

LILLEY TOWNSHIP PLANNING COMMISSION MINUTES
FEBRUARY 15th, 2024
PUBLIC HEARING – RE-APPLYING FOR A SPECIAL LAND USE APPLICATION
PARALLEL TOWERS III LLC AND AT&T FOR A NEW CELL TOWER
UNAPPROVED

The February 15th, 2024 SPECIAL MEETING AND PUBLIC HEARING regarding a Special Land Use Application was held at the Multi-Purpose Building and called to order by Chairperson Israels at 7:00 PM.

The Pledge of Allegiance was recited followed by the Invocation by Robert Doornbos.

The roll was called with the following members present: Doornbos, Israels, Bonnett and Hoving
Moore: Absent

Approval of Previous Months Minutes: Motion by Bonnett to Approve the minutes of the January 18th, 2024 meeting, Second by Doornbos Roll Call: Doornbos yes, Israels, yes, Bonnett yes, Hoving yes, Motion Carried

Approval of Tonight’s Agenda: Motion by Hoving, to approve the Agenda, Second by Doornbos
All in favor Aye – Motion Carried

Correspondence: Email from the law firm of Mika Meyers representing SBA Towers II LLC and the Packet placed on the table just prior to the meeting contesting the approval of the Parallel/AT&T application.

NOTE: The email with attachments totaling 79 pages was transmitted to the Planning Commission at 3:38 PM the day of the Hearing. This is a tactic we have seen before from another law firm and some clients that they represented on another subject before the Planning Commission.

Correspondence from Parallel/Harmoni Towers was received previously and information contained is unchanged from the specifications in the 2021, previously approved, original 2021 application.

Public Comment: on matters not published on the Agenda: None

Visitor recognition: Ronald Ridick – Mika Meyers PLC a law firm representing SBA Communications Corp. opposing re-approval the Parallel/AT&T tower and Leland Calloway representing Parallel and Harmoni Towers from a company called Archaven LLC, as broker and principal agent. Another name connected to this venture is Tillman. They are lease agents supplying various services to the tower builders especially finding additional providers to locate on their towers and to help local communities gain better coverage.

*****OPEN PUBLIC HEARING*****

Special Land Use Application – Re-Apply – Leland Calloway - Parallel Towers III LLC original date of application June 3, 2021, Original Public Hearing August 19, 2021 – Nothing has changed since the original submittal.

Property Parcel #62-02-35-400-009, owned by James and Ashleigh Droste, property size 12.02 acres located at NO ADDRESS, adjacently south to 9827 N Woodbridge Ave., Bitely, MI 49309 43.73238, - 85.82231

New Wireless Communication Tower, of self-supporting design, 280 structure height before appurtenances, inside 60 x 60 compound in 100 x 100 lease area.

Public Comment on this matter only:

Chuck Barron requested to speak under public comments after presentations are made and during discussions. OK'd by Chairperson. His input could be valuable. The issue arose regarding one member of the commission participating in this process in case there would be a familial conflict of interest. The decision was made by a Commission member to recuse from voting and discussion on this matter. It was resolved that there is no longer a financial benefit to Mr. Barron whose lease agreement with the existing tower on his property, was finalized and paid off. Mr. Calloway spoke up and agreed that often this is done and instead of a yearly payout, the lease is negotiated, paid off and completed.

Next to speak was Mr. Redick from Mika Meyers PLC given a 5-minute time limit as a legal representative of SBA Communications Corp., the tower where AT&T is currently located. Notes that our zoning requires that an approval can expire when not utilized timely. Claims that there have been many changes since the 3 to 2 yes vote to approve the other tower in 2021. Another location was found necessary at that time in part due to lack of additional capacity. This has changed since then. Cited our Zoning ordinance that favors co-location on towers. Israels agreed that our master plan encourages co-location however conditions have changed somewhat recently with increased cellular use and new carriers and equipment. Ridick conceded that the co-location capacity back then might not have been sufficient. Says today based on information submitted today and documented, that there is no necessity for a new tower and that SBC can more than adequately provide every capacity needed by AT&T to remain. Claims that there would be no improvement in coverage by relocating to the new tower. Sprint and T-Mobile have consolidated so equipment was cut in half, Nextel went out of business and their load has come down. Claims to be only at 50% capacity on the foundation and 80% on the tower equipment itself as documented on submittals. There is now ample structural capacity for AT&T to upgrade and to add more co-locaters. Under building code category life expectancy is 50 years, the highest category. AT&T FirstNet emergency service is already there. **A commission member noted that AT&T service does not work here** which seemed to surprise Ridick who did not recollect that this was the problem at the time of the first application by AT&T to make a change. Denies that a switch to a new tower would improve AT&T service. Wroblewski asked if Ridick has any influence on AT&T to make improvements. His answer was no. The law firm and the SBA Tower claim to have no influence on AT&T and upgrades as necessary. Claims that our zoning requires AT&T to **stay** on the existing tower even if community evidence says that coverage is scant or non-existent. Ridick claims that the tower has no responsibility to communicate with the cell providers. Again, he does not concede that the problem in 2021 was poor or no service with AT&T within most of the Township. Ridick then claimed that the existing tower has offered AT&T a reduction in the lease to \$10.00 less than the new tower lease price to stay on the SBA Tower. In response to an inquiry Leland Calloway explained that AT&T is contracted with Harmoni as co-applicants to build a new tower. AT&T believes that they can provide better service to the community with their own tower with new equipment on it. If AT&T loses customers because of lack of service a lower lease price makes no sense. **A question by Robert Doornbos found that the existing SBA tower is 250 feet tall and the new AT&T/Parallel Tower would be 280 feet tall. A 30-foot difference in height.** Israels asked a variety of questions of Ridick regarding communication with AT&T over the years, why old equipment was removed so slowly, and why there was no objection from them regarding side by side Towers in another Township. Ridick claims our Zoning does not allow us to approve another tower in our Township as long as the tower he represents has space for additional carriers. He is referencing **Section 20.07 YY. Wireless communication towers and radio and television broadcast towers.**

The applicant must demonstrate that the construction of a new tower is necessary to best suit the applicant's needs, rather than placing an antennae on an existing tower, spire, or municipal structure.

If the township Board is convinced no other method is applicable, the following standard must be met.

Note: The standards are the 5 questions listed and are concerning the lot size, fencing, base distance from lot lines, maximum height and that it must accommodate a total of 3 providers.

Zoning Officer Wroblewski noted this wording. It is suggested that a new tower **could be built** if the current situation is not meeting the needs of Township residents and visitors for service and safety. It is up to the Lilley Township Board to consider this if approved by this body. The safety of our citizens and visitors is our the most important issue.

In Summary, there were a number of situations including citizen complaints regarding lack of service and one situation where a Lilley Township Medical First Responder had no cell service with AT&T when responding to a call.

At this point Israels asked the audience if anyone other than the opposing counsel objects to a new tower and there were none. One more question was asked by an audience member of the SBA representative. Are they still providing services to Gerber Hospital and the Sheriff Dept? Gerber is still there, Life Ambulance, Omni. On the tower now are the following: Casair, AT&T, T-Mobile, County and Gerber Hospital per the SBA submissions with space for more.

The public Hearing is now closed for deliberation.

Chairperson Israels then reminded us that Federal Communication Statutes imposes certain requirement on Zoning. One is that the local government must act on a cell tower application within a reasonable period of time. We believe we have complied. Any decision to deny a request to place, construct or modify a cell tower must be in writing supported by substantial evidence contained in a written record. Israels requests that anyone that votes a no vote please explain your reasoning for the record to appear in the minutes and make sure it follows the rules as required. The Federal Telecommunications Act of 1996 states that local regulations cannot prohibit or regulate wireless facilities on the basis of environmental effects of FCC-compliant radio frequency emissions. There may be other personal reasons for a no vote and the resulting rejection of a Cell Tower Application that will not stand up in court. Care must be taken when considering our vote. Examples were given by Israels by referring to an actual court case. A significant gap in service coverage should be considered.

Israels asked Leland Calloway to come forward for some questions. If this tower is approved, what is the next step to provide service to this area? Answer: Their building permit does not expire until April so they are ready to begin soon, weather permitting. How long will construction take? When work begins in March, work should be completed by the end of May. Have any other providers approached you regarding placement on this tower? He cannot answer that but Harmoni will immediately start marketing this tower to other providers. When was the Master Lease signed and how long is it in effect? Entered last summer in July or August. From your perspective, how will that affect constructing the tower? The lease would not prohibit AT&T from moving elsewhere but the current lease would have to be paid off. Bob Doornbos confirmed that the new AT&T tower would be 30 feet taller than the existing one. He also had questions and comments on fiber optics and on how calls are forwarded between towers. Israel asked Leland if he had any information on expanding coverage East and West to cover more of our Township. We need more rural coverage. He replied that he would try to find that information before the Board Meeting. Some maps on the submittal would hopefully increase coverage with updated equipment. Doornbos approves of the 30-foot extra height for possible better coverage. Zoning Officer Wroblewski spoke regarding the many calls he gets from Tower representatives asking the Zoning Administrator for information on any new applicants.

Chairperson Israels closed discussion requesting a motion to commence voting on this application.

Motion to approve the Special Land Use Application from Parallel Towers III LLC and Harmoni LLC for the Construction of a New Wireless Communication Tower on the proposed site south of Woodbridge/M37 made by Doornbos, Second by Hoving – Roll Call: Doornbos yes, Israels, Yes, Bonnett Abstain, Hoving Yes – Motion Carried

Our decision will be presented to the Lilley Twp. Board for consideration at the next meeting on March 11th, 2024

Our next regular meeting will be held on April 14th, 2024 at 7:00 PM

Motion to adjourn by Doornbos second by Bonnett – Meeting adjourned at 8:17 PM

Judith C. Hoving - Judith C. Hoving - Recording Secretary