, no, sir.

**DAVID SANDERS:**

Of course my thoughts are, is we should be dealing with post-haste to fix a deficient issue here and we don't appear to be doing that. I'm, I guess, a little disappointed that we're not trying to...

**ROBERT SMITH:**

So in your opinion, you could go ahead and approve the subdivision plan with the zero lot line approved about the work zoning adjustment?

**DAVID SANDERS:**

Based on what Rusty had said. That's why

that...

**ROBERT SMITH:**

I was not aware of that.

**DAVID SANDERS:**

That's why they started that direction to start with I thought, but now I can't speak for him.

**ROBERT SMITH:**

No, now Dave, you are correct. That was why they started that land, yet it seems to be in the middle of that. The TAC Committee suggested he change the zone.

**DAVID SANDERS:**

Well, initially, that's what I would have recommended first. You know, if you've got a zoning issue you need to get the correct zoning in there and everything else goes away. But I guess I was just, well something needs to happen on this obviously, 'cause we've got some recorded plats or deeds that are not proper.

**BILL BLACKBURN:**

Robert, what if you got with Rusty and just checked on the specifics of this, the legalities? I think when we addressed it before the concerns from the body, as I recall, was that it just hadn't been through the proper channels and as long it's been before the Technical Advisory Committee and they've approved it, you know, if Rusty agrees

with that, it's been approved by the fire department and all that, then, you know, we're just, we just sign off after all them, after they've signed off. So why don't you check with Rusty and see exactly what is needed there. Maybe we can have a special meeting, Karen, before, the next couple of weeks or something. But check with him and see and, the impression I get, David, you don't necessarily think the zoning has to be changed?

**DAVID SANDERS:**

No. It does not have to be changed.

**BILL BLACKBURN:**

But the Technical Advisory Board has to approve it so we got a little bit of disagreement there. Why don't you just check with Rusty and tell him this and check back with Johnny Green Charles or whoever and just say this is what Rusty has said and, you know, we've got the zero lot lines now and whatever's needed there to--

**ROBERT SMITH:**

At that point, you feel you can go ahead and approve the lot, or the plan?

**BILL BLACKBURN:**

I'm speaking individually, all the rest of the members would have to see it--

**DAVID SANDERS:**

That's what I've always understood, Robert. That under C2 you could use conditional use of townhomes. You could actually construct those and if it were done as a single plat without any individual conveyances where a homeowner actually owned the plat, there wouldn't have been any issues. But when the surveyor divided the lots and deeds were made individually then that was not correct based upon the zoning ordinances. Now, you can correct that either of two ways in my opinion, you know, I'm not a lawyer, I don't know this. But one is to get the waiver from the Board of Zoning Adjustments for zero lot line, which they did and then file your plat based upon the C2 zone with a zero lot line and you can do that. You can do the subdivision now with those zero lot lines. Then the other way would have been is to come in and ask for a zone change and after you get the zone change then you file your plat based upon the zone change, which gives you the zero lot line. So both ways gets you to the same place. The cleanest way would have been to do the zone change but he obviously didn't do that.

**BILL BLACKBURN:**

Did you say the C2 specifically excluded townhouses?

**ROBERT SMITH:**

No. No, no, no. As a matter of fact, apartments are accepted at a C2.

**BILL BLACKBURN:**

Okay. Well that's the way I'd always thought of it, it was that you could do residential and commercial, you couldn't do commercial and residential. That's basic, rough.

**ROBERT SMITH:**

Right. Yes. Apartments are specifically listed in a C2. Specifically listed.

**BILL BLACKBURN:**

That up there is C2.

**ROBERT SMITH:**

That's what I assumed was happening.

**DAVID SANDERS:**

Is that entire strip C2?

**ROBERT SMITH:**

Yes, sir.

**DAVID SANDERS:**

All the way to the upper end of the---

**ROBERT SMITH:**

Well, no to the sub-station.

**DAVID SANDERS:**

Okay. All the way to the sub-station?

**ROBERT SMITH:**

Yes.

**BILL BLACKBURN:**

So if everything else, the fire and all the other stuff passed, I guess what we're saying is that it would be our understanding that getting the variance to the zero lot lines would correct that and it really doesn't necessitate the zone. But check with Rusty on that.

**ROBERT SMITH:**

Yeah, and I'll even check with Mr. Charles on that, too.

**BILL BLACKBURN:**

Yeah. Yes. Make sure and do so.

**ROBERT SMITH:**

Because he's the only one I have a concern about at this point.

**BILL BLACKBURN:**

Let him understand why, 'well, he's just trying to do it by the book'.

**ROBERT SMITH:**

I won't say the TAC Committee.

**BILL BLACKBURN:**

Yeah, by the statute in the book. He's just concerned about doing it the right way and if he understands that with the variance that they gave, takes care of the lot line setbacks and all that.

**ROBERT SMITH:**

I'll address that with both of those guys and Mr. Campwell and Mr. Reed, too, or I'll...

**BILL BLACKBURN:**

Anything else for the public hearing? Andrew Dinsmore is here, but he's on the official meeting, so I guess it's not kosher to take up that public hearing until the next meeting. You were here to discuss what this evening? In the yellow shirt.

**THOMAS NAIR:**

Poor Farm Hollow is what Larry and I are here to discuss. I'm not sure if that's part of the public.

**DAVID SANDERS:**

It's not a part of the public hearing. The public hearing was, could have been had we addressed the zone change at 571. But since it wasn't properly posted then I don't think we can do that.

**BILL BLACKBURN:**

So, I guess that's it for the public hearing,

isn't it?

**KAREN HARRIS:**

When would you like to try to reschedule the meeting?

**BILL BLACKBURN:**

Today is the 10<sup>th</sup>. Let's see, Tuesday the 24<sup>th</sup>. Any gleaning conflicts come up with that date? That's the Tuesday of Halloween week, trick-or-treat is the 26<sup>th</sup>. So nobody should get their windows soaped if they come. Let's try to have a special meeting the 24<sup>th</sup> then and notify everyone and encourage everyone to come. Let me write a reminder, maybe call them for three or four days ahead, just try to -- we apologize to you all for the inconvenience of this.

**ANDREW DINSMORE:**

So is that the end of this? Are you through?

**DAVID SANDERS:**

No. We haven't had our, well we can't have a regular...

**BILL BLACKBURN:**

We can't have a regular meeting tonight because we lack a quorum. By state statute, by law we have to have five independents and apparently some of our members could not make it this evening so we have to, cannot take

any action. Can't have a meeting so we're gonna schedule it for 5:00 Tuesday, two weeks from today and we'll try to do our best to make sure we have a quorum.

**ANDREW DINSMORE:**

Have you all signed out plat before?

**BILL BLACKBURN:**

Any questions of you, we'll be glad to answer and Karen can help him with this and David. What question specifically did you have?

**ANDREW DINSMORE:**

I just wanted to know if you, we had all the signatures together on one map that we made and---

**BILL BLACKBURN:**

You really need to do that before we sign off or approve it. You need to have the fire---

**ANDREW DINSMORE:**

We got all that now. I think we've done this a few years ago and I don't know if you all signed anything like this before. Before I come on a bunch of things were filed with the County Clerk.

**DAVID SANDERS:**

I don't believe the P&Z has approved anything except the preliminary map and as such you would not have required any other approvals. But where your area is

located in the county you should only need the Health Department and the Fire Department. I think is the only other two you need.

**ANDREW DINSMORE:**

So, we don't need you guys to sign it?

**BILL BLACKBURN:**

We just sign off after the others have signed. We're the last ones to sign.

**DAVID SANDERS:**

You'll need to get those two and you'll need to bring it to this committee for final approval.

**BILL BLACKBURN:**

Any other business for the -- are there any other in the public hearing?

CONCLUDED