

MEMORANDUM

TO: Michael G. Herring, City Administrator

FROM: Teresa Price, Director of Planning 

DATE: September 15, 1998

SUBJECT: Planning and Zoning Committee Public Hearing and Meeting Summary from September 10, 1998

A public hearing was held by the Planning and Zoning Committee of the Chesterfield City Council at 6:00 p.m., on Thursday, September 10, 1998, in the City Council Chambers. In attendance were: Chair Dan Hurt (Ward III); Councilmember Barry Flachsbart (Ward I – arrived later); Councilmember Barry Streeter (Ward II); and Councilmember Mary Brown (Ward IV). Also in attendance were: Councilmember Mike Casey (Ward III); Planning Commission Chair Bob Grant; City Attorney Doug Beach, Teresa Price, Director of Planning; Laura Griggs-McElhanon, Assistant Director of Planning; and, Annissa McCaskill, Planner I.

- I. **P.Z. 18-98 AT&T Wireless PCS, Inc. c/o Quinn, Ground and Banton, L.L.P.**; a request for a Conditional Use Permit (CUP) in the “LLR” Large Lot Residential District for an 18.4 acre tract of land located on Wildhorse Creek Road. Proposed Use: Operation of a church and placement of a wireless telephone transmitting and receiving facility.

[Note: The City Council exercised their “Power of Review” at the meeting of August 17, 1998, which requires a public hearing.]

Chair Hurt read the opening comments, which described the procedures for the public hearing. He then recognized Attorney Paul Ground, speaking on behalf of the petitioner.

Paul Ground, attorney for AT&T PCS, introduced the AT&T representatives in attendance (Mr. Beck, Mr. Stockell, and Mr. Thomas). Mr. Ground gave an overview of the telecommunications law, which was enacted in 1996. He stated that AT&T currently has ten (10) cellular facilities in Chesterfield, with an additional facility currently being reviewed by the Department of Planning. The only facility that requires a CUP is the St. Thomas site. He stated that Sprint had a CUP approved on the St. Thomas site a year ago, and currently has erected the fifty-two (52) foot wooden pole authorized by the CUP. The current request for an eighty (80) foot tall tower would allow co-location. The petitioner wants to camouflage the tower as much as possible, but because of its location (in the FAA regulated area) they are required to stripe and light the tower. Mr. Ground presented the following exhibits to the Committee:

1. An 11x17 map showing the current coverage of signal from the existing facility at Baxter Gardens retail nursery and from a proposed site located in the City of Wildwood.

2. An 11x17 map showing the nearest public land at Chesterfield Elementary, which would not give them the coverage they need in the area.
3. An 11x17 map which adds the coverage from the proposed St. Thomas Church facility to the map described in #1 above.
4. An 11x17 map depicting the FAA controlled area.
5. A diagram of the proposed tower design, depicting AT&T and Sprint on the inside of the pole.

Mr. Ground stated that there are problems with trying to house the facilities in the St. Thomas Church steeple, including: the current steeple would not meet his clients requirements; structurally the proposal wouldn't work; would be architecturally disproportionate to the church; and would have to be striped and lighted. He stated that the needs of the three (3) proposed users are: Sprint, 52 feet (which they are already approved for -- they don't need anything else from the City); AT&T, 63 feet; and Nextell, 80 feet. Mr. Ground stated that no additional trees would be removed to install the proposed facility. He advised the Committee that a surveyor had been out on the site to check views of the tower site from the adjacent properties. Mr. Ground submitted the following exhibits:

6. Depiction of the view from property to the west (the Downey property), which indicates that the tower would not be visible.
7. Depiction of the view from property to the east (the Human property), which indicates that the tower would not be visible.
8. Map depicting where towers are required to be striped and lighted.

There was general discussion between the Committee and Mr. Ground on: coverage areas; existing towers; and FAA jurisdiction.

Mr. Ground stated that AT&T has built several facilities in Wildwood and has three(3) proposals pending with the City of Wildwood. He noted that AT&T has had three or four facilities approved in Wildwood since its incorporation.

Rev. David Boogerd, pastor of St. Thomas Church, described the area.

Mr. Ground stated that the petitioner is requesting co-location instead of building more towers because the City's Cellular Tower Ordinance supports co-location, which will result in taller towers, but less in number. He stated that there is a problem with balancing coverage with a facility in St. Charles County because of dispersion over the Valley from the bluff.

Councilmember Streeter stated that the current tower is below the tree line and is well camouflaged. He stated that he would prefer several shorter towers that looked like trees.

In response to numerous questions from the Committee, Mr. Ground provided the following information:

- Q. Could the tower be limited to 64 feet in height?
A. There needs to be a 20 foot separation between users.
- Q. If not co-sharing, how tall would the AT&T tower have to be.
A. If in this exact spot, 63 feet. They need a 20 foot horizontal separation from other towers.
- Q. Could the location be moved so that it is located out of the FAA restricted area.
A. To get out of the FAA coverage, the tower has to be moved to the south and the providers wouldn't be able to get the coverage needed.
- Q. What is the maximum height to not be striped and lighted?
A. Ten (10) feet.

City Attorney Beach stated that the Cellular Tower Ordinance was drafted with the idea that fewer towers would be better. He stated that these three (3) providers would be located in this vicinity, so the City has to decide if we want one tower or several towers? He advised the Committee that the Federal Communications Act gives the City some authority, but we did not foresee the lighting and striping problem. He stated that the problem during the Sprint process was that we never got FAA comments, so we gave them provisional approval, then found out the pole needed to be striped and lighted.

Speakers In Favor

1. Rev. Boogerd, pastor of St. Thomas Church, 17842 Wild Horse Creek Road, Chesterfield, MO. He stated that he is here to answer questions. He noted that the church had voted twice on this proposal. The first time was to approve the 52 foot tall tower and the second time was to approve the 80 foot tall tower. He advised the Committee that the cemetery is an old family cemetery and is not owned by the church. However, the church cleans up the cemetery a couple of times a year. The current Sprint facility is not finished, re: landscaping. There are trees to be planted. He noted that one church member would have preferred the tower not to be located on the church property.

Speakers in Opposition

1. Ann Legner, Wilderness at Wildhorse trustee, 17819 Keystone Bluff Court, Wildwood, MO. She stated that the current tower could be overlooked, because it is currently at tree level. She noted that the tower could be seen from her subdivision. She would prefer several shorter towers.
2. Mike Bien, Greystone subdivision, 1016 Greystone Manor Parkway, Chesterfield, MO. He stated that the current tower is visible from his house. He requested the following information: 1. Is the proposed tower going to be a transmitting receiver? 2. What effects would the proposed tower have on TV reception? 3. What is the exposure limit to people?

4. What type of propagation will be used? Cone? 5. Why can't the tower be put somewhere else? 6. Why isn't Nextell here?

City Attorney Beach responded that the City has very few controls over cell towers. The City can't use as the basis for denial the emission of radio waves, which is controlled by the Federal Government.

(Councilmember Flachsbart arrived at this time.)

3. Arthur Fishel, Wilson Farm Estates, 2124 Hickory Drive, Chesterfield, MO. Mr. Fishel inquired if this tower is approved at 80 feet, does that mean we will have to allow 80 feet at other locations?

City Attorney Beach replied that cell towers are dealt with on a site specific basis and are not precedent setting. He stated that the current ordinance says that the providers should try and co-locate.

Councilmember Brown stated that the ability to camouflage the tower has been taken away because of the proximity to the airport.

4. Robert McKendry, 344 Steeple Lane, Wildwood, MO. He stated that the present tower at 52 feet is visible from the Downey's backyard (approximately the top 15 feet is visible). When the leaves are off the trees, he will be able to see it from his house. He inquired if a Special Use Permit is a variance from the Ordinance. He stated that he would prefer more towers that are shorter. He noted that he would object to towers he can see. Mr. McKendry stated that the current tower doesn't look from Wild Horse Creek Road.

City Attorney Beach clarified that the request is for a CUP in a residential district. He noted that certain uses are "conditional" in the Zoning Ordinance.

5. Greg Downey, 310 Steeple Lane, Wildwood, MO. He stated that the petition being considered violates provisions of the Cellular Tower Ordinance, including being located in a residential area and being located on a hill. He noted that he could see the existing tower from his house. He stated that he has a cellular phone and the only dead spot is at the bottom of Monarch Hill (Hwy. 109 south of Wild Horse Creek Road) and this tower won't take care of that.
6. Jeanne Downey, 310 Steeple Lane, Wildwood, MO. She stated that the existing tower is visible from her home. She noted that there are 9 general policies for site selection included in the Cellular Tower Ordinance and #7 is co-location – the City is ignoring the first 6 policies.

Neutral Speakers

1. Wendy Geckler, 26 Chesterfield Lakes, Chesterfield, MO. She noted that during adoption of the Cellular Tower Ordinance, slides of camouflaged facilities were provided, including church steeples in New England and imitation trees. She stated that what is proposed doesn't follow that. She asked the following questions:
 - 1) Can the City exempt the area around the airport and not permit towers in that area?
 - 2) Page 16 of the ordinance, addresses placement on ridge lines. Why did the City write this if the towers would need to be located on the ridge?
 - 3) Wouldn't co-location cause more visible impact?
 - 4) Can the FCC and the FAA override Chesterfield's Ordinance?
 - 5) Will the tower be in place before Tara at Wildhorse (proposed subdivision on the north side of Wild Horse Creek Road) is sold? Or at least, can the City require the developer to tell perspective buyers about the tower?
 - 6) Instead of chainlink, can the City require a stone enclosure at base and can the Architectural Review Board be involved with approval of the stone enclosure?

(Chair Hurt turned the meeting over to Councilmember Brown. Chair Hurt left the meeting at this time.)

In response to numerous questions, City Attorney Beach provided the following information:

- Q. What does the FCC do if the City denies all towers within the FAA controlled area?
A. If the City says no towers, any of the providers can take us to court. However, we would go directly to Federal Court. The City would have to establish that the providers have alternatives.
- Q. If the City denies the providers the ability to provide service, will we go to court?
A. Yes, but we can request that the provider submit alternatives to the City.
- Q. How many providers do we have to do this for?
A. There is 6 providers for this type of tower, plus there is another layer of service with 2 providers.
- Q. Is it cheaper for the providers to co-locate?
A. Not necessarily.

Councilmember Streeter recommended that the providers look at other technology and inquired if antennas can be located on the top of telephone poles?

Councilmember Flachsbart inquired what size towers the providers needed.

Rebuttal

Mr. Ground stated that Sprint needs a 52 foot tower, which is in place. In abstract, AT&T needs a 63 foot tower, with a minimum of 20 foot separation. If both of these providers were located on one tower, the tower would need to be 73 to 75 feet. If Nextell were added to the tower, it would need to be 80 feet. If Nextell were located on their own tower, they would need 80 feet. Height needed is a factor of ground elevation. There are five providers: SW Bell and Ameritech have a different system than AT&T, Sprint and Nextell.

In response to questions, Mike Thomas, AT&T, provided the following information:

Q. Can more towers be located outside the FAA area so the towers can be camouflaged?

A. Wouldn't be able to cover the area inside the zone.

Q. Can your service be provided by whips on telephone poles?

A. Current technology can't use whip antennas.

(Chair Hurt returned to the hearing at this time. Acting Chair Brown turned over the meeting to Chair Hurt.)

It was noted that representatives from Sprint PCS (Noel Hansen) and Nextell (Glen Klocke) were in attendance at the meeting.

Noel Hansen, Sprint PCS, stated that their system operated on a similar frequency as AT&T, which requires more towers and more height than 800 MHz systems. He noted that Sprint currently has a 52 foot tower at this location, although they could have used more height, which would have given them a bigger footprint. He stated that the landscaping hasn't been done because of the possibility of co-location.

Glen Klocke, Nextell, stated that their system would require a minimum of 80 foot in this area.

There was general discussion of the City of Seattle system, which is provided on top of telephone poles.

Noel Hansen stated that the COMA network requires fiber optics and there are not enough in place in the St. Louis Metro area.

Planning Director Price noted that Nextell is not part of the application. She stated that the Planning Commission recommendation is for an 80 foot tower with 3 co-users.

Councilmember Brown inquired if another petition is needed for Nextell.

City Attorney Beach replied that a separate petition would not be necessary to accommodate Nextell because the current recommendation from the Planning Commission is for 3 co-users with a maximum height of 80 feet. He read from the Zoning Ordinance, Section 1003.181 Conditional Use Permit Procedures, which states:

City Council decision. Following the hearing by the City Council or its Committee on Planning and Zoning on an application, the City Council may affirm, reverse or modify, in whole or in part, any determination of the Planning Commission. An affirmative vote of two-thirds (2/3) of the members of the whole City Council shall be required to approve a protested Conditional Use Permit or to overrule the disapproval of the Planning Commission. In all other instances, a majority vote of the whole City Council shall be required to approve, deny or modify the determination of the Planning Commission.

Public hearing was adjourned at 8:12 p.m.

A meeting of the Planning and Zoning Committee of the Chesterfield City Council was held at 8:20 p.m., on Thursday, September 10, 1998, in the City Council Conference Room. In attendance were: Chair Dan Hurt (Ward III); Councilmember Barry Flachsbart (Ward I); Councilmember Barry Streeter (Ward II); and Councilmember Mary Brown (Ward IV). Also in attendance were: Teresa Price, Director of Planning; and, Laura Griggs-McElhanon, Assistant Director of Planning.

* To Be Discussed at 9/23 City Council Meeting

- *I. P.Z. 18-98 AT&T Wireless PCS, Inc. c/o Quinn, Ground and Banton, L.L.P.**; a request for a Conditional Use Permit (CUP) in the "LLR" Large Lot Residential District for an 18.4 acre tract of land located on Wildhorse Creek Road. Proposed Use: Operation of a church and placement of a wireless telephone transmitting and receiving facility.

[Note: The City Council exercised their "Power of Review" at the meeting of August 17, 1998. A public hearing regarding P.Z. 18-98 was held earlier this evening.]

Councilmember Streeter noted that there is an existing tower on the site that he would prefer to get rid of.

Paul Ground, attorney for the petitioner, stated that he hasn't seen the landscape plan, but he sees no problem with replacing trees. He noted that AT&T has no additional towers in the foreseeable future, except one currently under review by the Department.

A motion **to approve** P.Z. 18-98 as recommended by the Planning Commission was made by Councilmember Brown and seconded by Chair Hurt.

Councilmember Flachsbart stated that if this petition wasn't approved the City would have another 60 foot tower someplace. He stated that 3 shorter towers are worse than 1 taller one.

A motion was made by Councilmember Brown, seconded by Councilmember Flachsbart, to amend Attachment A as follows (deletions are indicated by ~~strike through~~ and additions are **bold and underlined**):

Attachment A, page 3:

7. ~~The tower and cabinets will be enclosed by a black or dark green coated security fence.~~

f. Miscellaneous

Elevations of the accessory building or cabinets **and fencing material (including walls)** shall be approved by the Planning Commission. **Special attention shall be given to natural fencing material which shall be compatible with the cemetery.**

The motion to amend Attachment A as noted above was **approved** by a vote of 4 to 0.

The motion to approve 18-98, as amended, was **approved** by a vote of 4 to 0.

Note: One resolution relative to this matter will be needed for the September 23, 1998, City Council Meeting.

II. Approval of Planning and Zoning Committee meeting summary of August 20, 1998.

A motion to approve the meeting summary of August 20, 1998, was made by Councilmember Brown, seconded by Councilmember Streeter, and approved by a vote of 4 to 0.

V. Stonehill Tree Study – Councilmember Brown

Planning Director Teresa Price handed out a copy of the tree study for Stonehill including the Department comments, the consultant's comments and the revised tree study.

Councilmember Brown stated that she had asked Planning Director Teresa Price to put this on the agenda because of the number of calls and complaints she has been getting. She stated that she had talked to the tree consultant about this project.

Planning Director Teresa Price noted that Stonehill was in the review process when the Tree Ordinance was adopted. She stated that the Tree Ordinance can require the project to be redesigned, but the Department hasn't been doing this for projects already in the review process prior to the adoption of the Ordinance. She noted that now the Department is mentioning the Tree Ordinance requirements to petitioners and developers during the rezoning and Site Development Plan process.

***IV. P.Z. 23-98 Charitable Leasing Corporation, Inc.**; a request for a change in zoning from "M-3" Planned Industrial District to a "PC" Planned Commercial District for a 5.59 acre tract of land located on Chesterfield Airport Road, 200 feet west of Cepi Drive, 450 feet east of Goddard Avenue. Proposed Use: Research and resource facility.

Planning Director Teresa Price described the project, which will be an educational facility for "home school" children. She stated that the project would include labs, libraries, and a gymnasium. The project will be built in 2 phases of 25,000 square feet each. The building will be one story, but will be 45 feet tall for the gymnasium. The Planning Commission modified the permitted uses to only allow an educational facility.

A motion **to approve** P.Z. 23-98 was made by Councilmember Flachsbart and seconded by Councilmember Brown.

Chair Hurt expressed concern with the future development in the Valley, re: "PC" projects encroaching in "PI" areas (west of Long Road).

There was a general discussion of the appropriate zoning for the proposed use.

The motion was **approved** by a vote of 4 to 0.

**Note: One bill relative to this matter will be needed for the September 23, 1998, City Council Meeting.
SEE BILL #**

III. Department Update – Director Teresa Price

This item was not discussed by the Committee.

The next regularly scheduled meeting will be held at 5:30 p.m. on Thursday, September 24, 1998.

The meeting adjourned at 8:45 p.m.

TP/LPGM/lpgm

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