

**MINUTES
OF THE MEETING OF THE
CITY OF BENBROOK
PLANNING & ZONING COMMISSION
THURSDAY, DECEMBER 14, 2006**

The regular monthly meeting of the Planning & Zoning Commission of the City of Benbrook was held on Thursday, December 14, 2006 at 7:30 p.m. in the Council Chambers at 911 Winscott Road with the following members present:

Joe Hughes
Alfredo Valverde
Dian Price
John Dawson
Sanjiv Shah
Larry Marshall

Also Present:
Dave Gattis, Assistant City Manager
Ed Gallagher, City Planner
Sue Clark, Recording Secretary
Ron Sauma, Councilmember
Larry Stowe, Councilmember
Keith Bailey, Councilmember
Dave Kirk
Paul Taylor
Ted Avila
Pat Duncan
and approximately 7 others

I. CALL TO ORDER

Vice Chairman Marshall called the meeting to order at 7:30 p.m.

II. CONSIDERATION OF MINUTES

Regular Meeting – November 9, 2006

Motion by Mr. Valverde to approve the minutes of the November 9, 2006 regular meeting of the Planning and Zoning Commission as presented. Second by Mr. Shah. The Chair called the question.

Vote on the Motion:

Ayes: Mr. Hughes, Mr. Valverde, Ms. Price, Mr. Dawson, Mr. Shah, and Dr. Marshall

Noes: None

Motion carried 6 – 0

III. REPORTS OF CITY STAFF

A. ZONING

Z – 06 – 07 Consider Conditional Use Application for proposed cellular telephone communication site with an eighty-foot (80') high monopole and antenna as provided for in Section 6-B-b-7 and 8, and Section 22 of Ordinance Number 808, as amended, in Timber Creek Park (adjacent to existing tennis court area)

Vice Chairman Marshall introduced the item and asked for a presentation from the applicant.

Dave Kirk of REZoning, Inc. consultants represented T-Mobile USA and said they are requesting the Conditional Use is to provide coverage for an area that does not have adequate coverage at this time. Mr. Kirk said the industry, including T-Mobile, have challenges when providing coverage for residential areas. The trend is shifting in that direction since people no longer use their phones only when driving to work or to the store. He said people now use and demand the services inside their homes and are doing away with landlines.

Mr. Kirk said the location proposed in Timber Creek Park for the tower was not arbitrarily chosen. T-Mobile is not in the business of putting up towers, they are just trying to provide coverage to their customers. The engineers who create the search rings use data such as customer complaints and dropped calls.

Mr. Kirk said, between 2002 and 2004, there were almost 30-million new wireless subscribers. In 2005 alone, that number doubled and now there are over 200-million wireless users in this country and the trend is growing. He said unfortunately, the towers and infrastructure are required to use cell phones in residential areas and T-Mobile and other carriers are trying to come up with solutions to minimize the impact. The tower height is needed to get the signal out over existing tree lines and structures that could block the signal. He said the tower height needed in residential areas is 80 to 100 feet and is hard to compromise. The 80-foot pole they are proposing is a stealth pole with all of the antennas and lines contained within the pole to try to minimize the impact on the residential area.

Mr. Kirk said a benefit to having a cell tower in the neighborhood is 911 calls made from a cell phone are directly routed to the closest police dispatch. Without the appropriate infrastructure, the same cell call could be routed to McKinney. Everyday, more than 200,000, 911 calls are made and as of 2005, the majority of those calls are made on wireless phones. He said during the summer of 2006, T-Mobile handled roughly 50,000 emergency calls everyday and having the infrastructure in place to handle those calls is very critical to a community and certainly for residential areas.

Mr. Kirk said there is always a question of how much or what kind of exposure a homeowner will have with a tower in the neighborhood. He said the FCC has established an exposure standard or what they deem is an acceptable level for radio frequency emissions. An FM radio, television, cordless phone, microwave oven, and baby monitor are all things in a home that have a higher radio frequency emission than a wireless tower.

Mr. Kirk said he has reviewed the Staff report and has no objections to any of the Staff recommendations, including a brick-screening wall and the color of the pole. He said the pole is required to be a multi-carrier pole so within a short period, one or two other carriers will be located on the pole.

The Chair asked for any comments or questions from the Commission. Mr. Valverde asked Mr. Kirk if additional carriers would also be located inside the pole. Mr. Kirk said the pole will be designed to handle three carriers inside the top 25 to 30 feet. He said the Commission and Council could condition the approval that any future carriers must be located within the pole.

Mr. Valverde asked, other than cost effectiveness and convenience, why the particular location in the park was chosen as opposed to the furthestmost point away from the park facilities complex. Mr. Kirk said he was not involved in the site selection but he assumes it has something to do with future park expansion as opposed to costs required to install underground utilities across the park to service a site further from the existing park facilities complex.

Mr. Valverde asked if Mr. Kirk's company would have an objection to locating the pole in a different location within the property boundary so it is not right in the middle of the existing park facilities complex. Mr. Kirk said it would depend on the alternate location and their engineers would have to make sure it is not contrary to the direction they are trying to provide coverage. Discussion continued on how and why that location was selected.

For the Staff report, Ed Gallagher said the applicant, T-Mobile USA, is requesting Conditional Use approval of a cellular telephone communication site with an 80-foot high antenna pole in Timber Creek Park. The site, located adjacent to the existing tennis courts, is 364 square feet in the 17.4-acre, "CF"-zoned, City-owned park and is proposed to be served by underground utilities and enclosed by a seven-foot tall chain link fence.

Mr. Gallagher said this is a two-part Conditional Use application for Commission consideration. The first consideration is the proposed use in the "CF" District site. The second consideration is the 80-foot height of the proposed pole, 45 feet higher than the "CF" District height regulation.

The Commission consideration is based on the application of Zoning Ordinance provisions to the proposed facility. With the site located in a City park, all final decisions, lease terms, and any other matters will be by the City Council. At the December 13, 2006 Park Board meeting, the Board expressed unanimous opposition to the proposal in its entirety.

Mr. Gallagher said the location presented in the T-Mobile application is for a site-specific location to serve the South Benbrook area and indicates that, except for the park site, all other suitable locations are single-family residential.

Staff reviewed the application against Review and Evaluation Criteria for Conditional Use consideration as specified in the Zoning Ordinance. The five criteria in the Ordinance focus primarily on bulk, scale, height, open space and setbacks, as well as signs, traffic generation, and parking. The proposed application successfully tracks the review criteria

with the notable exception of the 80-foot high pole.

The 80-foot pole does present an aesthetic incompatibility and should have an earth tone, dull finish to reduce the visual incompatibility. The electronic equipment presents a lesser aesthetic incompatibility and the proposed seven-foot chain link fence should be replaced by a brick wall with earth tone brick on all four sides to reduce the visual incompatibility.

Mr. Gallagher said the Commission needs to be mindful of the Federal Telecommunication Act of 1996, providing that cities can continue to regulate the placement and construction of cell towers, provided they do not unreasonably discriminate against providers or prevent the use of personal wireless services within the city. That is, cities must not prohibit cell towers completely, but may regulate their location and height if they adversely affect adjacent areas. Cities must act on applications within a reasonable time, must provide written evidence to support a denial, and must not use the effects of radio frequency transmission as a basis for denial.

There are several appeals court cases that support denial of cell tower permits in residential areas or in scenic areas. However, the City must balance the needs of its citizens for wireless service. In addition, every other property within the search area is used or zoned for residential use and would also require a conditional use permit.

Mr. Gallagher said it appears that the proposed conditional use can be accommodated with conditions imposed, without undue hazard to the health, safety, and welfare of the community, and Staff recommends that the Planning and Zoning Commission approve the Conditional Use Application, Z-06-07, for the cellular telephone communication site with an eighty-foot (80') high monopole and antenna in Timber Creek Park subject to:

1. The 80-foot high pole having an earth tone, dull finish; require a brick wall with earth tone brick in lieu of the chain link fence, and
2. favorable consideration by the City Council.

The Commission may want to consider additional conditions of approval, as it may deem appropriate.

The Chair asked for any comments or questions from the Commission. There being none, the Chair opened the public hearing at 7:50 p.m. and asked if anyone wished to speak for or against the item.

Paul Taylor, 1309 Mesquite Trail, said he has an awesome view out the back window of his house. Mr. Taylor said he is not opposed to the cell tower being in the park, he is opposed to the selected location in the park. He said if the location was moved away from the highest use area of the park, it would be much more beneficial to the citizens of Benbrook and the users of Timber Creek Park.

Ted Avila, 1429 Timberline Drive, said he lives in the house closest to the tennis courts in the park. He said they removed the wood fence from his property and installed a chain link fence to better enjoy the view of the park. Mr. Avila said he is well known to the Benbrook Police Department because he watches the park at night and lets them know when people are in the park area after dark or when people ride dirt bikes and four-wheelers in the park.

Mr. Avila said it is a beautiful park, enjoyed by many people, and he thinks it is a horrible location for a cell tower. If the location of the pole were moved to the east or west, it would still be taller than anything else in the area. He said he uses T-Mobile and has never had a problem using his cell phone inside his home.

Pat Duncan, 1628 South Timber Court, said she is the acting president of the Timber Creek Neighborhood Association. Ms. Duncan said the association is not an active group because they seldom have issues, but T-Mobile may be the impetus for them to reorganize and become more active.

Ms. Duncan said there are many people in Timber Creek that have no problems with their cell phones and there are alternatives to the pole. All of the other cell companies contract with the Benbrook Water Authority and have their antennas on BWA water towers. She thinks the Mercedes water tower would provide T-Mobile with coverage in Timber Creek. To her knowledge, there are no contracts between T-Mobile and BWA but she is sure BWA would be willing to entertain a lease arrangement.

Ms. Duncan said alternatives must be considered because Benbrook does not have a lot of park space and Timber Creek Park is one of the best-kept secrets in the City. She said they have talked to the City about a future track around the park for walking, jogging, and skate boarding. The Cycle Association is interested in coming into the park.

Ms. Duncan said the brick-screening fence is totally unacceptable to her from a safety standpoint because it presents an opportunity for someone to hide and surprise children. She said she would never go for a brick wall at the park and the tower would be seen from I-20. If the city is going to have a Town Center, that would be something the Commission will need consider.

One of her main concerns is what else is going to happen. Ms. Duncan said a woman from Westpark told her that she could not get her T-Mobile coverage so the Commission should be prepared to have the same discussions with other providers. She said she would not want Benbrook to become the Cedar Hill of Tarrant County with towers and the BWA has provided a way to keep that from happening.

Ms. Duncan said she understands the need but putting a tower in a residential neighborhood is unheard of and there are other spaces available. She said there is empty space below Trinity Estates that is like farmland. However, she said, if the applicant wanted to put the tower there, she would be saying the same thing, as this is not a Timber Creek issue, but is a Benbrook issue. She does not want the City polluted with towers and she does not care what color they are or how non-reflective, she finds them to be very distasteful.

Ms. Duncan said security is an issue. BWA requires all cellular maintenance personnel on their water towers to sign in at BWA's office and get a key. She said cell towers require maintenance and the City would have no control over who has access to the tower and what hours they work. Ms. Duncan said the Commission should also consider noise or humming sounds from the tower and the affect on surrounding homes.

Ms. Duncan said she has received several calls from people who felt the City would be gaining revenue from the towers at the expense of their property values. If the Commission decides to present this item to the City Council favorably, the Council will hear from these residents.

Ms. Duncan said the Commission and Council should consider the way parkland was acquired, whether through bond issues or dedications, as there may be language in the title or deed that proclaims, "For Recreational Use Only" or "For Public Purposes Only". She said a city in the Chicago area awarded a similar contract and is now having legal issues because the city discovered they did not have the legal right.

Ms. Duncan said there are probably ways to get around the 35-foot height limit in residential areas, but the limit is there for a purpose. It is there to be upheld and keep property values as high as possible. She said she would encourage each Commissioner to vote against the issue.

The Chair asked for any further comments or questions. There being none, the Chair closed the public hearing at 8:08 p.m. and asked if the Commission had any comments, questions, or a motion. Discussion followed between the Commission, Staff, and the applicant, on possible alternative locations within the Timber Creek Park area.

Motion by Mr. Valverde to continue the item and public hearing until the January 11, 2007 Commission meeting, to allow the applicant to present alternative locations in the northeast part of the park and to address the issue of why it is necessary to install the pole in the Timber Creek Park area versus some alternate pole or existing area. Second by Ms. Price. The Chair called the question.

Vote on the Motion:

Ayes: Mr. Valverde, Ms. Price, Mr. Dawson, Mr. Shah, Dr. Marshall, and Mr. Hughes

Noes: None

Motion carried 6 – 0

B. SUBDIVISION PLATS

None

C. PD SITE PLANS

None

D. GENERAL

None

IV. PRESENTATIONS BY PLANNING AND ZONING COMMISSION MEMBERS

None

V. CITIZENS PRESENTATIONS

None

VI. ADJOURNMENT

The Chair noted there were no additional matters of business on the regular Commission agenda and declared the Commission regular meeting adjourned at 8:20 p.m.

APPROVED: _____ 2007

_____, Chair