

**MINUTES OF REGULAR MEETING  
OLDHAM COUNTY  
PLANNING AND ZONING COMMISSION**

**Tuesday, January 26, 2016**

At 9:00 a.m., local time on the above date, this meeting of the Oldham County Planning and Zoning Commission, hereinafter called the Commission, was called to order in the Courtroom of the Oldham County Fiscal Court Building, LaGrange, Kentucky, by Chairman Kevin Jeffries.

Other Commission members present were:

Joyce Albertsen	Bob Arvin	Denia Crosby
William Douglas	John Falvey	Sam Finney
Jan Horton	Greg King	Bob Klingenfus
Joe McWilliams	Kevin Mesker	Mary Ann Smith

Commission Member Absent: Laura Bohne

Others present and sworn in were Planning and Development Services Director Jim Urban, Senior Planner Amy Alvey and Community Planner Brooke Radcliffe. County Attorney John Carter and County Engineer Beth Stuber were present for the meeting. Ethel Foxx was the Secretary for the meeting.

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**Approval of Minutes – December 14, 2015**

Motion was made by Commissioner McWilliams and seconded by Commissioner Horton to approve the minutes of December 14, 2015 as submitted.

Motion carried by unanimous voice vote.

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**Motion to Return Docket PZ-15-015 to the Table for Hearing**

Commissioner Jeffries read a portion of the August 25, 2015 minutes where Applicant requested that Docket PZ-15-015 be tabled for 60 days. Chairman Jeffries suggested that motion be made to return Docket PZ-15-015 from the table for consideration.

Motion was made by Commissioner McWilliams and seconded by Commissioner Douglas to return Docket PZ-15-015 from the table for consideration.

By unanimous voice vote, Docket PZ-15-015 was returned to the table and continued for hearing.

**Secretary Foxx called and read Docket PZ- 15-015:**

**DOCKET PZ-15-015:** Application has been filed by Central States Tower III, LLC and Cellco Partnership (D/B/A Verizon Wireless) for approval to construct a 185 foot Telecommunications Tower on 35.672 acres located at the 2500 Block of West Highway 22 in unincorporated Oldham County.

**(1) Introduction of the application by staff and questions by the Commission:**

Senior Planner Amy Alvey presented the following:

- Summary of application which was continued from August 25, 2015.
- Notes and issues (Exhibit A: Staff Report dated January 26, 2016)
- Site history
- Aerials and photos of site that were taken in August of 2015.
- Revised site plan.

Administrator Urban responded to the Commission that this application is a uniform application for a cell tower. The Commission needs to make a final decision whether to approve or disapprove the cell tower. Should they disapprove they must give reasons why they disapprove and make suggestions which would better accomplish the objectives of the Comprehensive Plan and local Zoning Regulations.

Planner Alvey responded that it was not necessary to provide a Traffic Study regarding the entrance off Highway 22. Administrator Urban responded that it would be the State Highway Department that would issue an encroachment permit for any access.

**(2) Presentation by the applicant or representative and others in support of the application:**

Attorney David Pike, Pike Legal Group LLC, P.O. Box 369, Shepherdsville, Kentucky, was present to speak on behalf of this Application.

- Attorney Pike Presented Exhibit A, Power Point exhibits that have been filed.
- Spoke concerning their view of the Federal laws.
- Should they receive approval, they will accept the three conditions listed in the staff report.
- Stressed that no variances or waivers are required as the tower meets all the setbacks.

- Informed the Commission that this tower will not be lit; because of the height it is not required.
- A supplemental report has been submitted about radio frequency.
- All documents have been filed along with procedural guidelines as required.
- They are in compliance with all local requirements and the Oldham County Comprehensive Zoning Ordinance.
- They have conducted an extensive search and found an area that meets all the regulatory requirements.
- Addressed the Federal Telecommunications Laws, environmental and health concerns, property values and safety issues.
- Explained the items that are not substantial evidence under the Federal Telecommunication Laws that cannot be used in denying the placement of a cell tower.
- Telecommunication towers are considered a utility and licensed as a utility.

**(3) Testimony and questions by those opposing the application:**

At this time Planning Commission Attorney John Carter explained the reasons why the Commission cannot consider environmental and RF emissions concerns per the Telecommunication laws.

**The following adjoining property owners were present and sworn prior to stating their concerns:**

Brandon Cook, 2520 West Highway 22, Crestwood, presented Opposition Exhibit A, photos showing his property in relation to the tower location and photos of other properties already having cell towers. Later presented Opposition Exhibits F&G, photos of his property, Exhibit H, e-mail from Semonin Realtors and Exhibit I, a four page petition.

- Cell tower will be completely viewed from his and adjoining property neighbors' homes.
- Concerned about the proposed height of the cell tower.
- Suggests that the cell tower be located elsewhere such as near the highway or Commerce Parkway or even be co-located.

Vickie Davidson, 5600 Perry Neal Lane, Crestwood, pointed out on the map the location of her property including her daughter's property.

- Location of the cell tower is not fair to the adjoining property owners.
- Not fair that neighbors cannot state their concerns regarding certain issues that were addressed by the Applicant's attorney.

- Cell tower should be located elsewhere and concerned how it will affect her farm.
- The person allowing the placement of the tower on his property does not live nearby; he will not be affected by the cell tower.

Gordon Crouch, 2420 Eastwood Circle, Crestwood, presented Opposition Exhibits B, letter from Wakefield Reutlinger Realtors, Exhibit C, a three page report regarding Impact from Neighborhood Cell Towers; Exhibit D, six page petition; Exhibit E, and report on Cell Tower Health Impact". Later presented Opposition Exhibit J report on Cell Tower Proximity Impacts Study.

- Addressed aesthetic concerns.
- Recognizes a need for technology but as citizens request an alternative solution.

At this time, Planning Commission Attorney Carter informed the Commission that Gordon Crouch, (who spoke in opposition) was allowed to address and present a study as to cell tower health impacts on property.

Kevin Kennedy, 2418 Eastwood Circle, Crestwood, was present to speak in opposition to this application.

- Questions as to how they found the subject property.
- Concerns that if this is approved, that PVA will assess adjoining properties and property values may be decreased.
- Concerned all the neighbors will suffer because of the placement of the cell tower.

Ronald Hedges, 2702 West Highway 22, Crestwood, pointed out on the map the location of his property and pond.

- Originally considered the cell tower be placed on his property but has had a change of heart; he does not want it on his property.
- Concerned as to the type of trees that will be used as a buffer.
- Requests an alternative site for location of cell tower.

Dennis Hornback, 5420 Cross Creek Drive, Crestwood, was present to speak in opposition to this application.

- Not opposed to technology, but does not want it in their backyard.
- Concerns as to how the cell tower will be powered, how batteries (if used) will be contained, and possible drainage concerns.

**(4) Questioning of the applicant and those opposing the application by the Commission:**

Attorney Pike responded to questions from the Commission:

- Commercial power is available at the location; by statute; utilities require that this service be provided.
- Backup power will be available should there be power outages as there will be a generator at the location; it will be diesel powered and will meet all State and Federal requirements.
- Confirmed that the subject property consists of 1.06 acres.
- If required, a gate will be provided at the entrance although the compound area will be securely locked.
- There is flexibility in providing the required landscaping.

Per Attorney Pike's request, Planner Amy Alvey presented what is required under the landscaping regulations.

- Advised the Commission regarding various Circuit Court's handling of "Substantial Evidence".

**At this time Planning Commission Attorney Carter responded to the Commission as follows:**

- Addressed what the Commission can or cannot do regarding substantial evidence.
- Some Courts are divided that substantial evidence is evidence, other than from lay witnesses.

Attorney Pike continued response as follows:

- Explained what is considered "significant coverage gap".
- As to capacity gap, explained how signals can be transmitted with a cell tower.
- There are other carriers on the water tower in Centerfield but does not know who they are.
- Explained how every network is different and must have an FCC license.
- Applicant is willing to work with the neighbors regarding buffering of their properties.
- Pointed out on the site plan where plantings can be placed on two sides of the enclosure if necessary.

## Motion for Extension of Time

At 11:18 a.m., Motion was made by Commissioner McWilliams and seconded by Commissioner Falvey to extend ten more minutes for questioning of the applicant by the Commission.

Motion carried by unanimous voice vote.

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Appraiser for the Applicant, Martin Brown, of Galloway Appraisers, 2525 Nelson Miller Parkway, Louisville, having been sworn, responded as follows:

- Has been doing appraisal studies for years.
- Explained how they do studies throughout the country for proposed placement of cell towers in residential areas.
- In this way they can determine how property values have been affected.
- They have found that cell towers do not have a negative impact on value of those properties.

Applicant Radio Frequency witness, Gordon Snider, 4241 Holloway Drive, Louisville, 40299, having been sworn, responded as follows:

- Explained how they use more than three frequencies.
- Explained the license bands and the number and type of frequencies transmitted.

Attorney Pike continued response as follows:

- They are a regulated utility.
- As to finding property, they have a legal obligation to provide service and keep trying until they find someone to sell or lease their property. He has not encountered a situation where no one was interested in leasing or selling their property for placement of a cell tower.
- They do pay for expert testimony and those who testified today are the only witnesses considered expert witnesses.

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Planning Commission Members recessed for lunch at 11:30 a.m. and reconvened the hearing at 12:30 p.m.

**(5) Rebuttal evidence and Cross Examination by the Applicant:**

Attorney Pike stated he does not wish to cross examine and addressed the Commission regarding the evidence presented:

- Although it is not required, they are prepared to make some changes regarding plantings and fencing, in the spirit of being a good neighbor.
- The case law is clear in this issue that lay testimony cannot serve as substantial evidence for a cell tower denial.
- The only expert testimony heard today was from the Applicant's witnesses.
- All the evidence heard today by lay witnesses is regarding aesthetics.
- Aesthetics cannot serve as a basis for a denial when based on lay opinion.
- They have worked very hard to meet all the requirements of the regulations and there are no requests for variances or waivers.
- Administrator Urban has confirmed that cell towers are allowed in any zone.
- This is a tall structure but by cell tower standards, it is short.
- They did not propose a taller structure so that it would not have to be lit.

**(6) Rebuttal evidence and Cross Examination by the Opposition:**

Vickie Davidson states that she feels the neighbors do not have rights. Feels that the attorney is telling the Commission how to vote. She loves her home, property and cattle and has concerns with placement of the cell tower.

Ronald Hedges pointed out the location of his property, his pond and trees and had questions regarding property lines.

- Attorney Pike pointed out Drawing "P5" confirming where the lease line is located in relation to the location of the tower.
- He wants to reassure all those present that the evidence they have presented has been clearly thought out, has been carefully planned and they have taken all possible safety measures regarding the placement of the tower.

Administrator Urban confirmed that they do have a survey of Pauline Conn's property that was stamped by a surveyor in September of 2011.

Applicant's Engineer, William Grigsby, 1302 Main Street, Shelbyville, Kentucky, having previously been sworn, responded as follows:

- Confirmed the distances in question from the property line.

**(7) Final statement of the Opposition: None**

**(8) Final statement of the Applicant: None**

## **END OF PUBLIC HEARING**

At this time, Director Jim Urban referred to portions of the staff report:

- Stated the basis for making a decision from KRS 100.98, Item 4.
- The procedural matter is whether the uniform application is in compliance with the Comprehensive Plan and Zoning Ordinance.
- Administrator Urban reviewed the three original Binding Elements along with potential additional binding elements that were discussed.
- With reference to the evergreen trees, it is required that the trees be at least six tall and the binding elements should state White Pines or a similar tree.

## **FINDINGS AND DECISIONS**

### **PZ-15-015**

#### **Approval to construct a 185 foot Telecommunications Tower**

Motion was made by Commissioner King to approve Docket PZ-15-015, application to construct a 185 foot Telecommunications Tower because:

- Finds no substantial reason(s) to act in denial of this application.
- The opposition failed to bring expert testimony in terms of the subject matter where a valid denial can be based.
- Applicant has presented testimony and evidence in writing including proposed findings of facts, along with support from expert witnesses; all in reference and incorporated in this approval.
- Binding Elements are as follows:

## **Binding Elements**

1. The guarantee of removal of the cell tower, in case of abandonment, shall be irrevocable.
2. Any proposed lighting shall meet FAA regulations in accordance with Section 340-080 of the Zoning Regulations.
3. The antenna tower shall be maintained in either a galvanized steel finish or be painted light gray or light blue in color.
4. A six foot tall wood privacy fence will be constructed along the east side property line (the Cook property) starting approximately 50 feet from Kentucky Highway 22 Right of Way, for a distance of 375 feet.
5. Twelve, ten foot tall White Pine (or similar) trees will be planted 25 feet on center and staggered along the east property line, starting at the approximate location of the existing barn.
6. A gate will be placed across the access road located where the privacy fence begins.
7. All tree heights are to be measured from the top of the root ball.
8. A second row of trees shall be planted on the West fence line of the compound.

**Motion was seconded by Commissioner Smith.**

### **Discussion:**

- Commissioner McWilliams stated that he would probably feel much like those present in opposition; however, there are binding elements in place for the Applicant. He supports this motion because of the law and he wishes to uphold the law.
- Commissioner Horton stated he understands how those present in opposition feel as years ago a tower was constructed near him and he was very much opposed. The years have passed and he no longer notices the tower. Since the tower has been placed, his property value and adjoining property owners have increased.
- Commissioner Albertsen states that her heart goes out to those present in opposition. She knows there is a need for cell towers and the Commission does need to abide by the law.
- Administrator Urban responded to Commissioner Douglas that there is an agreement between the tower owner and the provider. Permits are not required for co-location, but additional electrical permits or a building permit is required for a small storage shed.

The vote was as follows:

**YES: Commissioners Albertsen, Arvin, Crosby, Falvey, Finney, Douglas, Horton, King, Klingenfus, Mesker, McWilliams and Smith.**

**NO: NONE**  
**ABSTAIN: NONE**  
**ABSENT: Commissioner Bohne**  
**Motion passed on a vote of 12-0.**

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**A ten minute recess was taken at 1:13 p.m. Commissioners returned and the meeting reconvened at 1:23 p.m.**

**Docket PZ 16-001** – Application has been filed by South Oldham Fire Department for approval of a Community Facility Review for a fire station to be located at 7715 Old Zaring Road, Crestwood. The zoning is C-2 Community Business District.

**(1) Introduction of the application by staff and questions by the Commission**

Planner Amy Alvey presented the following:

- Summary of application for a Community Facility for a fire station.
- Notes and issues (Exhibit A: Staff Report dated January 26, 2016)
- Site history
- Aerials and photos of the property and adjoining property, and intersection of Highway 329 and Old Zaring Road.
- Provided information as to the need for the Fire Department.

**(2) Presentation by the applicant or representative and others in support of the application:**

Chief Edward Turner, South Oldham Fire Department, resides at 7306 Meadow Road, Crestwood, was present and sworn prior to speaking on behalf of this application.

- There is a need for a fire station in this area to help reduce insurance rates for residents along Highway 329 and 1694.
- Residents pay \$7,000 to \$8,000 a year for home owners insurance.
- Allowing a fire station in that area will help cut their insurance rates in half.
- Plans to use an existing building for the proposed fire station to serve the Brownsboro area.

Jason Kruse, East & Westbrook Construction, 2642 Sheffield Court, LaGrange, was present and sworn prior to speaking in behalf of this application.

- Is the project manager for East and Westbrook and will be doing the construction on the building.
- Allowing the renovation of the subject building will save tax payers about a million dollars not having to build a new fire department
- There will not be any special outdoor lighting as it would be offensive to the neighbors; there are no plans for a flashing light.

Attorney Jim Williamson, 208 Parker Drive, LaGrange, was present to speak on behalf of this application.

- Has supported the South Oldham Fire Department for over 40 years.
- The location of the fire station will save money on home owners' insurance rates and will also allow for quicker response time.
- The proposed fire station will get the job done, will be manned by volunteers and will be an asset to the residents of Brownsboro.
- The facility proposed is within the bounds of the Comprehensive Plan.

### **(3) Testimony and questions by those opposing the application:**

George Parrish, 7611 Highway 329, Crestwood, was present and sworn prior to speaking in opposition to this application.

Mr. Parrish is not only here to represent himself, but also the Brownsboro Community Center located at 7701 Highway 329.

- Presented Opposition Exhibit A, letter from the Brownsboro Community Center.
- A resolution was adopted in January 2016 stating the proposed location for the fire department is not sufficient due the infrastructure and not having sufficient sewers and parking.
- The letter recommends the fire department be located on the opposite side of Kentucky Highway 329.
- When the new bridge is constructed, it will cause additional growth in Brownsboro being a good reason for the recommended location by the Master Task Force.
- Referred to Applicant Exhibit A, photo of the proposed building stating concerns with the lateral field.
- It may not be possible to construct the new doors due to the elevation of the existing driveway.

- Presented Opposition Exhibit B, photos showing equipment attempting to cut through solid rock on property across the street.
- Stated concerns that this is not the right location for the fire station.

Carl Parrish, 7701 Old Zaring Road, Crestwood, was present and sworn prior to speaking in opposition to this application.

- Referred to Applicant Exhibit A and pointed out the location of the existing building in relation to the location of his property.
- Concerned that the existing 12 foot tall trees were cut down; there is not enough room for parking; this is not an adequate place for the proposed fire station.
- There is a nice fire department already in the Crestwood area.

**Others present to speak concerning this application:**

Gilbert Kaelin, 6700 Old Zaring Road, Crestwood, was present and sworn prior to speaking regarding the application.

- Referred to Applicant Exhibit A as to the location of his property and pointed out the existing driveway that adjoins the subject property.
- Is concerned that there is not enough room for a fire truck to get through that driveway.
- Mr. Kaelin stated he has no other concerns.

Sharon Dietrich, 120 South Bayly Avenue, Louisville, was present and sworn prior to speaking regarding this application.

- Is the daughter of Mr. Kaelin and grew up on the farm on Old Zaring Road.
- Has concerns how Applicant's photo portrays the property lines in relation to Mr. Kaelin's property.
- States that she and her father are neutral concerning this application.

At this time, Administrator Urban assured Mr. Kaelin and his daughter that his property will not be affected whatsoever by this proposal. The photos shown are simply to show the approximate location of his property in relation to the subject property.

- Ms. Dietrich continued that her only concern is that trucks loaded with gravel fly over the hill where the proposed fire station is to be located.
- Suggests a flashing light be placed at that location.

**(3) Questioning of the applicant and those opposing the application by the Commission:**

Mr. Kruse responded to questions by the Commission:

- Confirmed the location of the existing septic system on Applicant Exhibit A.
- There will be no changes to the existing restrooms as it will be adequate for an unmanned station.
- The septic system can be expanded if necessary if the parking spaces are added at the front.
- The Health Department has already reviewed their plans; if there are any changes, the Health Department will need to review those plans.
- Referred to Applicant Exhibit A concerning the loading dock.
- Showed where the wall will be taken out and where the grade will be brought up to match everything across the floor level and be brought out to the road.
- Presently, all the drainage comes out to Old Zaring Road and there will be no changes; they are only changing the profile so they will have a ramp on both sides.
- They will not have to take the foundation wall down; they will only be changing the slope of the ground.

Chief Turner responded to the Commission as follows:

- Only a one-engine fire department is proposed.
- Plans to have four to five volunteers that live in the area.
- Told how many runs were made last year and how many are proposed.
- Most testing will be done at the main station.
- South Oldham Fire District did inquire about the old body shop suggested in the Master Plan.
- There were many liens on that property and was decided that the proposed location is the best.
- It is the Fire District Board's decision as to whether they will build at the five acre site on Kentucky Highway 329 (which has been purchased) at a future date.

Attorney Williamson responded to the Commission:

- It is the intent of the Board to keep the five acre tract as a future location.
- Not sure what will be done with this fire station once it is no longer needed, however, the South Oldham Fire Department is a frugal and responsible organization and will do what is best.

**(5) Rebuttal evidence and Cross Examination by the Applicant: None**

**(4) Rebuttal evidence and Cross Examination by the Opposition:**

George Parrish stated the following:

- Referred to the site that the Master Plan recommends.
- There is plenty of room on that site for a future fire station.
- The proposed location is not adequate.

Carl Parrish stated the following:

- There is a safety factor not having sirens or a light.
- Referred to Applicant Exhibit A where there are trees to the left of the building and concerned the trees will fall over on the existing building.

**Chief Turner responded to Ms. Dietrich as follows:**

- EMS is a County organization and will not be housed in that building.
- Only one fire engine is proposed in the building; there are no plans for mechanics or ambulances in that building.

**(7) Final statement of the Opposition:**

George Parrish stated the following:

- Wishes to preserve the history of this village.
- Placing the fire station next to what was once a stagecoach stop and museum is not acceptable.

**(8) Final statement of the Applicant: None**

**END OF PUBLIC HEARING**

Administrator Urban reviewed the requirements to consider a community facility:

- The Commission is to only review this application in light of the Comprehensive Plan.
- The Commission is to approve this application, or to deny the application.

- If it is denied, the Commission is to make recommendations for any changes that would better accomplish the objectives of the Comprehensive Plan.

## **FINDINGS AND DECISIONS**

**PZ-16-001**

**Community Plan Review**

**Fire Station**

Motion was made by Commissioner McWilliams and seconded by Commissioner King to approve Docket PZ-016-001, Community Plan Review for a fire station to be located at 7715 Old Zaring Road, Crestwood, because:

- The Community Facility for the fire station is in compliance with the Comprehensive Plan.

### **Discussion**

- Administrator Urban stated that the Brownsboro Master Plan is in line with the Comprehensive Plan.
- This application does not require binding elements.
- There was discussion as to concerns in directing traffic as the fire truck is leaving the premises.
- There will be Health Department approvals required prior to applying for a building permit.

The vote was as follows:

**YES: Commissioners King, Klingenfus, Mesker, McWilliams, Smith, Arvin, Crosby Falvey, Finney, Douglas and Horton.**

**NO: Commissioner Albertsen**

**ABSTAIN: NONE**

**ABSENT: Commissioner Bohne**

Motion passed on a vote of 11 - 1.

### **OTHER BUSINESS:**

#### **Election of Officers**

Acting Chairman King opened the floor for nominations for Chairman of the Planning Commission.

- Motion was made by Commissioner Klingenfus and seconded by Commissioner McWilliams to nominate Kevin Jeffries as Chairman of the Oldham County Planning Commission.

Motion carried by unanimous voice vote.

Chairman Jeffries opened the floor for nominations for Vice Chairman.

- Motion was made by Commissioner Smith and seconded by Commissioner Falvey to nominate Greg King as Vice Chairman of the Oldham County Planning Commission.

Motion carried by unanimous voice vote.

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**OTHER BUSINESS CONTINUED:**

**Training Hours**

Motion was made by Chairman King and seconded by Commissioner Falvey to accept the completion of 1-1/2 training hours each for Commissioners Albertsen and Jeffries.

Motion carried by unanimous voice vote.

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There being no further business, the Planning Commission meeting adjourned at 2:40 p.m.

The next regular meeting is scheduled for Tuesday, February 23, at 9:00 a.m. in the courtroom of the Oldham County Fiscal Court Building, LaGrange, Kentucky.

Respectfully Submitted:

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Ethel Foxx, Secretary

Approved:

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Kevin Jeffries, Chairman