TOWNSHIP OF INDIANA
PLANNING COMMISSION

JANUARY 23, 2019

A reorganization meeting of the Indiana Township Planning Commission was called to order at 6:00 p.m. by Senior Member Patrick Miller with the Pledge of Allegiance. The meeting was recorded on audio cassette.

The roll was called and Planning Commission Members present were Tom Ceponis, David Geahry, Patrick Miller, and Michael Rouggie. Newly appointed Member for the Fairview District Lisa Lachina was not in attendance. Also in attendance were Code Enforcement Officer Jeffrey S. Curti, Recording Secretary Jacquelyn Rouggie, Robert Herring, P.E./Project Manager from Nichols and Slagle Engineering, and Solicitor Katherine Janocsko with Tucker Arensberg.

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REORGANIZATION

Mr. Rouggie made a motion, seconded by Mr. Miller, to re-appoint Tom Ceponis as Chairman and turned the gavel over to him. Mr. Miller made a motion, seconded by Mr. Rouggie, to re-appoint Patrick Miller as Vice Chairman, to re-appoint Michael Rouggie as Board Secretary, and to re-appoint Jacquelyn Rouggie as Recording Secretary for 2019. Motion carried unanimously.

MONTHLY MEETING DATES

Mr. Geahry made a motion, seconded by Mr. Miller, that monthly meeting dates remain the same: the fourth Wednesday of each month at 6:00 pm, with the exception that the November meeting, which will be held on November 20th due to the Thanksgiving Holiday and the December meeting, which will be held on December 18th due to the Christmas Holiday. Motion carried unanimously.

MEETING MINUTES OF NOVEMBER 28, 2018

Mr. Rouggie made a motion, seconded by Mr. Miller, to approve the November 28, 2018 regular meeting minutes as presented. Motion carried unanimously.

DEVELOPMENT PROPOSALS

HORVATH TOWER - CONDITIONAL USE

Commission Members were previously presented with a site plan consisting of a Conditional Use Application for the development of a 199' high tower, three equipment shelters, a gravel access drive, fencing, and landscaping. The property is located west of Francioni Hill Lane (private roadway), approximately 0.5 miles south of the intersection with Park Place. The property is zoned “MDR” Medium Density Residential. Attorney Joe Perotti with Sittig Cortese, LLC, as well as Construction Manager Jim Relihan with SmartLink LLC, were present to represent the applicant Horvath V.

Mr. Perotti said no significant layout changes have been made to the plans since the last Planning Commission Meeting on September 26, 2018. Mr. Herring said the applicant has addressed most of the engineering items in the Engineer's original review letter dated September 22, 2018; however, a few issues still remain.

Mr. Herring reviewed the current Engineer's letter dated January 10, 2019. Mr. Herring said a response was submitted by Mr. Perotti dated January 17, 2019, addressing the items in the Engineer's letter. Mr. Herring said the location of all proposed light fixtures, if any, need to be put on the plans. Mr. Perotti said since the tower is less than 200' in height, they are not required to put lights on it under FAA regulations. He said the only lighting that will occur is when a technician comes out to inspect the tower and/or work on the ground-based equipment, and no lighting will be noticeable from adjoining properties,

Mr. Herring said Francioni Hill Lane is a private roadway. He said approval needs to be submitted from all of the owners of this private road regarding access and maintenance. Mr. Herring asked if the applicant was given the right to use the roadway. Mr. Perotti said they were, under a "Lease Agreement" between the property owner and the applicant. He said it is specified in this Agreement that they have means of egress and ingress to the tower. Mr. Herring said a signed and sealed letter is needed with every property owner's signature to use the private roadway. Mr. Perotti said he feels a signed and sealed letter is not needed; he said he feels the "Lease Agreement" is sufficient. Mr. Herring said a "Conclusion of Findings" needs to be provided. Ms. Janocsko said she feels that everyone with access to the private roadway needs to agree on the applicant using the road. Mr. Perotti said he feels the "Lease Agreement" between Horvath and the property owner Valentino Francioni is sufficient enough to allow access to the tower. Mr. Herring said Francioni Hill Lane must have a 20' right-of-way. Exhibit "A" should show a 20' right-of-way for the full length of Francioni Hill Lane and not just a portion. He said the full length of the roadway needs to be shown. Mr. Curti said there are many properties along Francioni Hill Lane that utilize the roadway before Val Francioni's property. Ms. Janocsko said it needs to be documented that the other property owners along Francioni Hill Lane give their permission to use the private road.

Mr. Herring asked who will maintain Francioni Hill Lane during construction. Mr. Perotti said Horvath will and this is stated in the "Lease Agreement". Mr. Ceponis asked who currently maintains Francioni Hill Lane and asked if there is a "Maintenance Agreement" in place between the owners of the lane. Mr. Curti said this is not something the Township requires for private roadways.

Mr. Herring continued with the Engineer's review letter. He said the owner of the communication antenna ancillary equipment must enter into an agreement with the Township providing that in the event the tower operation ceases, the owner will remove the tower, all antennas, and all of the ancillary equipment within one year. A demolition bond must be posted to cover the costs of this demolition/removal should the Township have to dismantle it. Mr. Perotti said the owner is fine with

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this. Mr. Herring said the proposed site plan requires 887 cubic yards of fill. He said a roadway bond must be posted if material is hauled to or from the site. Mr. Perotti said this is not a problem. Mr. Herring completed the review letter by stating that a Developer's Agreement and all appropriate bonds must be posted if the plan is approved.

Mr. Miller asked if Horvath considered any other sites for the tower. Mr. Perotti said they checked into other sites and nothing existing is close enough. Mr. Ceponis questioned this, because a cell tower already exists nearby at the Middle Road Volunteer Fire Department. Mr. Perotti said there is a gap in coverage in the area which needs to be filled. Mr. Ceponis said he lives in the area, and has not noticed any gaps in coverage. However, he did say there are coverage gaps along Saxonburg Boulevard. Mr. Perotti said a Radio Frequency Engineer will be able to answer these questions more sufficiently. He said due to enhanced 4GLTE coverage, more frequency is needed. Mr. Perotti said testimony will be given by the Radio Frequency Engineer explaining his findings at the Public Conditional Use Hearing.

Joe Veltri of 300 Francioni Hill Lane, said he lives in the first house on the private lane. He said he does not want to live between two cell towers; he feels there could be health concerns. He also said he is worried about the maintenance of Francioni Hill Lane. Mr. Ceponis asked Mr. Veltri if he entered into a Road Maintenance Agreement for the private lane. He said he did, along with his other neighbors that utilize the roadway.

Elizabeth Soose of 4003 Park Place, said she would like it noted on the record that she opposes constructing the cell tower. Attorney Alan Sable, with Sable & Sable, said he is representing the DiDomenico's and the Whelan's. Mr. Sable said he disagrees with Horvath having the right to access the site, and he has not seen anything in writing. Mr. Sable read excerpts from the Township's Ordinance about easements. He said he does not feel 50' - 60' is adequate to accommodate emergency vehicles, if they would be needed. He also said he has not seen any proof that Val Francioni has exclusive rights to use the private lane. Mr. Sable told Commission Members about some information he has gathered regarding the use of private lanes. Mr. Sable also said he feels this tower is a Commercial Use, which they wish to erect in a rural, residential area. He also said 887 cubic yards of fill is quite a lot to be handled by a private roadway. He presented Commission Members with copies of Case Law from a hearing known as ***Hash v. Sofinowski***. He read excerpts from this document. Furthermore, Mr. Sable said the easement for the road is only 12' - 15'. He said Township's SALDO requires a 20' minimum for a private roadway and it must consist of a dust-free surface. He said he does not feel the applicant has the legal right to expand the use of Francioni Hill Lane for a non-residential use. He said he has not seen any recorded easements as to who actually owns Francioni Hill Lane. He asked if a "Maintenance Agreement" was ever located; he was told there was one, however Val Francioni refused to sign it. Mr. Sable said he feels the applicant needs to provide proof that they can utilize the private roadway to build the tower. He does not feel they have the right to maintain the roadway themselves and go onto other people's properties. Mr. Sable said

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Section 511 regarding Conditional Uses in the Township's Zoning Ordinance states for every 100' of tower height, two acres are needed. He said Horvath is only leasing 10,000 square feet (100'x100') from Val Francioni. He said he was told the applicant feels they comply because the Francioni property is a total of 7 acres. Mr. Sable also said he feels subdivision approval for the tower property should be received. Mr. Sable said on the plans, it shows the tower base to be at 1,169'. With the tower being 199' high, due to the topography of the land, a lot of residential homes in the area will be able to see it.

Paul DiDomenico of 5008 Silent Meadow Court, said he is a lawyer. He said he feels the applicant does not have access rights to the tower site. He said the "Maintenance Agreement" presented is for the applicants property only. He said he feels there are safety issues for emergency vehicles to be able to access the site, and presented pictures. He said the neighboring home at 385 Francioni Hill Lane is only about 385' away, and he feels the tower's location is very unsafe for this home to be located so close. He also said he feels that Horvath only wants to erect the tower to make money off of it. Mr. DiDomenico said he feels there is no reason that Verizon cannot co-locate antennas on the nearby tower at the Middle Road VFD. He said the lease between Horvath and Francioni is not sufficient. He also said Francioni Hill Lane is only 10' wide in some places; it is required to be 20' wide by the Township's Ordinance. He said he does not feel this tower is a good fit for this residential area. Mr. DiDomenico showed a copy of the "Maintenance Agreement" that all the property owners on the private lane signed except Val Francioni. He said these property owners currently maintain the private roadway. Mr. Ceponis said he feels this Agreement gives everyone living along it an interest in what happens along the roadway.

John Whelan of 5012 Silent Meadow Court, presented a variety of pictures showing the entrance of the Park Place plan including the existing 165' tower at the Middle Road VFD. He also showed a picture of his back yard, which shows how they can see the existing tower from there. He then showed a picture he put together with the newly proposed tower imposed on it, and said it will obstruct their views. He said a monopole tower is being proposed. He also questioned why two towers need to be in place, only 900 yards from each other. He said he has never experienced any gaps in cell phone service. Mr. Whelan said Middle Road VFD receives rental money from the existing tower, and he feels if another tower is built, it could decrease the fire company's revenue from the rent they receive. He said he feels there could be alternatives to the proposed Horvath Tower and its location.

Mary Siegel of 4036 Park Place, said she also wanted it to be on record that she strongly opposes the tower. Nick DiDomenico of 5004 Silent Meadow Court, said he also has safety concerns, especially for the house he has partial ownership of at 385 Francioni Hill Lane, which is adjacent to the proposed tower. He strongly opposes the tower being built as well.

Mr. Perotti said he feels the access to the site is something that should be decided by the Court of Common Pleas. Mr. Geahry asked if other types of towers were considered. Mr. Perotti said they were, but the Radio Frequency Engineer

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determined this is the best type of tower for this location, and the Engineer will present his case and testify to this at the public Conditional Use Hearing. Mr. Geahry expressed concerns about ice accumulating in the colder months, and falling down onto the nearby house. Mr. Perotti said the tower is structurally built for that not to be an issue. Mr. Curti said Mr. Perotti previously said the closest home is Val Francioni's, however, that is not the case; there is another one located closer that needs to be considered. Mr. Perotti said the tower is designed to collapse at the 50% mark; they meet the requirements of the setback. Mr. Ceponis asked why a nicer-looking type of pole is not being considered. Mr. Perotti said the proposed tower complies with the Township Ordinance.

Paul DiDomenico showed the Lease Agreement between Val Francioni and Horvath. He said Val does not own the entire roadway. He said the Lease only calls for an easement from Val's property to Francioni Hill Lane. He also agreed with Mr. Curti and said the closest home is not Val's, but instead the home owned by NPDCO.

Ms. Janocsko said the applicant agreed to a Conditional Use Hearing to be held on February 12, 2019. She said the Planning Commission Members either need to vote on the plan tonight or ask the applicant for an extension in order to meet the advertising guidelines as set by the MPC.

Mr. Herring said that there are outstanding legal issues that required additional review and recommendation by the Township Solicitor. These legal issues include access to the site, maintenance of the private street, review procedure by the Township, and jurisdictional responsibilities of dispute in usage of a private street (i.e., Court of Common Pleas or Township issue). He feels the Township's Solicitor should look into this. Ms. Janocsko said unfortunately the Township is under time constraints. Mr. Curti asked if the applicant would agree to a time extension. Mr. Perotti said no; they are not only under time constraints due to the MPC and advertising, but also due to Federal time constraints.

Mr. Herring indicated he was not comfortable recommending approval of the plan until the outstanding legal issues are resolved. Ms. Janocsko said no matter what the Planning Commission recommends, the applicant has the right to go to the Board of Supervisors and ask for them to approve or deny the plan. Mr. Rouggie asked if the tower is considered to be a "commercial use". Mr. Herring said it is allowed in this Zoning District as a Conditional Use. Mr. Curti said the Township usually encourages co-locations of antennas on existing towers. He said in the 24 years he has worked for the Township, this is the first new tower that was ever proposed.

Mr. Rouggie made a motion, seconded by Mr. Miller, recommending the HORVATH TOWER - CONDITIONAL USE be denied due to the unresolved legal issues concerning access, maintenance, and ownership of the proposed private street (Francioni Hill Lane) accessing the site.

Motion carried unanimously.

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OLD BUSINESS

"DRAFT" OIL & GAS ORDINANCE UPDATE

Mr. Ceponis said they were presented with another "draft" Ordinance to update the Township's current Oil & Gas Ordinance. It now includes all comments suggested by the Solicitors, Engineers, Code Enforcement Officer, and Planning Commission Members. Ms. Janocsko agreed everyone's suggestions have now been incorporated.

Mr. Miller made a motion, seconded by Mr. Rouggie, to recommend approval of the "draft" to the Township's existing OIL & GAS ORDINANCE (#371) be passed on to the Board of Supervisors for their consideration to advertise it.

Motion carried unanimously.

Vanessa Lynch of 3726 Saxonburg Blvd., asked when the public will have access to review it. Ms. Janocsko said after the Board of Supervisors make their official motion to advertise it for review.

CORRESPONDENCE

LETTER OF RECOMMENDATION TO BOARD OF SUPERVISORS

Each Commission Member received a copy of the Planning Commission's Letter of Recommendation sent to the Board of Supervisors, which was written as a result of the Commission's November 28, 2018 regular meeting.

ADJOURNMENT

Mr. Rouggie made a motion, seconded by Mr. Geahry, to adjourn the January 23, 2019, Planning Commission Reorganization Meeting. Motion carried unanimously.

The meeting was adjourned at 7:05 p.m.

Jacquelyn A. Rouggie
Recording Secretary

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