

**MINUTES
OF THE MEETING OF THE
CITY OF BENBROOK
PLANNING & ZONING COMMISSION
THURSDAY, JANUARY 11, 2007**

The regular monthly meeting of the Planning & Zoning Commission of the City of Benbrook was held on Thursday, January 11, 2007 at 7:30 p.m. in the Council Chambers at 911 Winscott Road with the following members present:

Joe Hughes
David Ramsey
Alfredo Valverde
Jay Morrill
Bret Early
John Dawson
Sanjiv Shah
Larry Marshall

Also Present:

Ed Gallagher, City Planner
Sue Clark, Recording Secretary
Dave Gattis, Deputy City Manager
Ron Sauma, Councilmember
Larry Stowe, Councilmember
Dave Kirk
Alec Broadus
Gloria Kershaw
Perry Hughes
Betsy Beard
Tony Merriweather
Paul Taylor
Ted Avila
Pat Duncan
Bud Mews
Cheryl Marsh
Jim Wilson
Kyle Carr
John Richie
and approximately 15 others

I. CALL TO ORDER

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

II. CONSIDERATION OF MINUTES

Regular Meeting – December 14, 2006

Motion by Mr. Valverde to approve the minutes of the December 14, 2006 regular meeting of the Planning and Zoning Commission as presented. Second by Dr. Marshall.

The Chair called the question.

Vote on the Motion:

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

Abstain: Mr. Ramsey, Mr. Morrill, and Mr. Early

Noes: None

Motion carried 5 – 3 – 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)
Continued from December 14, 2006 meeting

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 took the month between meetings to look at other locations, which are shown through photo simulations presented to the Commission. Also prepared for the Commission are propagation maps addressing each of the two locations in Timber Creek Park, the original location in the park, and one for the Mercedes Street water tower owned by the Benbrook Water Authority.

Mr. Kirk said the water tower was mentioned last month as to why that could not be an option for T-Mobile antennas. Due to the proximity of the existing site to the northwest, their engineers have said the water tower is not an option and they are not interested in that location.

Propagation maps for the two alternate locations show they are tucked away in the park, away from the tennis courts and playground area.

The Chair asked if the applicant had a preference of the three locations presented. Mr. Kirk said the original location or the one northwest of the original location provide the best coverage of the residential area they are trying to cover but any of the three should work.

The Chair asked for any comments or questions from the Commission. There being none, the Chair asked for a report from Staff.

Ed Gallagher said, at the December 14, 2006 meeting, T-Mobile presented the Z-06-07 Conditional Use Application to the Commission for a proposed cellular telephone

communication site with an 80-foot high antenna pole in Timber Creek Park, a 17-acre, "CF" zoned City owned park.

The two-part consideration first includes the use of the cell site in the "CF" District property and second is the 80-foot height of the proposed pole, 45 feet higher than the "CF" District height regulation.

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

The location presented in the 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.

Mr. Gallagher said, at the last meeting, T-Mobile presented a site adjacent to the tennis courts. The Commission continued the item to allow the applicant to consider an alternate site and provide information to support the need for a cell site location in the park, versus the water tower on Mercedes Street.

Since the December Commission meeting, T-Mobile submitted two alternate sites in the park and service coverage information for the initial site, the two alternate sites, and the water tower on Mercedes Street.

The Staff reviewed the alternate applications 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 alternate sites, as well as the initial site, successfully track the review criteria with the notable exception of the 80-foot high pole.

Mr. Gallagher said both of the alternate locations are outside the 100-year floodplain. The Option 2 alternate location is northwest of the original site and is in an area identified as "Active Area" on Figure 8.11 of the Comprehensive Plan, as is the initial site presented last month. The Option 3 alternate location is northeast of the initial site and is in an area of the park identified as "Passive Area" in the Comprehensive Plan. The "Passive Area" is for restoration and enhancement of the natural environment to create a wildlife habitat/nature study area and is considered less desirable of the two alternate locations.

The cellular service coverage information submitted appears to indicate that either of the alternate sites will provide similar service improvements to the initial site presented last month. The information also appears to indicate that any of the three park sites will provide greater service improvements than the water tower on Mercedes Street.

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.

Since 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, it is recommended 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 at one or more of the site options 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.

Dr. Marshall asked if the height of the tower is the minimum or maximum. Mr. Gallagher said the applicant's request was for 80 feet tall, and 35 feet is the maximum height for the park, but the extended height is part of the Conditional Use application.

Mr. Early said he was absent from the December Commission meeting and asked if a brick wall versus a chain link fence was a recommendation from the City Staff. Mr. Gallagher said yes, the brick wall was a Staff recommendation but at the December meeting, the applicant suggested a vinyl-clad chain link fence, which Staff has no objection.

Mr. Early asked if the 80-foot height of the tower could be lessened. Mr. Kirk said the engineers in the metro area request an 80 to 100-foot pole height. Any height less than 80 significantly drops the coverage area and you end up needing three sites to cover the same area.

Mr. Valverde said he understood from the last meeting, that the applicant was to furnish the Commission alternative sites, but also the coverage or lack of coverage from the other existing towers within the Benbrook area that may or may not accommodate T-Mobile's needs.

Mr. Kirk said, within the search rings for the area, there is no coverage from any of the other locations. He said the first thing they do when coverage is needed is to find existing sites and there are none that meet the search rings or height needs and that is why they are applying for the Conditional Use. Mr. Valverde asked if Mr. Kirk meant they were looking for existing T-Mobile's sites or other cellular sites in Benbrook. Mr. Kirk said T-Mobile's existing sites.

Alec Broadus, representing T-Mobile, said in reference to alternate sites, typically they have to look for any tower or structure near the search area for their design. The closest structure is the water tower on Mercedes Street. The tower is what they addressed in their propagation map, which shows the tower does not give them the adequate coverage that they need.

Mr. Broadus said he is the land acquisition person for T-Mobile that identified the park as the only possible location. When he came to Benbrook looking for a location, Mr. Broadus said he took the water tower information to their engineers and they said the location would not work.

The Chair asked for any further comments or questions from the Commission. There being none, the Chair opened the public hearing at 7:52 p.m. and asked if anyone wished to speak for or against the item.

Gloria Kershaw, 1245 Mesquite Trail, said she has lived there for 32 years and the Option 2 alternate location is not suitable to be built on because it is unstable. Ms. Kershaw, said when Interstate 20 was built, large truckloads of rock were dumped in the park area. Since then the ground has been sinking.

Ted Avila, 1429 Timberline Drive, said Option 1 is directly behind his house. Options 2 and 3 are behind other people's houses. Mr. Avila said he uses T-Mobile and has no trouble with his service. He made and passed out flyers in his neighborhood about the Planning and Zoning Commission meeting and the 80-foot pole. He said some of his neighbors did not know about the meetings and it would have been nice if pictures were posted on the internet to show how tall the pole would be.

Mr. Avila is also concerned with noise from the facility and that in the future it be discovered that there are adverse effects due to the radiation emitted from the poles. He said his son, as well as other children, are growing up playing in the park. Mr. Avila asked the Commission to consider how they would feel if an 80-foot pole was built in their backyard.

Perry Mews, 1509 Timberline Drive, said he paid extra for his house to have the open park area behind his house. He is also concerned with the proposed chain link fence and teenagers climbing on the fence.

Mr. Mews asked why the applicant could not use two towers instead of one 80-pole. He said one could be at the water tower for northern coverage and the other on the high embankment on the edge of the dam at Benbrook Lake, which should give better southern coverage.

Betsy Beard, 905 Timberline Court, said she is a special educator and no one knows what effects these cell towers have on children. She said there are better open areas other than a city park where children play.

Tony Merriweather, 1433 Timberline Drive, said the tennis courts and park are directly behind his home. He said the park has been cleaned and upgraded since he moved there 17 months ago. He said he is concerned with the microwave emissions from the tower and

the possibility of high wind downing the tower on his property.

Paul Taylor, 1309 Mesquite Trail, said Timber Creek Park is a crown jewel for Benbrook. He said he works for Lockheed Martin as an electrical engineer and deals with RF (radio frequency). Mr. Taylor said cell phones are a relatively new technology and he is concerned with RF and its affect on our future health.

Pat Duncan, 1628 South Timber Court, said she is the acting president of the Timber Creek Homeowner's Association and concurs with the previous speakers. Ms. Duncan said the use of the water tower on Mercedes Street would give the coverage needed.

Ms. Duncan said she hoped the Commission would join the Park Board in voting against the item because of the children playing in the park and the lack of security. She said, if lose of service occurs, the service people could be in the park at anytime of the day or night and know one knows who those people are. Ms. Duncan said if they utilize the water towers, they must go to the Benbrook Water Authority, sign in, get a key, bring the key back, and sign out, so that knowledge is constant as to who is at those sites.

Ms. Duncan said she does not understand why T-Mobile is not interested in the water tower location. It would certainly provide a great deal of coverage except for some small spaces. Also, the tower will have space for two other antennas and she does not know if other users will be renting from T-Mobile. She said the other two users would have equipment to house as well, so how many 26 by 14 buildings would be needed in the park and how much revenue will T-Mobile make at the expense of the neighbors and property owners around the park.

Ms. Duncan said she thought it would be a good idea for the water tower to be used, and does not see a good reason why that cannot be done. She said she could see many reasons why it should not be in the Timber Creek Park.

Ted Avila said he is concerned with a brick wall around the equipment building as recommended by Staff. He said teenagers would be able to climb the wall and hide.

Bud Pavel, 1513 Timberline Drive, said security is a great concern. It would be up to the residents to ascertain whether a truck at the tower is a T-Mobile employee or if the police should be called. Mr. Pavel said it would be a bad president to start letting cell towers be built in city parks.

Cheryl Marsh, 1321 Mesquite Trail, said she bought her house next to the park because she home schools and the park is their playground. Ms. Marsh said if the tower were allowed in the park, she would consider moving.

There being no further speakers, the Chair closed the public hearing at 8:22 p.m. and asked the Commission for any comments or questions.

Discussion followed between the Commission and the applicant.

Alfredo Valverde said the Commission is trying to make an intelligent decision but there is a lot of guesswork involved because of the lack information provided. Mr. Valverde said it is his belief that some coverage could be provided from the water tower but the applicant did

not provide the numbers needed for the Commission to make an intelligent decision.

Mr. Kirk said he is not aware of any figures he could provide as far as a cover percentage and is not sure if that is even quantified. He said the engineers would give them the search ring with the height range they are looking for and as you go out of that ring, it needs to go higher and higher because they are not at the ideal location for the coverage needed. The water tower is outside of that ring.

Joe Hughes asked if the applicant had considered other areas south of the subject site like the old soapbox derby park. Alec Broadus said he was not familiar with that area, but to provide the coverage needed, they had to stay in the general area of the search ring. Mr. Broadus said, too much further south from Timber Creek Park, there is nothing to be covered but the lake. He said the park is the only location that would work for them.

The Chair asked Dave Gattis, Deputy City Manager, to address criteria used for conditional use applications.

Mr. Gattis said conditional uses are a zoning action so the criteria used in zoning is the same criteria the Commission should consider for a conditional use permit. The Commission should ask if this is the proper use for this particular location, does it protect the health and welfare of the immediate adjacent property owners, and what affect does it have for the community at large. In addition, does it cause specific traffic or noise problems?

Mr. Gattis said on this particular issue, the applicant has requested a conditional use for a cell tower within a particular search ring. The only available sites within the search ring are in residential zoning or the public park. Somehow, T-Mobile will have to provide service to the area.

Mr. Gattis said, for the record, Pat Duncan has addressed the Commission twice, advocating water towers and has never mentioned that she serves on the Board of Directors of the Benbrook Water Authority, and has some sort of vested interest about whether the water tower is used. The Water Authority collects rent from the cell companies to use their towers for antennas, as opposed to someone else getting the rent.

Mr. Gattis said the Commission should decide if this is the appropriate use for the park. If the Commission approves the conditional use, the City Council will decide if they want to lease to T-Mobile for the use in a public park. He said the affects of radio frequency radiation is not a consideration the Commission should consider because Congress has ruled cities should not deal with those issues.

Mr. Valverde asked Mr. Gattis to describe the legal requirement of sending notices to individuals concerning Planning and Zoning Commission meetings.

Mr. Gattis said Staff is required to send written notice of a public hearing to property owners within 200 feet of the application site but typically goes beyond 200 feet. The property owner, as listed on the current tax roll, is mailed a letter and the notice is published in the official newspaper, the Benbrook News.

Mr. Ramsey asked Mr. Gattis how receptive he feels the Corps of Engineers would be to

leasing property to a cell communication company. Mr. Gattis said he is not aware of any cell tower on any Corps property. Mr. Gattis said, in reference to the discussion of the soapbox derby park, the park is a City of Fort Worth park, in the City of Benbrook, on Corps of Engineers owned land.

Larry Marshall said other alternative locations are available but may not have been considered. Dr. Marshall said the park along the Trinity River in Fort Worth and several cell towers that are being planned to be mounted on Trinity Valley School property are locations that should be considered.

Motion by Dr. Marshall to deny Z – 06 – 07, Conditional Use Application, based on the location being the second largest City parkland and the tower would place limited uses on the park, not enough information was provided by the applicant, and according to the City's Zoning Ordinance, the Commission should not allow the Conditional Use in order to protect existing neighborhoods. Second by Mr. Shah. The Chair called the question.

Vote on the Motion:

Ayes: Mr. Ramsey, Mr. Valverde, Mr. Morrill, Mr. Dawson, Mr. Shah, Dr. Marshall, and Mr. Hughes

Noes: Mr. Early

Motion carried 7 – 1

B. SUBDIVISION PLATS

None

C. PD SITE PLANS

None

D. GENERAL

G – 07 – 01 Consider Update of Section 8 – Community Facilities of the Comprehensive Plan

Chairman Early introduced the item and asked for a report from Staff.

Ed Gallagher said the update to Section 8 – Community Facilities of the Comprehensive Plan is presented by Staff as the applicant. The update regarding bike routes was actually generated Jim Wilson and Kyle Carr of the Lockheed Martin Bicycle Club.

Jim Wilson, 7205 Royal Oak Drive, Benbrook, Kyle Carr, 7500 Whitestone Ranch Road, Benbrook, each spoke on the benefits of the proposed bike route update to Section 8 of the Comprehensive Plan. The update would include an on-road bike route/lane plan and utilize the City's existing street network to facilitate recreation and transportation by bicycle.

The net effect of the route/lane system is improved safety for bicyclists. In addition, the plan encourages and facilitates alternate (and emission free) transportation. Roadways included in the bike route/lane plan include Winscott Road, Sproles Drive, Vista Way, Westpark Drive, RM 2871, Jerry Dunn Parkway, Rolling Hills Drive, Benbrook Boulevard, Timbercreek Drive, Timberline Drive, San Saba Avenue, Mercedes Street, I-20 Frontage Road, Benbrook

Parkway, Williams Road, Chapin Road, Team Ranch Road, Veterans Parkway, Cook Ranch Road and Bellaire Drive.

The Chair asked for any comments or questions from the Commission. There being none, the Chair opened the public hearing at 9:22 p.m. and asked if anyone wished to speak for or against the item.

John Richie, 1103 Sproles Drive, Benbrook, and Ted Avila, 1429 Timberline Drive, Benbrook, each spoke in support of the update.

The Chair closed the public hearing at 9:25 p.m. and asked for any comments, questions, or a motion from the Commission.

Motion by Mr. Valverde that the Commission recommend the City Council adopt the update of Section 8 – Community Facilities of the Comprehensive Plan. Second by Dr. Marshall. The Chair called the question.

Vote on the Motion:

Ayes: Mr. Valverde, Mr. Morrill, Mr. Early, Mr. Dawson, Mr. Shah, Dr. Marshall, Mr. Hughes, and Mr. Ramsey

Noes: None

Motion carried 8 – 0

G – 07 – 02 Consider Update of Section 17 – Capital Improvements of the Comprehensive Plan

The Chair introduced the item and asked for a presentation from Staff.

Ed Gallagher said the Capital Improvements Plan (CIP) is a forecast and scheduling of public physical improvements for the next five years and beyond. The City Charter requires that the Capital Improvements Plan be updated every year and it was last updated and approved by City Council in February 2006.

Mr. Gallagher said this year's plan includes the status of ongoing CIP projects and bonding capacity analysis. Also included are the updated evaluations of street conditions, revised street priorities, and updated project costs

The projects included in the CIP are the two remaining drainage projects, Plantation West Creek and Plantation East Creek, from the 2004 bond election. Mr. Gallagher said the Plantation West Creek project is expected to be bid toward the end of this month. Easements are being acquired for the Plantation East Creek project.

Mr. Gallagher said, because the City has gradually converted monies that previously went to debt service to general fund activities and to tax reductions, the proportion of total revenues that has been allocated to debt service has declined since 1995. Therefore, the staff has projected future bonding capacity using nine percent of total revenues, rather than 20 percent. The Commission will note that as we complete the current bond projects and pay

off previous indebtedness, the City will have no capacity to sell additional bonds over the next five years without exceeding the nine percent target.

Staff recommends that the Planning and Zoning Commission recommend that the City Council adopt the revised Section 17-Capital Improvements as part of the Comprehensive Plan.

The Chair asked for any comments or questions from the Commission.

Dr. Marshall asked Staff why the percentage dropped on the amount of funds dedicated to fund indebtedness.

Dave Gattis, Deputy City Manager, said that in the past, the City's debt service constituted about 20 percent of total revenues. As the City has paid off bonds, the debt service went down. Over the past 10 years or more, the general fund portion gradually ate up that amount of tax rate, or Council has lowered the tax rate. Mr. Gattis said that is why the City is down to only nine percent of revenues going to debt service and the rest going to the general fund.

Mr. Gattis said if the City wanted to sell additional bonds now, taxes would have to be raised. The ideal is, as previous bonds are paid off, there is a little bit of increment to sell bonds without having to raise taxes, but the City instead has decided to use that money for something else.

There being no further comments or questions from the Commission, the Chair opened the public hearing at 9:32 p.m. and asked if anyone wished to speak for or against the item. There being none, the Chair closed the public hearing at 9:33 p.m. and asked for any comments, questions, or a motion from the Commission.

Motion by Mr. Valverde that the Commission recommend the City Council adopt the update of Section 17 – Capital Improvements of the Comprehensive Plan. Second by Dr. Marshall. The Chair called the question.

Vote on the Motion:

Ayes: Mr. Morrill, Mr. Early, Mr. Dawson, Mr. Shah, Dr. Marshall, Mr. Hughes, Mr. Ramsey, and Mr. Valverde,

Noes: None

Motion carried 8 – 0

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 9:35 p.m.

APPROVED: _____ 2007
_____, Chair