

**PLANNING AND ZONING BOARD MINUTES  
THURSDAY, JANUARY 10, 2019 - 1:30 PM  
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

**PRESENT:** Chairman, Lawrence Lauffer; Members: Steven Lauer (arrived at 1:32 p.m.); Honey Minuse, Alternate Member #1, Richard Cahoy and Alternate Member #2, Ken Daige **Also Present:** Planning and Development Director, Jason Jeffries; Principal Planner, Gayle Lafferty; Interim City Attorney, Kira Honse and Deputy City Clerk, Sherri Philo

**Excused Absence:** Robin Pelensky

**Unexcused Absence:** John Carroll

**I. PRELIMINARY MATTERS**

**A. Agenda Additions and/or Deletions**

None

**II. PUBLIC COMMENT**

Mr. Tim Adams, of the Indian River Mosquito Control District, said they currently have trails to access the proposed property for the tower in order to control mosquito breeding. He wanted to be sure that they can maintain access to the property during construction in order to control the mosquito population.

Mr. Lauffer said that item is on today's agenda as a quasi-judicial hearing.

Ms. Kira Honse, Assistant City Attorney, explained that he is allowed to speak at this time, but would be better off speaking during the quasi-judicial portion of today's meeting.

\*Please note that a Power Point presentation for the items on today's agenda was distributed to the Board members prior to today's meeting being called to order (attached to the original minutes).

**III. PUBLIC HEARINGS**

**[Quasi-judicial]**

**A. Site Plan Application Submitted by Crown Castle USA for the Construction of a 195 Foot Monopole Wireless Communication Tower Located Between 17<sup>th</sup> Street and 18<sup>th</sup> Street West of Indian River Boulevard (#SP18-000007)**

The Chairman read Site Plan Application #SP18-000007 submitted by Crown Castle USA by title only.

The Chairman asked the Board members if they had any ex parte communication.

Ms. Honse noted that disclosure of both communication and site visits would need to be reported as ex parte.

Mr. Lauffer reported that he drives by this property regularly.

Mr. Cahoy and Mrs. Minuse reported that they pass by this property frequently.

The Deputy City Clerk swore in staff and all witnesses present for today's hearing en masse.

Ms. Gayle Lafferty, Principal Planner, briefly went over pages one (1) through eight (8) of the Power Point presentation with the Board members. Staff recommends approval of the site plan and conditional use subject to conditions listed in staff's report.

Mrs. Minuse said they are proposing three (3) wireless communication services. She asked is that the way it is now.

Ms. Lafferty said the Code requires at least three (3) and that is what they are going to provide. She thinks they currently have one (1), but there is space for two (2) more.

Mrs. Minuse said the map included in their backup material shows a proposed future carrier lease area on a future platform (backup information attached to the original minutes). She asked is that for one (1) tower. She asked does another tower have to be built for leasing purposes.

Mr. Jason Jeffries, Planning and Development Director, said that would be a question for the applicant.

Mr. Daige said that he heard the word "towers" and asked how many towers are they approving.

Mr. Jeffries answered one (1).

Mr. Daige asked can they put more on this site.

Ms. Lafferty did not think there is room for more than one (1) tower. She said the site will have one (1) tower with the ability to have three (3) providers.

Mr. Lauffer asked is there is a timeframe for the tower coming down and the other tower going up.

Ms. Honse said they could make a condition that once the new tower is built they have to remove the old tower.

Mrs. Minuse said that is something they should consider in moving this forward.

Mr. Lauffer asked is the picture provided in their backup information an accurate depiction of what the top apparatus of the tower is going to look like.

Ms. Lafferty said it is her understanding that is what they are reviewing and approving.

Mr. Lauffer said he is having a hard time getting a true perspective of what the top of the tower is going to look like and how prevalent it is going to be.

Ms. Lafferty said the new tower is proposed at 195 feet and current tower is 208 feet.

Mr. Daige asked what is the diameter of the bottom of the tower.

Ms. Lafferty said that is not a criteria that staff reviews. She said that would be a good question for the applicant.

Mr. Daige asked what is the distance from the base of the tower to any residential units.

Ms. Lafferty answered 179 feet to the property that is zoned for multi-family development.

Mr. Daige said that is not his question. He wanted to know how far it is from the base of the tower to a residential unit.

Ms. Lafferty nodded that she does not have that information.

Ms Katie Cole, of the Law Firm of Hill Ward Henderson, said that she is present today representing the applicant, Crown Castle USA. She said this is a request for a conditional use and site plan approval for a replacement tower. She reported that about two and a half to three (3) years ago the City informed Crown Castle USA that not only was their lease expiring, but the City had expedited the demolition of the Power Plant. She reported that the current tower services the entire barrier island and all of downtown Vero Beach. She said the tower is also the link to 911 for those service areas. In working with City staff, they identified a handful of City owned parcels for a tower, but unfortunately because of restrictions in the City Charter and zoning conditions, the municipal properties were not available. Crown Castle USA then looked for other properties that might be available within the same geographic area that could accommodate a tower. She said in working with the City, they identified this parcel of land, which is in the POI Zoning District. She said the Planning and Zoning Board heard a Code amendment to allow a conditional use for towers up to 200 feet in the POI Zoning District, which was adopted by the City Council. She said they hosted a neighborhood meeting in March and she received one (1) telephone call in advance of that meeting to answer some questions. She confirmed that the application and all exhibits are entered into the record and accepted as competent substantial evidence to support the application. She also confirmed that they concur with staff's analysis and the evidence presented in staff's report. She reported that this is a five (5) acre parcel of land that has split zoning of RM-10 and POI. The portion of the parcel that is being leased by Crown Castle USA consists of about .2 acres. The site is located in the center of the five (5) acre site. She reported that the base of the tower is approximately 165 feet from the western property line, which is the closes residential property line and 50 feet to the north is zoned RM-10. She reported that there are currently two (2) towers on the Power Plant, which is the T-Mobile Guide Tower and the Monopole that Crown Castle USA owns. They expect both T-Mobile and Sprint to co-locate on the proposed new tower so there will be two (2) towers being replaced with one (1) tower. She reported that the tower will be constructed to cover a total of four (4) carrier, but they are proposing three (3) carriers. The existing tower antenna is exactly the same as what would be put on the new tower. She reported that there will be a fence around the compound, as well as a landscape buffer. She explained that the only area that will be cleared would be the .2 acres of land together with the access road. The rest of the five (5) acre site will remain in its naturally vegetated state so there will be a significant amount of vegetation with the tower in the middle. She said there are platforms shown on the site plan, which two (2) are shown in solid and two (2) in dash lines. Each carrier requires their own equipment platform so this site plan shows the two (2) platforms for the two (2) carriers that have applied to be on the tower. But, in the event a third or fourth carrier is added there is room for two (2) more platforms. She said with regard to the height, the reason they are proposing a tower at a height of 190-feet is because that is how the carriers get their reach, so the tower at a height of 190 feet allows for almost duplicate coverage as they currently have with the tower at the Power Plant.

Mr. Lauffer asked does the top of the tower where the instrumentation is located lean out over the property.

Ms. Cole said it is contained within the .2 acres.

Mr. Lauffer questioned the fall zone of 46 feet.

Ms. Cole explained that the towers are engineered with breakpoint technology so if there were a tower failure the tower would break at the 46 foot mark.

The Chairman opened the public hearing at 2:09 p.m.

Mr. Phil Watts said that he lives on 18<sup>th</sup> Street, which is very close to this property. He said it was stated that the area would be clear cut around the pole.

Mr. Lauffer explained that the .2 acres that they will be putting the tower would be clear cut. The rest of the site would remain as it is.

Mr. Watts said the reason he asked this question is if it would be a fire hazard if there was a tower fire.

Mr. Jeffries said that would be reviewed as part of the building permit process.

Mr. Watts asked are there printed radiation patterns that he can look at.

Ms. Cole said there is not any printed radiation patterns. She explained that the Federal Statute prohibits local governments from considering any type of radiation patterns in its zoning decisions with respect to towers. She noted that it is within the FCC Guidelines.

Ms. Honse noted that these questions are addressing issues that are not part of the criteria that is in the County's Ordinance for land development. She asked the Board members to take that as part of their consideration towards competent substantial evidence.

Mr. Watts said another question he has is with regard to noise pollution. He asked if there will be a generator on site that would be operating either fully or partially that would create a problem for his quiet neighborhood.

Ms. Cole said the carriers have not proposed generators that they know of yet. She said they will see when they come in for their building permit, but any generators would be within the kilowatt allowance in the City's Code.

The Chairman closed the public hearing at 2:15 p.m., with no one else wishing to be heard.

Mrs. Minuse referred to the issue of the Mosquito Control District.

Ms. Cole said that they will work with them.

Mr. Tim Adams, of the Mosquito Control District, said they just need to maintain access to the site.

Mr. Lauffer suggested that the Board put that in their motion.

Ms. Honse asked Mr. Adams if he has the authority from the property owner to have the trails through the property.

Mr. Tim Adams answered no. He thought it was a grandfathered type of thing in that they have been treating the area for years.

Ms. Honse said that she would be concerned about putting that condition in because the property owner may not have authorized this.

Mr. Tim Adams thought they were covered under Chapter 388 of the State Statute, which allows them to have access to any place that is nuisance based and a potential danger to the public.

Mr. Lauffer said that agreement is really between the property owner and Mosquito Control.

Ms. Honse said that is correct.

Ms. Cole appreciated the Board's consideration. She said the competent substantial evidence has been submitted into the record and is in support of this application and goes through both the site plan criteria, as well as the conditional use criteria. She said there has not been any opposing evidence presented to the Board that it does not meet the criteria of the City's Code. She said they greatly appreciate the Board's consideration and approval of the project.

**Mrs. Minuse made a motion to accept staff's recommendation (that the Board recommends approval of the site plan and conditional use subject to the conditions listed in staff's report for Site Plan Application #SP18-000007 submitted by Crown Castle USA). Mr. Lauer seconded the motion and it passed 5-0 with Mr. Daige voting yes, Mr. Cahoy yes, Mr. Lauer yes, Mrs. Minuse yes, and Mr. Lauffer yes.**

**[Legislative]**

- B. An Ordinance of the City of Vero Beach, Florida, Relating to the Tree Replacement Fund; Amending Title VII, Land Development, Chapter 72, Landscaping and Tree Protection, Section 72.43(i)(1) of the Code of the City of Vero Beach; Providing for Codification; Providing for Conflict and Severability; and Providing for an Effective Date.**

**This item was tabled from the December 20, 2018, meeting.**

The Chairman read the proposed Ordinance by title only. He noted that this item was tabled from the December 20, 2018, Planning and Zoning Board meeting.

Mr. Jeffries reported that he included in their backup information for all of Section 72.43 of the Code (attached to the original minutes). He then briefly went over the Power Point presentation for this Ordinance. Staff recommendations approval of the revised text amendment as presented in the proposed Ordinance.

Mr. Lauffer asked if he is correct that removing invasive vegetation was always part of the Ordinance and staff is recommending that it be taken out.

Mr. Jeffries answered no. He explained that the Tree and Beautification Commission requested in their initial motion to remove that language and staff's recommendation is to leave it in. He explained that staff's justification for this is because of the Comprehensive Plan and staying consistent with the adopted policies in the Comprehensive Plan.

Mrs. Marilyn Black Dussault, Vice Chairman of the Tree and Beautification Commission, explained

that when someone wants to develop a property and there are trees they want to take down they can either replant the trees on the property or they can pay money (mitigate). The Tree and Beautification Commission is looking to have an alternative to that, which is if there is a tree that can be saved and rather than the developer paying into the Mitigation Fund, the developer could remove the tree and put it in a place where the Tree and Beautification can maintain and irrigate the tree and perhaps offer the tree to someone who could use it. She explained that the Tree and Beautification Commission is trying to not kill trees for money.

Ms. Honse said in order to do that they would have to make other revisions to the Code because they would have to be able to give the developer or property owner that option. If that is the Tree and Beautification's intent, that is not what was conveyed in the Ordinance as approved by the Tree and Beautification Commission.

Mrs. Dussault said that was their starting point. She said they had to make sure that the first step was to understand what it was that the Commission wanted to do. She said it seemed logical that this would be the first place since the Planning and Development Department deals with their Mitigation Fund.

Ms. Honse said she understands that, but rather than piecemeal changing the mitigation section they should probably consider if they do want to give this third option to developers of saving a tree and giving it to the City to plant temporarily until they can give it to someone else, that should be incorporated along with these changes. She said they should do all the changes at one time to this particular section.

Mr. Daige said that is not in this proposed Ordinance.

Ms. Honse said that is correct. She said that was not conveyed to the Planning and Development staff or to herself that was the intent of what the Tree and Beautification Commission was actually trying to do.

Mrs. Dussault felt if they went back and looked at the minutes of the Tree and Beautification Commission meetings where they discussed this at length they would see that was always the intent. She said they were advised that this was the best way to go.

Mr. Daige asked Mrs. Dussault if she read the Ordinance that is before the Board today.

Mrs. Dussault answered yes.

Mr. Daige asked if she wants to see it go through as it sits before them.

Mrs. Dussault said absolutely because it essentially embodies exactly what they are talking about.

Mr. Daige wanted to make sure that this is along the lines of what the Tree and Beautification Commission is looking for.

Mr. Lauer said one (1) of the questions the Board had at their last meeting was why the provision regarding removal of invasive plants was stricken from the Ordinance.

Mrs. Dussault said the removal of invasive plants as she understands was added in April of this past year with respect to the Tree Mitigation Fund. If it can't be removed then so be it. It is just that it is very expensive to remove invasive plants, especially Pepper Trees and it is her concern that the

amount in the Fund would be used up completely by any large scale removal.

Mr. Lauer asked Mrs. Dussault if she knows why that provision was added.

Mrs. Dussault answered no.

Mr. Jeffries noted that the last amendment to this Section of the Land Development Code was in 2013. He thinks that Mrs. Dussault is referring to the change to the Comprehensive Plan that was done in April. He said that he would have to do more research on this.

Mrs. Dussault said the reasoning behind this was that in researching the cost associated with removing invasive plants, the Commission's concern was that the Fund would be gone and they would not be able to maintain what they need to maintain in order for the City to remain a Tree City USA, which the City has been for 37 years.

The Chairman opened and closed the public hearing at 2:41 p.m., with no one else wishing to be heard.

Ms. Honse said if there is intent to do additional changes to this particular Section and the Tree and Beautification Commission would like to have a third option for developers then she would recommend that the Board table this in order to allow staff to bring back language that incorporates that option.

Mrs. Minuse questioned don't they already have something to that effect in the Code. She referred to Section 72.43, (1) (3), which states in part, "*Any costs associated with the relocation shall be entirely borne by the applicant...*"

Ms. Honse thought in this case they were trying to allow some of the cost to go to the City, but otherwise yes it does.

Mrs. Dussault said that is not true. She said the Fund is City money so what the Tree and Beautification Commission is trying to do is to say to the developer rather than pay money into the Fund that they move the tree to another place. She said there is no City money involved.

Mr. Jeffries questioned at the developer's cost.

Mrs. Dussault answered yes. She said as she understands it there is a relocation provision already in the Code that allows a developer to make that choice. All the Tree and Beautification Commission is saying is that they want to be able to have the tree placed somewhere else so they can irrigate it before they offer it to someone else. They want to keep the tree alive. She said they are not talking about a Live Oak Tree that is 100 years old. They are talking about specimen trees that people discard because they are smaller. She said the Commission could have a program offering those trees to someone else. She said the cost is borne by the developer the same way the cost would be borne by the developer to kill the tree and give the City the mitigation fee.

Mr. Daige said to understand this, when a site is being developed and trees need to be removed the Tree and Beautification Commission would need a holding area for these trees and the City would need to provide the holding area.

Mr. Lauffer said to look at the practical side, if he was a developer and is going to remove a tree and put it at another location that is a cost to him and the job would be completed. If he has to go back

and pick up the tree to be placed at another location then that is double his cost and as a developer he would say that he is not going to do that. If someone else is going to pick up the tree once he put it on the site then no problem.

Ms. Honse said that she does not entirely understand what Mrs. Dussault is requesting so she thinks they can proceed with this Ordinance as it is. She said they would probably need to have more discussion as to the questions about how to better implement Code Section 72.43 (1). She noted that this is City money and ultimately the City Council determines how the money is expended.

Mr. Lauffer said that he does not have a problem with what the Commission is requesting.

Mr. Daige suggested that the Board move forward with the Ordinance in front of them.

Mr. Cahoy felt that Code Section 72.43 (1) (3) speaks to the issue.

Mr. Lauer said Code Section 72.43 (1) (3) is not an alternative to the Mitigation Fund. It is something that the developer is allowed to do. It doesn't state that this would be an alternative, but gives that possibility. In other words they might still have to pay into the Mitigation Fund and are just giving the tree to the City.

Mr. Jeffries said there is another part of the Code that is pertinent in that aspect, which is Section 72.43 (a), which states in part "*Mitigation is not required for the removal of any trees and palms successfully relocated on site or off site in accordance with subsection (1) below.*" He explained this means that if the developer bears the cost to relocate the tree then they don't pay into the Mitigation Fund.

Mr. Lauer thanked Mr. Jeffries for pointing that out.

**Mr. Daige made a motion that the Board approves the Ordinance before them relating to the Tree Replacement Fund. Mr. Lauer seconded the motion and it passed 5-0 with Mr. Daige voting yes, Mr. Cahoy yes, Mr. Lauer yes, Mrs. Minuse yes, and Mr. Lauffer yes.**

#### **IV. PLANNING DEPARTMENT MATTERS**

Mr. Jeffries reported that they will be discussing the work plan for the year at their next meeting.

#### **V. BOARD MEMBERS' MATTERS**

None

#### **VI. ADJOURNMENT**

Today's meeting adjourned at 2:52 p.m.

/sp