



Planning Commission

DRAFT Meeting Minutes

July 15, 2019

7:00 p.m.

Planning Commission met in regular session in the Council Chambers at Village Hall, 99 W. Main Street and was called to order by Planning Commission Chair Mr. Neil Kirby at 7:05 p.m.

Those answering roll call:

Mr. Neil Kirby, Chair	Present
Mr. Brad Shockey	Present
Mr. David Wallace	Present
Mr. Hans Schell	Present
Ms. Andrea Wiltrout	Present
Mr. Sloan Spalding (council liason)	Present (left at 10:39p.m.)

Staff members present: Steven Mayer, Development Services Coordinator; Jackie Russell, Development Services Coordinator; Mitch Banchefsky, City Attorney; Ed Ferris, City Engineer; and Josie Taylor, Clerk

Mr. Kirby stated he had comments on the Minutes for May 20, 2019. Mr. Kirby said he had noticed highlighting on the May 20, 2019 minutes and asked if the highlighting was for the Planning Commission or if it was just left over.

Ms. Taylor replied that should just be left over.

Mr. Kirby stated that on page 22 of the May 20, 2019 minutes it looked like there was a motion made without being voted on before the next motion was made, saying it was the same motion being made before being continued and he did not know if they needed to mark it as such. Mr. Kirby stated it was the approval for VAR-35-2019(C), lettered as (D) that shows up twice on that page in succession. Mr. Kirby noted the motion was made and seconded, a motion was made and seconded, but there was no vote on the prior motion and we should note that it was a modification to the original, I believe that was a modification of the original motion.

Ms. Taylor stated that was her recollection as well, but she wanted to confirm that.

Mr. Kirby stated that on page 25 of the May 20, 2019 Minutes the highlighting stated something about it not being stated in final vote language, and asked if that was fixed up already.

Ms. Taylor stated there had been a statement that something was to be included as a condition, but when the final vote came in it was not restated, so it was a matter to confirm.

Ms. Wiltrout stated she did not remember that being part of the final vote.

Mr. Kirby stated he thought when the motion was made further on that it said "the modification to condition 3 to state the curb cut along US-62 not to exceed what ODOT permits" which is the text that they had in the highlight. Mr. Kirby stated it appeared to be the same.

Ms. Wiltrout stated it was the same.

Mr. Kirby stated that, if not, they restated it so it was fine.

Mr. Kirby asked if there were any others.

Mr. Wallace stated he had none.

Mr. Kirby asked if they could do all the minutes together in one motion.

Mr. Wallace asked Mr. Banchefsky if they could make a single motion to approve the minutes.

Mr. Kirby stated two sets.

Mr. Banchefsky stated yes.

Moved by Mr. Wallace, seconded by Ms. Wiltrout to approve the May 20, 2019 and June 3, 2019 meeting minutes, as corrected. Upon roll call: Mr. Wallace, yea; Ms. Wiltrout, yea; Mr. Schell, yes; Mr. Shockey, yea; Mr. Kirby, yea. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5-0 vote.

Mr. Kirby noted this brought the meeting to corrections or additions to the Agenda, and stated he would like to almost completely re-order some of the cases. Mr. Kirby stated it would be FPL-64-2019 Newton Court Final Plat, followed by TM-59-2019 Courtyards at New Albany, followed by CU-47-2019 Conditional Use, in that order. Mr. Kirby stated the first two were probably a relatively quick thing and then those applicants could leave. Mr. Kirby stated he suspected the conditional use would take a lot of time.

Mr. Kirby asked if there were any additions or corrections from staff.

Mr. Mayer replied there were none from staff.

Mr. Wallace asked if they needed to make a motion to switch the agenda around.

Mr. Banchefsky stated yes.

Moved by Mr. Wallace, seconded by Mr. Kirby to reorder the Agenda to hear TM-59-2019 PUD text modification first, followed by FPL-64-2019 Newton Court Final Plat. Upon roll call: Mr. Wallace, yea; Mr. Kirby, yea; Mr. Schell, yea; Mr. Shockey, yea; Ms. Wiltrout, yea. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5-0 vote.

Mr. Kirby swore to truth those wishing to speak before the Commission.

Mr. Kirby stated that when they got to the conditional use there would probably be, on a per speaker basis, re-swearing to make sure that everyone had been sworn.

Mr. Kirby requested all present silence their phones.

Mr. Kirby invited the public to speak on any non-agenda items.

Ms. Athena Voda, of 1574 Harrison Road SW, stated she had a Powerpoint presentation she would like to show about concerns about her new neighbors' property. Ms. Voda stated that when it floods, the grass had not been mowed since it was purchased, and is collecting debris and spreading it onto her property now because the grass is so high. Ms. Voda stated she wanted to discuss the flooding issue and she would like to show it.

Ms. Voda stated she had done some research using Google Earth and looking at the history of the area and did screen shots of the aerial view of all the changes and how all of the water flow was now connecting to the South Fork Licking River from above OH-161.

Ms. Voda's Powerpoint presentation was shown on screen.

Ms. Voda stated she believed that was part of the cause of more water coming down and causing the backup and flooding on her corner of the property. Ms. Voda began her Powerpoint presentation stating she was showing an image from 2010 where she noted everything was still farmland, where her property was pinpointed on the image, and the stream/river on the image. Ms. Voda showed an image from 2012 and noted you could see at the top there were some new white buildings above OH-161 and stated the stream was not gone, diagonally, from her property. Ms. Voda said the stream had not really changed that much, but you could see, if you zoomed in, that it started to straighten out. Ms. Voda showed an image from 2014 and stated it showed more buildings at the top now and said you could now see the stream had completely changed, it was cut off and gone straight down. Ms. Voda said all the changes in the landscaping changed the water pattern on that stream. Ms. Voda said the water was forcing it, path of least resistance, to go straight. Ms. Voda showed an image from 2015, stating more buildings were up at the top, there was some new development right below OH-161, and the stream was getting more defined as straight and there was a "mini-island" forming in the stream. Ms. Voda showed an image from 2017 and said it was almost more developed at the top and noted the stream was wider. Ms. Voda showed an image from 2018 and stated the factory data center was now in the back and more development on the top corner, above the factory center. Ms. Voda stated the stream was getting wider and straightening out even more. Ms. Voda showed an image from 2019 and said it was from March according to Google. Ms. Voda stated it was completely more developed and there was a road, she thought, at the top, that was not there before, that connected above Jug Street whose name she could not remember.

Mr. Mayer stated Innovation.

Ms. Voda stated Innovation, thank you, and noted that road was built whereas in the prior picture it had just been cleared of trees to be built. Ms. Voda stated the stream was getting

worse, straightening a lot more, and wider than previously. Ms. Voda noted she was showing drainage systems that now existed, in the presentation, that had not existed before, that were pushing water going down. Ms. Voda stated that as it went down further toward OH-161 it got connected by another stream on the right, which was part of the South Fork Licking River. Ms. Voda stated it went underneath OH-161 in two (2) directions. Ms. Voda stated that the stream that was on the other side of the road, by the area that was just opened up for development, went directly underneath on the left side and the original stream connection on the right side, right into the South Fork Licking River, which was the stream that went to the corner of her property. Ms. Voda stated she now had two (2) waterflow connections that connected there and went into one. Ms. Voda stated when she looked to see what the flooding areas were and also looked at elevation maps for the area, these images showed that all the water did direct town toward her property. Ms. Voda stated all the water, particularly when debris blocks it, backs up right at her corner. Ms. Voda noted she had pictures of her property and the water to show in the presentation.

Mr. Kirby stated so she was seeing increased flooding, more debris coming downstream, and there was a problem with lack of mowing catching things.

Ms. Voda stated correct.

Mr. Kirby asked if Ms. Voda's property was in the township or the incorporated village, and whether her neighbors were in the incorporated village.

Ms. Voda stated she was surrounded by the new property that was annexed to the city, but said she was not city, she and one neighbor were still township.

Mr. Kirby stated this sounded like something staff handled. Mr. Kirby stated the Planning Commission needed to hear it for future applicants to make sure mistakes were not repeated. Mr. Kirby stated some developers were in the room and they got to hear it, that this was coming and something they needed to be aware of and keep track of. Mr. Kirby noted one of the developers was nodding at him. Mr. Kirby stated the ability to do something with Planning Commission was limited, except to plan a better future as they developed out there. Mr. Kirby thanked Ms. Voda for bringing it to the attention of the Planning Commission for the enforcement part of it, as the law says you are not, roughly, allowed to change your neighbors' drainage. Mr. Kirby said the case could be made to staff for enforcement to make sure that things were as they should be, which may involve the village engineer and others doing the measurements to see if its rain levels or drainage changes, as those could be hard to tell apart. Mr. Kirby noted that to the extent they could say it was done by the developer, there was remedy for that, but it was not with the Planning Commission. Mr. Kirby stated the Planning Commission did appreciate Ms. Voda coming before them because development was occurring and the Planning Commission would like to make sure future development had a minimal impact on the neighbors.

Ms. Voda stated the other thing she had was about the mowing of the lawn. Ms. Voda noted the property had been annexed by the city and stated she had tried to call to see who would take care of it because large rats were now in that property, especially when flooding began,

and entered her property. Ms. Voda stated she was told the company did not own it anymore and had sold it to another company she could not identify.

Mr. Kirby stated he did not know how good the Licking County auditor's website was. Mr. Kirby stated that in the Franklin County website he could state where to find the owners.

Ms. Voda stated she had learned it was the same company name Facebook had used before, but when she tried to obtain information on that company there was nothing.

Mr. Kirby stated Ms. Voda could work with staff on this.

Ms. Voda asked if the Planning Commission wanted to see pictures.

Mr. Kirby stated one (1) or two (2), perhaps.

Ms. Voda had an image shown on the screen and stated there was a culvert next to part of her house and noted that the water, because it was becoming so bad, was now eroding the road and culvert and it was cracking on both sides. Ms. Voda stated the image was from May 20th and if the presentation moved back to an image from April 6th she mentioned a difference in the gap could be seen.

Ms. Voda stated the city had told her she was still Jersey Township and that she had gone to the Jersey Township meeting where she was told she was on a county road. Ms. Voda stated the county said it might be annexed into the city. Ms. Voda stated she had not been able to reach anyone to take a look at the dangers of that road and every time it rained it was eroding more and more.

Mr. Kirby asked if the culvert was on Ms. Voda's property or on a neighbor's property.

Ms. Voda stated it was at the corner of her property, technically on the new company's property.

Mr. Kirby stated that put it in the city.

Ms. Voda stated yes.

Mr. Kirby asked if, as far as the city went, when they got the road, did that mean they also got the property.

Mr. Mayer stated sometimes the city got only the centerline and would need to research to find out how much of the road the city got and if there were any agreements in place.

Ms. Voda stated that construction trucks flew down that road and one could see the rocks and pebbles that fell every time they flew over that culvert and it may just collapse one day.

Mr. Kirby stated thank you.

TM-59-2019 Courtyards at New Albany

PUD Zoning Text Modification Amendment to the Courtyards at New Albany PUD zoning text to allow for 16 foot wide driveways where city code permits a maximum of 12 feet in width (PID: 222-001972).

Applicant: Epcon Communities c/o Aaron Underhill

Ms. Russell presented the staff report.

Mr. Kirby asked if there was engineering on this.

Mr. Ferris stated there was not.

Mr. Aaron Underhill, attorney for applicant Epcon Communities, stated he was not at the meeting where this had been considered with Pulte. Mr. Underhill stated there were a couple of distinctions here. Mr. Underhill stated there were no three (3) car garages. Mr. Underhill stated this really went to a maneuverability issue and not wanting to run up yards or drive over sidewalks when there were two (2) cars parked in the driveway. Mr. Underhill stated that if you thought of the way the New Albany Code typically worked, setbacks were a lot larger than those in an empty-nester development. Mr. Underhill stated the applicant was amenable to the conditions for this.

Mr. Underhill stated the other modification related to street tree spacing. Mr. Underhill stated that, as approved, their text provided for an average of one (1) tree per thirty (30) feet. Mr. Underhill stated it had been unclear if with these changes they would run into a one-per-thirty-feet problem. Mr. Underhill noted it said average, but stated they thought it best to make sure they could move the trees around as long as they were providing the same number so they did not interfere with improvements.

Mr. Kirby asked Mr. Underhill if he was okay with the apron as proposed by staff.

Mr. Underhill stated yes.

Mr. Kirby asked what would be done if a driveway was diagonal to a sidewalk. Mr. Kirby stated would they just say twelve (12) feet at one end and twelve (12) feet at the other; twelve (12) feet where it touched the sidewalk on one side, move it over, and say twelve (12) feet where it left the sidewalk.

Mr. Mayer asked if it was diagonal.

Mr. Kirby stated if your driveway was angled to the sidewalk, how would you compute the width, would you measure two (2) different widths and as long as neither of those exceed twelve (12) feet you were good.

Mr. Mayer stated he thought the intent was that you would keep the same width, but where it hit the right-of-way line it would be a maximum of sixteen (16) feet and you would keep that through until the close.

Mr. Kirby asked if it only counted at the right-of-way line.

Mr. Mayer stated that was correct.

Mr. Kirby asked if angling was possible as long as the right-of-way line was not perpendicular to the driveway.

Mr. Mayer stated that was correct.

Mr. Schell asked if this was the first time Epcon had done a project like this with such a short driveway.

Mr. Jason Coffee , with Epcon Communities, stated these setbacks were typical for CR communities. Mr. Coffee noted this was the first place they had that kind of a taper and, as they got into the design and potential construction, saw it was a maneuverability issue.

Mr. Schell asked if in any of their other developments they had not had a similar setup as the current design.

Mr. Coffee replied the setback had been there, but it was the New Albany taper they had not seen in prior communities. Mr. Coffee stated they were not required to do that in any of their other communities.

Mr. Kirby stated that as far as he could tell this was identical to the Nottingham Trace language that was just approved.

Mr. Mayer stated that was correct.

Mr. Wallace asked if it was fair to say that if this issue had been anticipated at the time the application was submitted it would have been submitted with a request that the tapering be removed.

Mr. Underhill asked for clarification.

Mr. Wallace asked if this maneuverability issue had been identified when the application was made and the plans were being formulated, it would have been addressed at that time.

Mr. Underhill stated that was correct. Mr. Underhill stated that sometimes you assume things because you do them over and over again at different communities, and the standard was different here, they did not catch it.

Mr. Wallace stated this was not a variance, this was just a change to the PUD.

Mr. Mayer stated that was correct.

Mr. Wallace stated they did not have to meet the variance requirements.

Ms. Wiltrout stated it sounded as if there was a staff review of a tree planting plan that would go over an average versus a lot-by-lot calculation, and asked if that was correct and there was no need to make that a specific condition now.

Mr. Mayer stated they would go through that with the applicant and it just gave staff the ability to make sure they got the same amount of trees. Mr. Mayer stated they could look at it, block by block analysis, to make sure they were getting the right amount.

Mr. Underhill stated it was better than coming through with another final development plan, so this was a more streamlined way to get it reviewed.

Ms. Wiltrout stated okay.

Mr. Kirby asked if any members of the public wished to speak on this. (No response.)

Moved by Mr. Kirby to accept the staff report and related documents into the record for CU-47-2019, seconded by Mr. Schell. Upon roll call vote: Mr. Kirby, yea; Mr. Schell, yea; Mr. Wallace, yea; Mr. Shockey, yea; Ms. Wiltrout, yea. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5-0 vote.

Mr. Kirby stated he needed to back up because he had just done the wrong set of documents in the motion he just made.

Moved by Mr. Kirby, seconded by Mr. Wallace, to accept the staff report and related documents into the record for TM-59-2019. Upon roll call vote: Mr. Kirby, yea; Mr. Wallace, yea; Mr. Schell, yea; Ms. Wiltrout, yea; Mr. Shockey, yea. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5-0 vote.

Mr. Wallace asked if they needed to withdraw the earlier motion for CU-47-2019.

Mr. Kirby asked Mr. Banchefsky how to reconsider CU-47-2019 or if it would be reconsidered when the time comes.

Mr. Banchefsky asked if this was for the documents.

Mr. Kirby stated yes.

Mr. Banchefsky stated it was either way.

Moved by Mr. Wallace, seconded by Mr. Kirby, to reconsider the motion that was made, and seconded, and approved to accept staff reports and related documents into the record for CU-47-2019. Upon roll call vote: Mr. Wallace, yea; Mr. Kirby, yea; Mr. Schell, yea; Mr. Shockey, yea; Ms. Wiltrout, yea. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5-0 vote.

Moved by Mr. Wallace, seconded by Mr. Kirby to un-accept the staff report and related documents into the record for CU-47-2019. Upon roll call vote: Mr. Wallace, yea; Mr. Kirby, yea; Mr. Schell, yea; Mr. Shockey, yea; Ms. Wilttrout, yea. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5-0 vote.

Moved by Ms. Wilttrout, seconded by Mr. Schell, to approve TM-59-2019 based on the findings in the staff report with the conditions listed in the staff report. Upon roll call: Ms. Wilttrout, yea; Mr. Schell, yea; Mr. Wallace, yea; Mr. Kirby, yea; Mr. Shockey, yea. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5-0 vote.

FPL-64-2019 Newton Court Final Plat

Final plat for the dedication of land for right-of-way for a new public street to be known as Newton Court. (PID: 093-106422-00).

Applicant: EMH&T, c/o Katie Miller

Ms. Russell presented the staff report.

Mr. Kirby asked Ms. Russell to go back and show the future connections on the presentation. Mr. Kirby stated it would cross Innovation eventually going toward the freeway and it would go north to Clover Valley eventually.

Mr. Kirby asked for engineering.

Mr. Ferris stated the plan had been submitted and resubmitted. Mr. Ferris stated the applicant had agreed to provide a drainage easement across all of the cul-de-sacs at this time. Mr. Ferris noted they had enclosed an Exhibit A which had some notes that were found on other plats. Mr. Ferris stated the applicant had just received a copy of Exhibit A tonight and had agreed to work with them to put on the plat to clip the notes.

Mr. Todd Cunningham, of EMH&T, stated Mr. Ferris was correct, they had reviewed those notes and would certainly work with staff to make sure the appropriate steps were done on the plat and take care of the drainage easement as requested.

Mr. Kirby asked if the cul-de-sac limit was 900 feet.

Mr. Mayer stated he believed it was 800 to 1,000 feet depending on the type of road.

Mr. Kirby asked if semis could turn around in that size cul-de-sac.

Mr. Cunningham stated yes they could, saying that bulb was a ninety (90) foot diameter bulb.

Ms. Voda asked to return to the slide before and asked if this was a road they were going to put straight up, where the cul-de-sac was, up at the top.

Mr. Mayer stated this was an exhibit from the city's strategic plan. Mr. Mayer stated the strategic plan included lane use recommendations and also thoroughfare plans. Mr.

Mayer stated that what was shown with dashed lines was showing where, at the time the plan was adopted, were recommendations for future road connections. Mr. Mayer said this did not show exact alignments, it was there to illustrate where it was felt additional connections would be valuable in this area. Mr. Mayer said this was showing before Innovation Campus Way existed, and this was showing that the city desired and thought a connection needed to be made to Mink Road in order to get to an interchange. Mr. Mayer stated that just like that this was the first segment of this roadway that could be, hopefully, a connection all the way to Clover Valley or somewhere up on Jug Street.

Ms. Voda stated that if they dig trenches and ditches along the side of the road for water drainage and that could connect up towards the river on Hopkinson it also connected to the bottom of river at some point, waterfall.

Mr. Mayer stated that on this road there was a private development, you could drive up Innovation Campus Way and see it just to the east of this roadway, so this road was being put in to serve that development and future developments. Mr. Mayer stated all the storm water that was going to be generated on this road would go into the storm basin that was just off to the east, on that private property.

Ms. Voda stated that if she remembered correctly, the elevation at that top corner was probably about 150 feet higher than below the street, so it slanted for the elevation toward Harrison Road.

Mr. Mayer stated he thought Ms. Voda was generally correct, that the water flowed from north to south, maybe the applicant knew more about this than he did, but he was unfamiliar with the exact elevations within this area.

Mr. Kirby asked the applicant if he wanted to address the detention.

Ms. Voda stated she was curious how they were going to make sure that water did not go ...

Mr. Cunningham stated there were two (2) things they needed to concern themselves with when planning for storm water. Mr. Cunningham said there was understanding the existing drainage patterns today, because they needed to know what the impact was with development and the other thing was meeting the city's standard for post development retention requirements. Mr. Cunningham said that in this case Ms. Voda was correct, that area where the road was going, as it existed, was a cornfield, where its previous use was a tributary to the stream by Ms. Voda's house. Mr. Cunningham noted they were not allowed to take the water away from that stream. Mr. Cunningham said once they developed it, they still had to discharge into the same watershed, the same discharge pond. Mr. Cunningham said the other they needed to do, since they were changing the land use, was comply with the city's storm water drainage policy. Mr. Cunningham said in this case they provided engineering plans and received approval for the necessary studies showing they had complied, at least as designed, as it was not built yet, with the city's policy. Mr. Cunningham stated that as the project went through construction the

city monitored, inspected to ensure things were built according to plans so it would function properly when completed.

Mr. Kirby stated the important point here was that because they were going to have hard surfaces that drained quickly they would have to retain that water and release it slowly so it acted like the cornfield they were used to.

Mr. Cunningham stated as dictated by the city's policy.

Ms. Voda stated it ran fast down there and that was part of the problem. Ms. Voda stated it might not be a lot of rain, but it came down really fast and backed up very quickly.

Mr. Shockey asked Ms. Voda how long she had been in her home.

Ms. Voda stated she had purchased the house in August 2018.

Mr. Shockey asked if this was her first home, if he remembered correctly, and that was why she had such an interest in this.

Ms. Voda stated, yes, she had owned other homes, but she had been overseas when she had purchased them and she had actually never lived in those other homes.

Mr. Shockey stated there had been a lot of rain in 2018 and a lot of rain in 2019 up to this point. Mr. Shockey stated he did not know what the differences were in the rain this year to date.

Mr. Kirby stated that last year they were 14 inches over for the year.

Mr. Spaulding stated that average annual precipitation was 39 inches and last year they had gotten 55.

Mr. Shockey said there was probably a lot of area flooding last year as well, and there was a lot of area flooding this year also because of the water.

Ms. Voda stated she floods in the winter too, even when there is snow, there was no rain, just light snow, and it flooded.

Mr. Shockey stated he had seen her pictures and thought she had a good reason to be there, but that she did not know, necessarily, what happened in prior histories.

Ms. Voda stated that if you looked at aerial views, Google maps, in her presentation you could see the changes in the landscaping. Ms. Voda said that as she had shown, the difference in the water stream because water flow goes toward the path of least resistance.

Mr. Shockey stated this kind of tied back to what Mr. Kirby had said and what the engineer had said, that in the city policy controls how fast the runoff can get to the creek and if there were any problems with that, then, in her meetings with them, they would help her through that. Mr. Shockey stated he wanted to point out the rainfall they had experienced was a big part of the problem because Third Street was a river a few weeks ago too and he had never seen it flood like that. Mr. Shockey stated he hoped that helped and appreciated Ms. Voda's presentation.

Ms. Voda stated her concern was that no one would know how bad it would get until after it was developed. Ms. Voda stated everyone planned and tried to do their engineering, but, as a network engineer, she knew that sometimes you could not estimate where a signal flowed. Ms. Voda noted it could just go somewhere else and you would then say you had not seen that coming. Ms. Voda stated that as much as you tried to plan for it, it just sometimes did not go that way and she wanted to make sure that, as they had said, it had to do with the fact that it came fast.

Mr. Shockey stated he thought they would take time to meet with her and help her.

Mr. Kirby stated Ms. Voda should talk to the guy behind her (meaning Mr. Cunningham), as well, as he was the engineer responsible for it, and suggested she get a business card for after the meeting.

Moved by Mr. Kirby, seconded by Ms. Wiltout, to accept the staff report and related documents into the record for FPL-64-2019. Upon roll call vote: Mr. Kirby, yea; Ms. Wiltout, yea; Mr. Schell, yea; Mr. Wallace, yea; Mr. Shockey, yea. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5-0 vote.

Moved by Mr. Schell, seconded by Mr. Kirby, to approve FPL-64-2019 with the condition that the developer work with the city engineer. Upon roll call: Mr. Schell, yea; Mr. Kirby, yea; Mr. Wallace, yea; Mr. Shockey, yea; Ms. Wiltout, yea. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5-0 vote.

CU-47-2019 Conditional Use

Conditional use application to allow a monopole cellular tower telecommunication facility to be developed at 5089 Johnstown Road (PID: 222-001516).

Applicant: UAS Inc, c/o Rob Ferguson

Mr. Kirby requested that all those coming up to speak this evening individually swear to tell the truth, unless they were attorneys, in which case they were not required to do so, if they were representing somebody.

Mr. Kirby asked Mr. Banchefsky to confirm the comment regarding attorneys.

Mr. Banchefsky replied that they could be disbarred, but did not have to swear.

Mr. Kirby noted this was not for the variance. Mr. Kirby stated there were two (2) hearings required to make this thing reality. Mr. Kirby said one was a conditional use

asking if it was appropriate to put a cell tower on a church site. Mr. Kirby stated the other was a variance, was it allowable to put it that close to the lot line. Mr. Kirby stated the Planning Commission did not hear the variance, so anything to do with how close to the line was not part of the use, it was part of the variance, and was not heard by Planning Commission, the Board of Zoning Appeals (hereafter, "BZA") got that one.

Mr. Mayer presented the staff report.

Mr. Mayer noted the New Albany city code required that if a tower were being put in a property that was zoned residential, which Temple Beth Shalom (hereafter, "TBS") was zoned R2, but it had an institutional use, which a religious use was, it must come before the Planning Commission for a conditional use.

Mr. Mayer noted the applicant was proposing to put the tower at the back of the parking lot. Mr. Mayer stated this had been reviewed the prior month by the Planning Commission and tabled to allow the applicant to bring a radio frequency (hereafter, "RF") engineer to the meeting.

Mr. Mayer noted the variance to allow for the setback would be heard on July 22, 2019 at the same time and place as this evening's Planning Commission but it would be heard by the BZA.

Mr. Mayer stated the New Albany code for cell towers required the applicant to show the new tower was technically necessary. Mr. Mayer said the applicant had provided the data shown in the presentation, a heat map showing the number of dropped calls in the month of April. Mr. Mayer stated that after last month's testimony, and additional evaluation analysis, staff felt the applicant was not meeting the technical need to show. Mr. Mayer noted it was questioned that it showed just one month's worth of time. Mr. Mayer stated that, additionally, it did not show any numbers about the capacity needed and the calls being made. Mr. Mayer stated it did not sufficiently provide technical need for the area.

Mr. Mayer noted Thompson Park had been mentioned at last month's Planning Commission meeting and stated the city's code for cell towers encouraged applicants to look at public parks first. Mr. Mayer noted the city had looked at the vicinity and it was about a half mile away from the proposed site. Mr. Mayer stated the applicant had not shown it had thoroughly investigated Thompson Park to be an alternative location for the cell tower.

Mr. Mayer noted the applicant had provided additional information to the city and staff had provided it to the Planning Commission. Mr. Mayer stated he could also provide it to the public after the meeting. Mr. Mayer stated the information provided showed a flood plain map for Thompson Park and some case law that had been requested by the boards and commission.

Mr. Kirby asked if there was any engineering on the use.

Mr. Ferris stated no.

Mr. Kirby asked to hear from the applicant.

Mr. Banchefsky stated there were some ground rules. Mr. Banchefsky stated this was a bit different than the Planning Commission usually dealt with because it implicated federal law, not just the local zoning code. Mr. Banchefsky stated the Federal Telecommunications Act did not preempt local zoning ordinances, such as the pending conditional use application, but it did contain five (5) exceptions.

Mr. Banchefsky stated these had been noted previously, but he wanted to state them again. Mr. Banchefsky stated the board may not unreasonably discriminate among providers of functionally equivalent services. Mr. Banchefsky stated this had nothing to do with what was being done here. Mr. Banchefsky stated the board may not regulate in a manner that prohibits or has the effect of prohibiting the applicant from providing the provision of personal wireless services. Mr. Banchefsky stated that was key because that implicated whether there was a coverage issue and where the facility would be located. Mr. Banchefsky stated the board must act on the application within a reasonable period of time and noted they were fine on time at this point. Mr. Banchefsky stated the board must make any denial of the application in writing and that must be supported by substantial evidence in a written record. Mr. Banchefsky stated those were the federal requirements that overlay what the local zoning code had.

Mr. Kirby asked if the minutes would qualify as that written record.

Mr. Banchefsky stated that better would be a record of action in detail, which the staff would work with the commission to make sure they had that, if it was needed.

Mr. Kirby asked about the fifth point Mr. Banchefsky had mentioned.

Mr. Banchefsky stated the statute preempted local decisions regarding the health impact or environmental impact of RF emissions, saying they had discussed that at the last meeting, he believed.

Mr. Wallace asked if that was assuming the provider was in compliance and stated they would need some evidence from the applicant that they were in compliance.

Mr. Banchefsky stated right, in other words, emissions from the tower are within the limits provided under federal law.

Mr. Rob Ferguson, from United Acquisition Services representing Verizon Wireless, swore to tell the truth.

Mr. Joe Perotti, attorney for Verizon, swore to tell the truth.

Mr. Ferguson stated that, as a quick recap, when Verizon released the search ring in 2008 it was surrounding the front of the country club. Mr. Ferguson stated they had

contacted, or tried to contact, the folks at the country club but did not get any positive feedback or return phone calls on those inquiries. Mr. Ferguson stated that in 2012 they shifted the search ring down to the intersection of US-62 and Thompson Road. Mr. Ferguson stated that one of the first things they did when they looked for a location to place antennas or what may end up being a cell tower, was look for tall structures in the area. Mr. Ferguson asked for the heat map to be put up on the presentation.

Mr. Wallace asked if Mr. Ferguson had said they had started the search in a different location then the one they were now searching in.

Mr. Kirby stated he had said the country club.

Mr. Ferguson said in 2008, that's correct.

Mr. Wallace asked why had they started there.

Mr. Ferguson stated the coverage gap they had talked about, in both locations, was really the entire area that he was indicating on the presentation.

Mr. Wallace asked if he could say "this entire area here" so that the record was clear what area he was talking about.

Mr. Ferguson stated it was old Dublin Road to, Mr. Ferguson stated he could not quite read it.

Mr. Kirby stated the big one was Reynoldsburg-New Albany.

Mr. Ferguson stated Reynoldsburg-New Albany, route 62 as it bisects this area, and running down into that area. Mr. Ferguson stated this was the area, more or less, that they were trying to cover. Mr. Ferguson stated they had sites in certain areas, illustrating on the presentation where those sites were.

Mr. Kirby asked if the sites over here were on Hamilton and Dublin Granville.

Mr. Ferguson stated at Hamilton Road and OH-161, there was a cell tower there. Mr. Ferguson stated it was better represented on another slide, but said they were right there, by the Home Depot was a macro site.

Mr. Kirby stated on Hamilton Road.

Mr. Ferguson stated correct, and said Hamilton Road and OH-161 there was a cell tower there. Mr. Ferguson stated it was better represented on another slide, but said they were right there, near the Home Depot.

Mr. Kirby stated on Hamilton Road.

Mr. Ferguson stated on Hamilton Road, correct. Mr. Ferguson requested to look through the slides and selected one. Mr. Ferguson said Hamilton Road and OH-161 was a macro site. Mr. Ferguson stated down there was a GN that was a macro down in Gahanna and indicated where US-62 and Hamilton Road were. Mr. Ferguson indicated where the Jefferson Township site was.

Mr. Kirby stated it was at the veterinarians, saying Animal Hospital of New Albany was that site, he believed.

Mr. Ferguson stated okay. Mr. Ferguson stated it was off the map, but up at OH-161 and New Albany Road there was a macro site at the Ohio Department of Transportation (hereafter, "ODOT") interchange. Mr. Ferguson indicated others that he said were small cells which he believed were located around the school. Mr. Ferguson stated that entire area was where the coverage problem was. Mr. Ferguson stated it was most notably here, here, and right there, while indicating the areas he stated on the presentation.

Mr. Ferguson stated that when somebody in his position was given a search ring to find a site they looked at that area and they looked for tall structures, existing towers, rooftops, something that could get the antennas up. Mr. Ferguson said there were none of those things here. Mr. Ferguson stated the only tall structures that they did have were power lines that ran down through Thompson Park and turned to the southwest. Mr. Ferguson stated that, as they explained last month, they could not co-locate on those towers, saying the loading that Verizon had was too weighty, too heavy, to sustain safely co-location on those towers.

Mr. Kirby asked what that was in numbers.

Mr. Ferguson stated sorry.

Mr. Kirby stated that was weight and asked what was the weight limit of a tower and what was the typical weight need.

Mr. Ferguson stated the transmission line was designed to hold KV8 lines, it was not designed to hold a profile class 1.

Mr. Perotti stated that communication towers were governed by the ANSI standards and power lines use completely different standards. Mr. Perotti stated that just to be in compliance with FCC issues and federal issues, when you built a communications tower that structure needed to be in compliance with those federal requirements and noted that the power lines seen here were not.

Mr. Kirby stated he had made a statement that was numerically verifiable and he wanted to get the numbers in the record if they had them.

Mr. Spaulding asked that, just for clarification, were they saying their company had never put a cell tower on top of a transmission tower.

Mr. Ferguson stated it had.

Mr. Spaulding stated they had an application ten (10) years ago on this exact issue and asked who was wrong then.

Mr. Ferguson stated but it did not happen then.

Mr. Spaulding stated that was his question, had he ever done it before.

Mr. Ferguson stated they had, but they did not do it anymore because that had fallen out of favor for safety reasons.

Mr. Wallace asked what kind of safety reasons, safety to whom.

Mr. Ferguson stated the electrical, the requirements that AEP would have for technicians to climb those lines.

Mr. Wallace asked if he was suggesting it was not feasible, was that what he was saying. Mr. Wallace stated it was possible, it could be done and had been done in the past, but Mr. Ferguson was saying that today, based on the limited testimony heard from him so far, it just was not feasible.

Mr. Ferguson stated correct.

Mr. Wallace stated one reason was safety and asked what were some of the other reasons that he would put forward, that he was familiar with personally, that would suggest non-feasibility.

Mr. Ferguson stated the transmission lines were in the vicinity of Thompson Park.

Mr. Perotti stated that what was really driving all of Verizon's applications nationwide was that they monitored the Verizon network and when they identified a gap in coverage they issued Mr. Ferguson's company a search ring. Mr. Perotti stated the search ring oftentimes did not jive with local zoning ordinances, so there was a fine edge between filling gaps in coverage and constructing facilities that also complied with local zoning ordinances. Mr. Perotti stated Mr. Ferguson could then describe, precisely, where the transmission lines were on this page, referring to the presentation on the screen.

Mr. Ferguson stated generally they were coming down through there and they turned southeast.

Mr. Perotti stated Verizon's proposed facility was represented by the orange or red dot and asked if that was correct.

Mr. Ferguson stated correct.

Mr. Perotti stated he thought that what he was alluding to was probably best described in expert testimony from Verizon's RF engineer, he was not in the previous hearing in June. Mr. Perotti stated that was really what drove all of their applications, where was the gap in coverage and how could they fill that gap in coverage with the least intrusive means.

Mr. Kirby stated they would certainly get to that, the plan was to certainly get to that, saying he had questions on that topic. Mr. Kirby stated that to meet all of the demands and requirements, we needed to prove that, or at least show, hardship if nothing else, for all the alternatives that would be available. Mr. Kirby stated they had heard at one point in time, this board heard an application to put a cell site on a transmission line and, if that had fallen out of favor, they needed real reasons why. Mr. Kirby stated things like it's gotten too heavy, okay, that has numbers on it. Mr. Kirby stated if AEP says that's too heavy for our tower because of ANSI standards on the tower, those were quantifiable numbers that were very easy to prove, easy to deal with. Mr. Kirby stated he was an engineer and numbers, with units on them, settled arguments on judgment calls. Mr. Kirby stated safety ones, that's another issue, there we had different training required and permission possibly, to get there. Mr. Kirby stated we were making sure that everything fits, all the dots line up.

Mr. Perotti stated of course, all of those requirements, filling a gap involved considerations to public health and safety. Mr. Perotti stated he would let Mr. Shirey testify to this proposed facility. Mr. Perotti stated that as he was thinking out loud, the previous application, to verify based on transmission lines, filling a gap in coverage also involves topography and users on the network so the power lines or transmission lines that might have been implicated years ago might have been at a different elevation, it was just impossible for them to say and this one's just totally different.

Mr. Ferguson stated okay.

Mr. Wallace noted Mr. Ferguson had provided his name, but asked Mr. Ferguson to provide his background and experience. Mr. Wallace asked what would give Mr. Ferguson the personal knowledge to testify about the matters he was talking about at this time. Mr. Wallace asked Mr. Ferguson to help them understand who he was, what his background was, and what qualified him to provide the testimony he was providing.

Mr. Ferguson stated his firm had the search ring for the roughly fourteen (14)/twelve (12) years it had been in play. Mr. Ferguson stated he had been a part of that company, doing that work, since 1996. Mr. Ferguson stated he had probably worked on well over 500 applications, co-locations. Mr. Ferguson stated he had found sites in many jurisdictions in central Ohio, Cleveland, and Pittsburgh. Mr. Ferguson asked if there were any additional questions.

Mr. Wallace stated Mr. Ferguson had an attorney with him that day and if he felt comfortable that Mr. Ferguson had established his bona fides to keep going, but if he

wanted to ask Mr. Ferguson some questions to get some more information out, go ahead.

Mr. Perotti stated Mr. Ferguson was only serving as an expert as far as site acquisitions consulting was concerned, finding suitable structures or properties to acquire, so yes, they were comfortable.

Mr. Wallace asked if he had somebody else with him.

Mr. Kirby stated you have other experts in the room.

Mr. Perotti stated yes.

Mr. Ferguson stated that what they generally do when they have a search ring is they drive the search area, they look for tall structures, something for them to co-locate on and, if they don't have any of those solutions that are available to them, they begin to look for large land tracts. Mr. Ferguson stated they, of course, read the code of the jurisdiction where they were making application and looked for tracts where they could find a typical setback or buffer to residential where they could place a tower. Mr. Ferguson stated that in this particular case they tried the country club. Mr. Ferguson said there was lots of buffer there to residential locations to put a tower and could be had and were often looked at for country club locations. Mr. Ferguson stated they could not find anyone to interact with, could not get a dialogue going. Mr. Ferguson stated that took place over three (3) and half years. Mr. Ferguson stated that when they spent that amount of time and could not find a solution the RF would go back and do what they called a search ring re-design. Mr. Ferguson stated that in this case they moved farther south, to the intersection of US-62 and Thompson Road. Mr. Ferguson stated there they three (3) land tracts that were of considerable size.

Ms. Wiltrout asked if the moving of the search ring changed, at all, the significant gap coverage.

Mr. Ferguson stated it was still there in both cases.

Ms. Wiltrout asked if it helped the problem, did the problem change, was the problem addressed by the new ...

Mr. Kirby asked if she was asking if the solution was better or if the problem was different.

Ms. Wiltrout stated she was asking if the solution to the second search ring was adequate or better than the first search ring.

Mr. Perotti stated he thought that was probably a question best directed to their RF engineer because it was based on wireless needs. Mr. Perotti stated that unless they would like to call him now, he was probably the best suited to answer that question.

Mr. Kirby stated that if they were going to hear from him any way he could come up to the microphone and give his name and professional qualifications.

Mr. Brent Shirey stated his name.

Mr. Kirby asked if he was a professional engineer.

Mr. Shirey stated he was not a PE, he had a BS EE degree from Grove City College, an ABET accredited institution in western Pennsylvania.

Mr. Kirby stated that differentiation was one he wanted in the record.

Ms. Wilttrout stated she was wondering if the search ring move was supported by evidence versus the need in the community at large, whether or not that was served equally by search ring one (1) being moved to search ring two (2).

Mr. Shirey stated he was not familiar with the entire history, but said they typically move a search ring as a concession they could not find a suitable property or willing landowner to deal with them. Mr. Shirey said they shifted the search ring and made do with what they could.

Mr. Kirby stated the original search site had better RF performance.

Mr. Shirey stated that was right, in fact not just location but height.

Mr. Ferguson stated they moved from the country club to US-62 and Thompson Road and there they had three R2 districts, institutional use plus residential. Mr. Ferguson stated they talked with, and tried to work with, all three. Mr. Ferguson stated they had worked with All Saints Episcopal but could not find a suitable location on their property. Mr. Ferguson stated they had dialog with the Presbyterian Church but those conversations trailed off, they could not find a location on that property either. Mr. Ferguson stated what worked for them was TBS. Mr. Ferguson stated they were interested, had good topography, good tree height, good screening for locations. Mr. Ferguson said they looked at three locations on that property to start and made sure TBS was comfortable with the locations they were looking at. Mr. Ferguson stated there was a deed restriction on this property that noted they need to work with the design review committee for the City of New Albany.

Mr. Kirby asked for the City of New Albany or for the New Albany Company.

Mr. Ferguson stated, sorry, the New Albany Company. Mr. Ferguson stated they had gone through that deed restriction process and looked at three locations on TBS property. Mr. Ferguson stated they had done a balloon test where they flew a balloon at 130 feet, it was a five (5) to six (6) foot wide balloon, and the folks from the New Albany Company took photographs of it and it was deemed that the location where the site was now, the one being presented, was the preferred location to pursue. Mr. Ferguson stated their original application and the original plans discussed with both the New

Albany Company and TBS were for this to be a monopine, a faux tree. Mr. Ferguson noted that by the time they had completed that exercise the decision by the New Albany Company was to make this a monopole. Mr. Ferguson stated that was where they were in terms of the location picked, the type of pole, tower they had picked.

Mr. Perotti stated he knew Mr. Wallace had requested RF testimony at the previous hearing in June. Mr. Perotti stated that over the next few minutes they would like the RF engineer to give the city a better idea of why this property, why they can't go on another property, and so forth.

Mr. Wallace stated before they went there he had a question. Mr. Wallace stated he had mentioned there was another type of pole that could be utilized that was discussed between the New Albany Company, Mr. Ferguson, and presumably TBS.

Mr. Ferguson stated yes.

Mr. Wallace asked if that was something that actually looked like a big tree.

Mr. Ferguson stated it was called a monopine.

Mr. Perotti stated he had an image of one, saying it was a standard monopine.

Mr. Kirby asked how tall was the one in the picture.

Mr. Perotti stated this one was in Orange County, California and was up in the air 120 feet and was close to what they were proposing, just about fifteen (15) feet shorter. Mr. Perotti stated that if you looked closely, and added that he could pass that around to the residents, although it was difficult to see, that was where the antennas would be located.

Mr. Kirby stated your tri-corner hat, that he called it a tri-corner hat.

Mr. Perotti stated yes, exactly, the receptors. Mr. Perotti stated that was where the anchor tenants' antennas were located. Mr. Perotti stated this tower, as well as the one Verizon was proposing, was designed for co-location, so if AT&T or T-Mobile or Sprint sought a structure it was designed to accommodate other wireless providers. Mr. Perotti stated that based on their discussions with the New Albany Company, they came to the conclusion that a simple monopole having a galvanized finish would be more appropriate but Verizon was amenable to having any condition of approval, look like a normal pine if the city is okay with that. Mr. Perotti stated that was what the original inspector's work was, it had less of a setting impact, instead of making it resemble the surroundings with a monopine.

Mr. Ferguson stated there were some additional photos of monopines that were located in the city of Columbus that were of similar height. Mr. Ferguson stated one was 120 feet and the other was 125 feet which were ten (10) and five (5) feet lower than what the applicant was proposing here.

Mr. Schell asked how tall some of the trees were in that location.

Mr. Ferguson stated they were sixty (60) to seventy (70) feet that are immediately behind TBS.

Mr. Schell said he was talking about this type of look being another forty (40) or fifty (50) feet above that.

Mr. Ferguson stated that was correct.

Mr. Shockey asked if he had been involved with the New Albany Company review authority discussion.

Mr. Ferguson stated yes.

Mr. Shockey asked why would they prefer a galvanized monopole over something that was more eco-friendly looking like the picture he had just seen. Mr. Shockey asked if he had any memory of those conversations.

Mr. Ferguson stated he did not want to speak for them, but after they had gone through the exercise and taken the photos, he believed, their opinion was it was a utility-like use and just treat it as a utility.

Mr. Shockey stated just treat it as a utility pole instead.

Mr. Kirby stated something closer to the color of the sky minimized impact.

Mr. Ferguson stated that in their business there are some cases where people would say paint it blue to match the sky, but how could you ever get a color to match what the sky looked like. Mr. Ferguson noted that, typically, a galvanized pole in Columbus, Ohio blended better.

Mr. Shockey stated he would like to see those pictures.

Mr. Kirby stated yes

Mr. Ferguson stated he could pass those up front.

Mr. Perotti stated Mr. Shirey was an RF engineer for Verizon.

Mr. Shirey stated that was true.

Mr. Perotti asked if he was familiar with the RF plot.

Mr. Shirey stated yes.

Mr. Perotti asked, just for members of the Planning Commission, could he describe what they were looking at, saying the yellow dots surrounding the proposed facility, could he explain what those represented.

Mr. Shirey stated the yellow pinpoints were the existing cell sites they had surrounding New Albany, Plain Township to the west, Jefferson Township to the south, and all cells and macro cells to the north of New Albany

Mr. Perotti asked if the yellow dots that represented Verizon wireless service cell sites were currently propagating a signal.

Mr. Shirey replied yes.

Mr. Perotti asked if the signal they were propagating filled the area where Verizon was proposing a new facility.

Mr. Shirey replied no, it did not. Mr. Shirey stated they did provide some marginal coverage. Mr. Shirey stated every cell site provided coverage and capacity, so any new cell site they proposed fit a dual purpose. Mr. Shirey stated that originally, when this was started, going back to 2008, coverage was a concern. Mr. Shirey stated that as they continued to grow traffic wise, capacity became more of a concern.

Ms. Wiltout asked if they had any information about the growth and the need for capacity over the years.

Mr. Shirey stated they could provide it.

Mr. Perotti asked Mr. Shirey, when this site was originally proposed, was there a need for services in 2008.

Mr. Shirey stated yes, there was a need for service in 2008.

Mr. Perotti stated eleven (11) years had passed since the original need.

Mr. Shirey stated that was correct.

Mr. Perotti stated so there had been a need for service for at least eleven (11) years.

Mr. Shirey stated correct.

Mr. Perotti stated as far as capacity and service were concerned, and asked in terms of how a provider filled a gap in coverage, was it based on a number of factors such as topography or number of users on the network.

Mr. Shirey stated that from a coverage perspective they looked at what was referred to as signal strength. Mr. Shirey stated, plain and simple, where you had service gaps, either rooted in customer complaints or dropped calls, as you could see here

demonstrated on this map, you treated the coverage gaps or dropped calls, with new cell sites. Mr. Shirey stated that, secondly, as he stated earlier, they also proposed new cell sites to serve a growing capacity need.

Mr. Perotti asked if that was serving growing capacity needs.

Mr. Shirey stated yes.

Mr. Perotti stated that it looked that as things stood at that moment, it looked like orange or red dots, there was growing capacity needs to the left, growing capacity needs to the right, what did those represent.

Mr. Shirey stated what you saw there was on a legend. Mr. Shirey stated Ms. Wiltout had mentioned it was from April data, this was a heat map of the dropped connections through the month of April. Mr. Shirey stated the red represented higher concentrations of dropped connections where the lighter colors, actually the dark blue, or purple, represented lower or cooler areas, once again, it was referred to as a heat map.

Mr. Perotti stated that assuming this site was constructed and Verizon was propagating a signal, would this facility fill that significant gap in coverage.

Mr. Shirey stated yes, as a matter of fact, what you saw here was a best server plot. Mr. Shirey stated the orange outline showed where the proposed cell site at TBS would cover as a dominant server on the best server plot. Mr. Shirey stated the area within the coverage, you would see improvements from this proposed cell site.

Mr. Perotti asked if this site was on air and propagating a signal, would it also correspond with the surrounding sites and network as a whole.

Mr. Shirey asked what was meant by correspond.

Mr. Perotti stated speak to the other sites.

Mr. Shirey stated absolutely, a handoff, smooth transmissions in between, macro cells and small cells as well.

Mr. Perotti asked if it would alleviate the surrounding structures as well.

Mr. Shirey stated absolutely, from a capacity standpoint that was the other intention, to offload those neighboring cell sites.

Mr. Perotti asked, so, in your opinion, would the other sites work more efficiently and better.

Mr. Shirey stated absolutely.

Mr. Perotti stated there had been some discussion at the earlier meeting in June concerning another property at Thompson Park, and asked Mr. Shirey if he was familiar with that site.

Mr. Shirey stated yes, he was.

Mr. Perotti asked, based on your RF analysis, if this tower were located on that property, would it fill the gap in coverage.

Mr. Shirey stated it would not. Mr. Shirey stated the studies they had done showed, naturally they were shifting to the northwest to Thompson Park on the order of three quarters (3/4) of a mile, so, with a tower of comparable height, 130 feet, you would lose coverage to the southeast.

Mr. Spalding asked where on the heat map Thompson Park was located.

Mr. Shirey stated it was right around here while illustrating on the heat map.

Mr. Spalding said he thought he was a little far north there, try again.

Mr. Perotti asked if Mr. Spalding knew where it was could he point it out to them.

Mr. Spalding stated he was asking the engineer who did the study.

Mr. Shirey stated Thompson Park runs north/south, so depending on where.

Mr. Spalding stated that was fair and asked where was the center of the heat map. Mr. Spalding stated spacially there was a center, but if he was actually looking at the heat map, where was the center of the heat map, was it not where all the reds were located.

Mr. Shirey stated the center of the cell site they were proposing was at the orange pin drop.

Mr. Kirby asked if that was a weighted center, where they had looked at all of the places they needed coverage and it was the one that got the most, picked up the most, dropped call areas.

Mr. Shirey stated that if they were to locate a cell site here (indicating a location on the presentation), that would be the best place to put a cell site to clean up the dropped connections, but available land, willing landlords.

Mr. Spalding stated his question was if they used the Thompson Road location, were they still going to hit the epicenter, the weighted area of their heat map. Mr. Spalding stated if this was a radar image, then he would put the tower as close as possible so he could hit that area that was getting the most dropped calls. Mr. Spalding asked if, in his professional judgment, was Thompson Road, at the south end of Thompson Road, not appropriate to hit the density of that area

Mr. Shirey stated from the south end of Thompson Road, the site they had evaluated from the past, was north of Thompson Road, on the order of a quarter (1/4) mile. Mr. Shirey stated the height they proposed there was on the order of 185 feet, so higher than what they had settled on at TBS. Mr. Shirey stated that, however, his opinion, was that they would cover portions of the dropped connections, but they would lose to the southeast.

Mr. Spalding asked even at 180 feet.

Mr. Shirey stated even at a 185 feet.

Mr. Spalding asked, if he had his desired location, was the proposed height of the tower what he needed to accomplish or could it be lower.

Mr. Shirey stated the 130 had been a concession from 185. Mr. Shirey stated that, speaking honestly, they would have preferred 185.

Mr. Perotti stated that when he drove in this afternoon he was on I-70 for a couple of hours and said that along the infrastructure he generally passed a communications tower every mile or every two (2) miles. Mr. Perotti stated Verizon and other providers really had that infrastructure built, especially along interstates that went across the country. Mr. Perotti stated when you got into residential areas, where the need for service and capacity was growing exponentially, they needed to be closer to the residents. Mr. Perotti stated that was what this facility was supposed to do, provide service to residential areas.

Mr. Perotti stated that, unfortunately, there were few areas of low hanging fruit left. Mr. Perotti stated that along the interstate and along commercial areas, Verizon wireless providers were usually in pretty good shape but as far as providing a signal to residents, that was where this application came in. Mr. Perotti stated that especially when you considered that in 2016 76% of 9-1-1 calls originated from a cell phone and households across the country had eliminated their land line, the demand was there and that was the impetus for this application

Mr. Kirby stated the slide on the screen had been taken in April.

Mr. Shirey stated it was April dropped connection data.

Mr. Kirby asked if April was a typical month.

Mr. Shirey stated, typical month, the traffic patterns did not vary too much.

Mr. Kirby stated they did not have a Mother's Day equivalent from years ago, when the North American network took effectively unlimited call demand in the days of switched calls.

Mr. Shirey stated traffic patterns did not vary too much, however, he stated, there was a green leaf effect. Mr. Shirey stated that as foliage comes on the trees there were more dropped connections. Mr. Shirey stated that May, June data typically would have more drops and would see things shift from the blue to the oranges and yellows.

Ms. Wilttrout asked how this compared to April a year ago.

Mr. Shirey stated he had not looked at that, but could pull that data.

Mr. Schell asked if he were able to find something on Thompson to kind of hit the southwest portion, saying he had said it still leaves portion on the southeast side, could he not use a much smaller cell tower to hit that bottom piece.

Mr. Shirey stated that conceivably they could, but asked that they rule on the proposal.

Mr. Wallace asked if Mr. Shirey could repeat what he had said.

Mr. Shirey stated that conceivably they could line the area, New Albany, with smaller cell sites and resolve the issues. Mr. Shirey stated it came down to investment and it came down to time, and asked that they rule on the proposal.

Mr. Kirby stated this heat map was dropped calls and asked if the applicant had a baseline performance level for what was the acceptable dropped call rate and how did this compare.

Mr. Shirey stated they did but it would be, he said not a trade secret, but something they kept close to the vest, Verizon.

Mr. Kirby stated that did not help their case and asked if there were FCC standards on that.

Mr. Shirey stated not that he knew of.

Mr. Kirby stated that in the old switch days it was ninety (90) seconds to dial tone or the carrier got fined. Mr. Kirby stated he did not know if there was an equivalent on dropped calls or coverage.

Mr. Shirey stated nothing that he was familiar with. Mr. Shirey asked if he was asking about FCC requirements.

Mr. Kirby stated this was not FCC driven.

Mr. Shirey stated no, it was market driven.

Mr. Perotti asked if anyone had any further questions for the expert, Mr. Shirey, at that time.

Mr. Kirby stated commission members. (No response).

Mr. Perotti stated they had no more witnesses to call, but before they heard from the residents, he would like the Planning Commission to consider the fact that this application had been years in the making, eleven (11) years in the making. Mr. Perotti stated that often times when wireless providers were attempting to fill a gap in coverage like this, sometimes there was a butting of the heads between state law and federal law. Mr. Perotti said he thought it was at the request of Ms. Wiltrout that they provided cases that fleshed this issue out and really considered the applications of where there was a significant gap in coverage. Mr. Perotti stated the cases they had provided illustrated strictly telecommunications cases which they thought applied because there had been a significant gap in coverage for eleven (11) years when the search ring was initially issued. Mr. Perotti stated that under the Telecommunications Act of 1996 Congress established a two part test which had been fleshed out by various federal courts. Mr. Perotti stated that what it required an applicant like Verizon to do, the first part of the test, was to fill a significant gap in coverage and that was something that required expert testimony from the wireless engineer and that was why Mr. Shirey was there today. Mr. Perotti stated they were confident there was a significant gap in coverage. Mr. Perotti stated that to fill by the least intrusive means, which was a separate requirement under the Telecommunications Act, what it required was an applicant to demonstrate that it compared meaningful alternative sites. Mr. Perotti stated this meant the other sites in the area, or other properties, and because there were no other existing infrastructures, associated towers, water towers, schools, or hospitals, the applicant must construct this facility in order to fill the gap in coverage. Mr. Perotti stated they were confident they had met both of those requirements. Mr. Perotti stated that to the extent there were any questions or concerns regarding the Telecommunications Act or how those requirements were met ...

Mr. Kirby asked Mr. Perotti to pause there. Mr. Kirby stated he knew Mr. Perotti probably could not get into specifics, but a small number of small cells would perhaps provide similar or better coverage. Mr. Kirby asked if they had a higher investment cost if they solved it that way.

Mr. Perotti stated no, it was not about money. Mr. Perotti stated what was driving this application was RF.

Mr. Kirby stated he was working back, making sure Mr. Perotti answered the question he asked. Mr. Kirby asked could this be solved with small cells, a modest number of small cells.

Mr. Perotti stated no, absolutely not. Mr. Perotti stated small cells were more tailored for covering street corners, coffee shops, or libraries. Mr. Perotti stated that to fill this gap in coverage small cells would be completely overloaded in providing the RF signals based on a number of factors.

Mr. Kirby asked not enough height or not enough processing power to handle the capacity.

Mr. Perotti stated yes, he had hit on two of the main issues, topography as well. Mr. Perotti stated originally this site was proposed at 190 feet and since then they had reduced, as per discussion, to 135.

Mr. Shirey stated 130.

Mr. Perotti stated 130, that was the minimum and necessary to fill this gap in coverage.

Mr. Kirby stated with a single tower.

Mr. Perotti stated with a single tower, yes. Mr. Perotti stated each wireless site really had its own place in the network. Mr. Perotti stated that as soon as they turned this site on it also helped the surrounding sites.

Mr. Kirby stated, right, the perimeter unloads, the perimeter carried by the other cells, unloads to them.

Mr. Perotti stated yes.

Mr. Kirby stated because they see the coverage, they see effectively a capacity increase, they see it too because they are carrying fewer calls. Mr. Kirby stated everything you added to the new site came off the load from some other site.

Mr. Perotti stated if small cells worked as a silver bullet or panacea, then the only type of wireless deployment would be small cell. Mr. Perotti stated it just won't work for this site.

Mr. Kirby asked if they could put numbers on that. Mr. Kirby stated you get a forty (40) foot tall small cell which they could do in the right-of-way almost with very little effort. Mr. Kirby stated coverage radius comparisons, could they put numbers on how many fractions of a mile did that 130 foot tower cover. Mr. Kirby asked what was the radius of coverage.

Mr. Perotti asked Mr. Shirey if he was able, with the laser pointer, to give a rough estimate.

Mr. Shirey stated it did vary so much.

Mr. Kirby stated with topography and a whole bunch of other things.

Mr. Shirey stated topography, height, average terrain, height of the pole itself, ground elevation, all of those things, so he did not have figures to say if you go from 130 feet to 85.

Mr. Kirby stated what he was looking for was, so a 130 foot tall tower reaches past, say, Reynoldsburg-New Albany Road when you are looking east.

Mr. Shirey asked if he was asking if it would cover beyond New Albany Road.

Mr. Kirby stated, yes, he was pretty sure New Albany Road was in there if he could read the map right.

Mr. Shirey stated he believed it would be this far north.

Mr. Kirby stated it ran north and south, Reynoldsburg-New Albany Road.

Mr. Shirey stated to the east.

Mr. Kirby stated yes. Mr. Kirby stated he believed the macro on the bottom was at Reynoldsburg-New Albany Road.

Mr. Shirey stated with a 130 they would reach past that far.

Mr. Kirby asked how far did small cells reach.

Mr. Shirey stated typically small cells, and it varies once again.

Mr. Kirby stated so a forty (40) foot tall small cell.

Mr. Shirey stated so a forty (40) foot tall small cell, order of a quarter to a half mile, depending on foliage, lane use, things of that nature.

Mr. Kirby stated so the distance they just did from TBS to Reynoldsburg-New Albany, and beyond, is how many, is it a mile, is it two (2).

Mr. Shirey stated he believed it was on the order of 1.25, 1.5.

Mr. Kirby stated so in comparing the technologies you had one (1) to two (2) miles in radius out of a macro and you were getting, you said, a quarter mile out of a small cell. Mr. Kirby stated when you do the area of, eight (8) times the radius is sixteen (16) times the area that you are covering compared to a small cell. Mr. Kirby stated for everyone who was not familiar with the technology, one was small and concentrated and the other was really big. Mr. Kirby stated that was what he was trying to produce so people had a way to judge what coverage was in geographic terms. Mr. Kirby stated capacity was another issue, but he wanted to get that in the record of how much coverage they were getting out of one tower and why the tall tower works so well.

Mr. Spalding stated the applicant had used a term he wanted to be sure he had a little better understanding of, substantial gap in coverage. Mr. Spalding asked if that was defined in any way.

Mr. Perotti stated yes, it was defined in the case law provided to the Planning Commission. Mr. Perotti stated various courts had defined significant gap as the inability of wireless customers to access the wireless network, that was the definition.

Mr. Spalding stated so there was a difference between access and dropped calls.

Mr. Perotti asked access to.

Mr. Spalding stated the network.

Mr. Perotti stated, I'm sorry.

Mr. Spalding stated he may, eighty percent (80%) of the time, have access to their network and ten percent (10%) of the time have a dropped call, was that a substantial gap in coverage.

Mr. Perotti stated he had a significant gap in coverage, yes.

Mr. Spalding stated so that was different than substantial.

Mr. Perotti stated he did not understand, they never said substantial, significant gap was a term of art that had been fleshed out by the various courts. Mr. Perotti stated there had been a significant gap in this area for at least eleven (11) years, that was the testimony by Mr. Shirey.

Mr. Spalding asked if these were Verizon dropped calls.

Mr. Perotti stated that was right.

Mr. Spalding asked if they had a substantial drop in Verizon participation in the area because of the gap in coverage.

Mr. Perotti stated no, they had an increase, it had been increasing exponentially since the invention of the smartphone.

Mr. Spalding stated they heard a lot about the new technology and the changes that 5G was bringing in comparison to 4G and LTE, and asked the applicant to educate them a little bit about those differences as it related to this tower they were constructing; what technology will be used.

Mr. Perotti stated this was proposed 4G, and he could probably direct the discussion to Mr. Shirey, but in his experience, 5G was more tailored to fix the issues that 4G had.

Mr. Kirby asked if he could name them, the issues 4G had.

Mr. Perotti stated faster upload speeds, greater capacity means, I will probably defer to Mr. Shirey, he's the expert.

Mr. Shirey stated 5G will bring higher frequency and lower latency, so quicker connections, shorter ping times, higher throughputs, on the order of ten (10) megabits per second for 4G to one (1) gigabit per second for 5G. Mr. Shirey stated he would say that 5G would be a complement to 4G. Mr. Shirey said that you had to have an underlying 4G service in order to have 5G. Mr. Shirey noted that when he said 5G, they had two (2) brands of it. Mr. Shirey stated they had millimeter wave, which was high frequency, in Columbus it would be 37 gigahertz, versus what they proposed to build here, 700 megahertz, or 2100 megahertz, or 1900 megahertz, for the 4G tower. Mr. Shirey stated lower frequencies, better coverage. Mr. Shirey stated that at the higher frequencies they had more bandwidth, so that translated to more speed.

Mr. Spalding stated he was probably familiar with the fact the State of Ohio and communities like New Albany had put a lot of effort in the last couple of years into working on their state law to make sure that when 5G came through communities it could be done in such a way that consumers wanted to have access to that higher technology and communities wanted to maintain their aesthetics. Mr. Spalding stated they had done a lot of work in New Albany for that. Mr. Spalding stated he was assuming Verizon wanted to have some introduction to 5G in this community. Mr. Spalding noted every kid here was watching YouTube or whatever all day, and they needed those download speeds, as a consumer that was what they were going to want. Mr. Spalding asked, again, would Verizon have 5G in this community.

Mr. Shirey stated not initially at the proposed site, but eventually they would. Mr. Shirey stated that at those frequencies, 5G, ultra wide band, being at the 37 gigahertz frequency, you did not get as much coverage. Mr. Shirey stated for that reason they typically stuck with the lower heights. Mr. Shirey stated a 130 foot monopole would likely deploy 5G when they expand their 5G footprint to include New Albany.

Mr. Kirby asked, so this was 5G ready, so to speak.

Mr. Shirey stated it was.

Mr. Spalding asked why not build a smaller tower now and then populate it with 5G towers around the community that can relay between the two.

Mr. Shirey stated, once again, it came down to time and investment.

Mr. Spalding stated, but there again, there was a technology answer to this coverage it's just that it was more expensive.

Mr. Shirey stated yes.

Mr. Spalding stated he would ask this differently. Mr. Spalding asked, if he were a consumer in New Albany, and he wanted to have 5G, he would probably be looking for a different provider because it was not going to be Verizon, was that what he was saying. Mr. Spalding stated he wanted to be sure that was clear in the record.

Mr. Perotti asked to back up.

A community member asked Mr. Perotti if he was the expert or the attorney and stated the expert should be allowed to testify to that.

Mr. Perotti stated he understood these hearings could be, that everyone had been civil and he would like to maintain that. Mr. Perotti stated it took years to build a wireless signal. Mr. Perotti stated if Verizon had its way, this facility would have been constructed in 2008. Mr. Perotti stated it had not gotten its way and that was why they submitted another application. Mr. Perotti stated to fill this gap in coverage, there had been a way to fill that gap for eleven (11) years. Mr. Perotti said that was why they were seeking the city's approval to construct this facility.

Mr. Wallace stated in the May 17th letter that accompanied the application, there was a table on page five (5) and it had name, location, height, and type of facility. Mr. Wallace asked the applicant if he knew what he was talking about.

Mr. Perotti asked if it was a diagram.

Mr. Ferguson stated he thought it was in the Powerpoint also.

Mr. Wallace stated he did not see it in the Powerpoint, it may have been there, it was attached to their letter. Mr. Wallace stated his question was were the facilities that were listed Verizon facilities.

Mr. Ferguson asked if he could approach and see what Mr. Wallace was looking at.

Mr. Wallace stated absolutely.

Mr. Kirby asked if he had a page number.

Mr. Wallace stated he had said it was page five (5).

Mr. Ferguson stated those were Verizon's, C stood for small cell and Macro stood for cell tower.

Mr. Wallace stated one of the elements they needed to establish was the inquiry into the feasibility of alternate locations. Mr. Wallace stated they had given testimony earlier that they had approached the country club to see if they could put a Verizon tower there. Mr. Wallace stated they had said they had gotten no real response to that. Mr. Wallace stated that he did not know that he had seen any information here about what other towers were available, other than the power line for co-location access.

Mr. Perotti stated it was difficult, it would be like proving a negative. Mr. Perotti stated if there was an existing tower, like a water tower, something they could attach their antennas to, Verizon would have done that based on a number of reasons. Mr. Perotti

stated if there was an existing communications tower that fit their needs Verizon would go on it not only because the FCC mandates it but also because it would be more cost effective for Verizon, rather than construct a new facility.

Mr. Wallace stated so you were not able to identify any other tower in the New Albany area other than the ones that were listed there, Verizon facilities, that would be available for some sort of co-location, and asked if that was right.

Mr. Ferguson stated to satisfy this coverage objective. Mr. Ferguson stated there were other towers in New Albany.

Mr. Wallace asked, could he tell them tonight where those towers were and what process they went through to eliminate them as candidates for co-location.

Mr. Ferguson stated none of them were on the map that he was looking at.

Mr. Wallace stated he knew, he did not really see any and he did not see any listed, so that was why he was asking. Mr. Wallace stated because their obligation under the statute, and the way the Sixth Circuit had interpreted the issue, was to show they had searched out feasible alternatives, tracked them down and eliminated them, one by one. Mr. Wallace stated they had heard his testimony about what he did and he was trying to find out what locations there were they had identified that were co-location opportunities and how they went about eliminating them. Mr. Wallace said he had not heard it yet so if they had it he would like to hear it, if they did not they could move on.

Mr. Kirby stated much like the process you used to impeach Thompson Park as being too far away, the same process for the nearby towers would be illuminating.

Mr. Perotti stated he could answer that, there were no existing towers, or water tanks, or anything of adequate height within the search area.

Mr. Wallace stated he would like to hear the site location person provide that testimony. Mr. Wallace said he knew he was under oath and saying what he believed to be the truth, but he would like to hear it from the expert.

Mr. Ferguson stated, if he was understanding correctly, there was nothing within the area they had outlined earlier tonight for him to say Verizon would this work for you, other than the sites they were already on.

Mr. Wallace stated okay.

Mr. Ferguson asked if that answered his question.

Ms. Wiltrout asked what was the highest tower on that site.

Mr. Ferguson stated it was going to be one of the sites along Hamilton Road. Mr. Ferguson stated this was a self-support and he was guessing that was probably the highest tower.

Ms. Wiltrout asked what was the highest tower he could have considered that he was not already on.

Mr. Ferguson stated that one.

Ms. Wiltrout asked what was the highest one he had ruled out, if there were any.

Mr. Ferguson stated there weren't in that entire area.

Mr. Kirby stated, so there were no water towers, for example, in that chunk.

Mr. Wallace stated so no other cell provider, wireless provider, had any towers anywhere in New Albany.

Mr. Ferguson stated he had not said that, he had said in that area. Mr. Ferguson stated there was a tower on OH-161 and New Albany Road, they were on that tower. Mr. Ferguson stated a year and a half, two (2) years ago, they came before administrative review, in the beauty campus location, for the tower there. Mr. Ferguson stated he would have to look at the map further, but it was so far outside their search area that it would not solve this problem. Mr. Ferguson stated, by default, if it was not going to cure that problem, process of elimination, it did not give him an opportunity to co-locate at that location to solve the coverage problem.

Ms. Wiltrout stated the reason she thought this question was really interesting was that the search area moved already because he could not find a substantial place.

Mr. Ferguson stated they could not get any conversations.

Ms. Wiltrout stated she wanted to understand if they could not do a search area three (3) that had an appropriate tower.

Mr. Ferguson stated he hated to keep deferring to Mr. Shirey. Mr. Ferguson stated he had to do that, other than to say, they generally, when they got a search area, they overlay that onto the zoning map and they consulted the zoning code. Mr. Ferguson stated that if he did not have a tower, or rooftop, or water tank of significant height to be above the trees and one that satisfied the search criteria that Verizon asked him to look for, it did not solve the problem they were asking him to solve, so they did not go there. Mr. Ferguson stated going higher, further away did not allow signal to reach. Mr. Ferguson stated in effect, they ran into the same problem they had down here where they had a tower way down there.

Mr. Kirby stated too far away

Mr. Ferguson stated, too far away to adequately serve the area.

Mr. Kirby stated their capacity at the edge of coverage was lower than the capacity in the middle of coverage.

Mr. Shirey asked what the question was.

Mr. Kirby stated at the fringe of the coverage area, their capacity was quite low compared to that part of the coverage area.

Mr. Shirey stated that was true.

Mr. Kirby stated, okay, so not only does signal strength but the capacity drops with it.

Mr. Shirey stated that was correct.

Mr. Kirby stated, so far away means maybe you could touch one (1) or two (2), but they could not touch the capacity they needed.

Mr. Shirey stated it translated to lower throughput; lower throughput meant lower capacity.

Mr. Schell asked if they had really investigated the idea of doing a large one in Thompson Park and then using some smaller cells around the southeast portion to pick up the lower areas that did not seem to be as urgent as the ones in the southwest.

Mr. Shirey stated their engineering departments view was that the Thompson Park site was inferior to the proposed site.

Mr. Wallace asked why.

Mr. Shirey stated extent of coverage. Mr. Shirey said not only extent of coverage in the areas of concern, but also because they were moving closer to other sites, Plain Township and the small cells to the north, they had instances of too much of a good thing. Mr. Shirey stated they had interference among the small cell sites.

Mr. Kirby stated you were too close.

Mr. Shirey stated too close, yes.

Mr. Wallace stated he had lost him on that one. Mr. Wallace stated, to Mr. Schell's question, as he understood the site process, the process really was looking for a spot to put one (1) pole that solves all your problems.

Mr. Shirey stated that was true, as many problems as they can solve.

Mr. Wallace stated understood, saying he had overstated, but he was looking for one spot that solved as many of the issues as he could, right. Mr. Wallace stated Mr. Schell's question was to what extent had they backed off and said rather than look at one site, one facility, that solved most of their problems, why did they not try to find two (2) locations that might solve, might provide the same resolution of the problem. Mr. Wallace stated maybe they did not need to have the 180 foot tower with the mega booster to do that. Mr. Wallace noted he saw his point in response to Mr. Kirby's question, if they put 1,000 little small cells out there they might have problems. Mr. Wallace said he was not talking about putting a 1,000 up, they were talking about maybe putting one (1) or two (2). Mr. Wallace stated one (1) at TBS, maybe a little shorter, one (1) at Thompson Road Park, maybe a little shorter, or maybe even a third one someplace else, he did not know. Mr. Wallace asked, what attempt to investigate that sort of resolution to their significant gap problem had been done.

Mr. Shirey stated his request remained to provide them a ruling on what they had proposed and if they were not in the applicant's favor they would go back to the drawing board.

Mr. Kirby stated, so for Thompson Road the issue was loss of coverage in the direction that they moved.

Mr. Shirey said that was right, loss of coverage to the southeast, increased interference to the west.

Mr. Kirby asked if the interference to the west could be managed with power levels directly on the radius.

Mr. Shirey stated down tilts and power levels, in effect were the same thing, but either way you would be diminishing coverage from the other cell sites. Mr. Shirey stated typically optimization would be down tilts.

Mr. Mayer stated staff had some additional information to share from the city engineer about the current site.

Mr. Ferris stated they had a plan that was submitted back in 1996 that showed that the flood plain for that stream behind TBS would put this cell tower very close to the hundred (100) year flood plain for the stream. Mr. Ferris stated they had pulled that out today and it was part of the record.

Mr. Kirby asked the applicant if they had seen that.

Mr. Ferguson stated no, he had not seen the plan that the gentleman was referring to at this point in time. Mr. Ferguson stated, however, they did submit Verizon's NVA study and one of the aspects of that NVA study was the flood plain information. Mr. Ferguson stated they had submitted Verizon's NVA flood report.

Mr. Kirby asked if that was prepared by a professional engineer.

Mr. Ferguson stated yes.

Mr. Kirby stated according to that one it was not in the hundred (100) year flood plain.

Mr. Ferguson stated that was correct.

Mr. Kirby stated that conflicted with the data the city engineer had.

Mr. Mayer stated his understanding from talking to the engineering staff was that was part of the national flood plain format map. Mr. Mayer stated it was done as a region and they study major streams. Mr. Mayer stated the site where TBS was had a tributary of the Rocky Fork. Mr. Mayer stated staff's understanding was the study did just look at the Rocky Fork, the major tributary, the major stream, and not the tributary that was immediately behind the parking lot where the site was located.

Mr. Kirby asked Mr. Ferguson if that fit to what he knew.

Mr. Ferguson stated sorry.

Mr. Kirby asked, did the evidence just presented by the planner match your understanding of how that documents.

Mr. Ferguson stated he would have to see it and he would probably defer to an engineer.

Mr. Kirby asked if there was anything else from staff.

Mr. Mayer stated nothing else.

Mr. Kirby called for a break.

Mr. Kirby asked if an attorney representing the public was present and requested to hear from him first.

Mr. Wallace stated if Mr. Pauley had testimony while he presented then they would hear that or if he just had an oral presentation he wanted to make.

Mr. Brandon Pauley stated he had a presentation and he also had a written submission that he wanted to make part of the record. Mr. Pauley stated he was an attorney with the law firm Brennan Manna Diamond retained by various residents of the community. Mr. Pauley stated, for the record, addresses of those residents: 5055 Johnstown Road, 7080 Oxford Loop, 5741 Thompson Road, 6860 Oxford Loop, 3860 Oxford Loop, and 3840 Oxford Loop. Mr. Pauley stated he had submitted a written objection on Friday afternoon to staff and he wanted to present each of them with the written submission he had.

Mr. Kirby asked if this was different from his letter to BZA on the 24th.

Mr. Pauley stated it was. Mr. Pauley stated this was specific to the conditional use application.

Mr. Wallace asked if his oral presentation was that he preferred to recite what was in the letter.

Mr. Pauley stated he was not going to go line item by line item of the submission. Mr. Pauley stated he was going to highlight some key points that he wanted to make sure to direct Planning Commission's attention to because he thought them significant to the conversation this evening. Mr. Pauley stated that many of the points had been prudently brought up already by questions to Verizon and to United Acquisition Services.

Mr. Pauley stated first he had looked at the New Albany Code as it related to telecommunications towers. Mr. Pauley stated when a telecommunications tower was to go into a residential district, the code specifically required a showing that there were no other technically feasible alternatives to the residential placement of the telecom tower. Mr. Pauley stated he thought the application, and what it did not say, said a lot to the validity of this application. Mr. Pauley stated he did not think through the written application, he also did not believe through the testimony they had heard tonight, that there had been a viable and effective demonstration that there was not a technically feasible alternative available to Verizon for the cell tower.

Mr. Pauley stated second was the emphasis that the code put on co-location. Mr. Pauley stated not only for ...

Mr. Wallace asked Mr. Pauley which section of the code he was just referring to.

Mr. Kirby asked if he was talking about 1179.08 in their code or the Telecom Act 1996.

Mr. Pauley stated, no, your code, New Albany code.

Mr. Wallace stated it was probably 1179.08 (c), he was guessing.

Mr. Pauley stated yes, (c). Mr. Pauley stated the code required a demonstration that there were not technically feasible alternatives. Mr. Pauley said then, 1179.08 was the section on co-location. Mr. Pauley stated they believed that Verizon had not demonstrated that there were not feasible co-location opportunities available to it. Mr. Pauley stated in the presentation in the submission he had just presented to the hearing, if they looked at page five (5). Mr. Pauley stated one specific location, and a lot of this information, there are companies that built vertical real estate. Mr. Pauley said two of them were American Tower and Crown Castle Tower, those were two significant ones. Mr. Pauley stated just as a demonstration, looking at the publicly available information for American and Crown Castle, there was a Crown Castle tower at the corner of Morse and Hamilton Road that had availability at 105 feet and they could

pull that up. Mr. Pauley stated an expert for Verizon might say 105 feet was not tall enough to effectuate what they were trying to do.

Mr. Kirby stated they had one in the room, lets settle that issue now, if you don't mind.

Mr. Pauley stated yes, and real quick, the demonstration, and the point he was trying to make, was this information, based on the code language that New Albany had, the burden fell on Verizon to demonstrate this information. Mr. Pauley stated, so, he was pulling one example that they thought may provide a technically feasible alternative. Mr. Pauley stated that on another, he thought page four (4), right before it, was a smattering of American and Crown Castle towers that were available. Mr. Pauley stated that if they would like to turn to the expert to demonstrate that the specific Crown Castle location was not feasible ...

Mr. Kirby asked if this was available in Powerpoint so the rest of the audience could have this in front of them.

Mr. Pauley stated he did not have a Powerpoint but he had like ten (10) more copies.

Mr. Kirby stated if staff had sufficient copies, then letting at least a couple of those circulate in the audience would be a good thing.

Mr. Pauley asked if he would like to hear from the Verizon expert.

Mr. Kirby stated they could hold off on that.

Mr. Pauley stated part of the written submission was demonstrating that there quite possibly could be technically feasible alternatives to this. Mr. Pauley stated the application submission by Verizon just did not provide the Planning Commission with enough information to determine whether or not there were technically feasible alternatives. Mr. Pauley stated it was basically, here is our solution that we in our own best interests think will service a problem, a perceived problem, and this is take it or leave it, from our perspective. Mr. Pauley stated the Planning Commission had asked questions about alternatives and those questions were sidestepped. Mr. Pauley stated there had not been a straight answer as to whether or not they had sufficiently considered technically feasible alternatives. Mr. Pauley said there should also be a demonstration, it should not just be the word of somebody paid by Verizon to say, you know what, anything else is not technically feasible because we've determined our search ring at our own discretion to be ...

Mr. Kirby asked if he could stop him there for a second. Mr. Kirby stated someone paid by Verizon, what actually was Mr. Pauley implying there.

Mr. Pauley stated he was implying that the hearing was getting a one-sided viewpoint without much pushback or even to your questions.

Mr. Kirby asked on behalf of the RF expert, on behalf of the site selection person.

Mr. Pauley stated on behalf of Verizon. Mr. Pauley stated the RF expert, he believed, it was not Bolane who signed the affidavit that was submitted as part of this application. Mr. Pauley stated, but Mr. Shirey, saying he believed he was paid by Verizon.

Mr. Shirey stated he was an employee.

Mr. Pauley stated he was an employee of Verizon.

Mr. Kirby stated okay. Mr. Kirby asked if he was trying to impeach his professional credentials as presented.

Mr. Pauley stated he was not impeaching his professional credentials, but what he was asking was that, or what he was suggesting was, the New Albany code set out what needed to be demonstrated. Mr. Pauley stated they had a burden they had to prove, many of your questions in their presentation were pointed toward that burden that they have to meet. Mr. Pauley stated it was the Planning Commission's discretion, but what he was suggesting, as a participant in this hearing, that they had not demonstrated that there were not less intrusive, technologically feasible alternatives to the solution that they were providing in their written submission.

Mr. Wallace stated that's the burden that shifts once they make their prima facie case, the burden of providing that was on the city.

Mr. Pauley said he did not believe they had met their burden.

Mr. Wallace stated that was not what Mr. Pauley had just said.

Mr. Pauley stated that in reading the code there could not be technically feasible alternatives and there was no demonstration as to what alternatives there were and whether those alternatives were actually run to ground.

Mr. Kirby stated what you are saying was by failing to show the infeasible alternatives they failed to show there were not feasible alternatives.

Mr. Pauley stated he did not think it was as narrow as they need to demonstrate every single infeasible alternative that was available to them. Mr. Pauley stated what he was saying was that in just looking at the public records available, there were other towers that had co-location space that was available to them and that there were specific questions that were posed to the applicant regarding what they did to identify and discover technologically feasible alternatives. Mr. Pauley stated that, quite frankly, the only answer was we've been working with this location for eleven (11) years and there had not been much investigation otherwise. Mr. Pauley stated one specific example was we tried to call the country club but nobody would answer. Mr. Pauley asked if that was a demonstration there was no technologically feasible alternatives, that they tried to call a country club that would not be in a residentially zoned district and because nobody answered now the residents that were surrounding, that invested in their homes, that

live in the property, now are stuck with a 140 foot monopole in a gray color in their backyard. Mr. Pauley stated, to answer your question, to say that we called the country club and tried to do it there, that did not meet the burden of what the New Albany code presented.

Mr. Pauley stated, in moving to the Telecommunications Act, the section that was most applicable was that this commission shall not prohibit or have the effect of prohibiting the provision of personal wireless services. Mr. Pauley said the RF affidavit that was presented as part of the application, no where ...

Mr. Wallace stated, you've referred to an RF affidavit and asked Mr. Pauley to direct him to what he thought was an affidavit.

Mr. Pauley stated it was Exhibit A to the application dated, received, May 17, 2019.

Mr. Wallace stated he never saw where anything on that letter was actually attested to, notarized, and sworn to be under oath.

Mr. Pauley stated exactly. Mr. Pauley stated on page ten (10) of the UAS application it referred to Exhibit A, RF affidavit. Mr. Pauley said the Verizon wireless, it was not attested, it was not under oath, and Mr. Bolane was not here to testify as to the veracity of the conclusions or statements made. Mr. Pauley stated he noted that in a footnote in the submission he provided to the hearing. Mr. Pauley stated he called it an affidavit because they had called it an affidavit, but, quite frankly, it was just a piece of paper with somebody's signature on it. Mr. Pauley stated, to back up, there has been a buzz word called significant gap in service. Mr. Pauley stated that was what was applied by the courts and that was what was defined within the Telecommunications Act. Mr. Pauley stated nowhere in that submission was the term significant gap, it simply referred to a gap in service. Mr. Pauley said, as far as the submission, and maybe Mr. Shirey can answer that on re-direct from the Planning Commission, the application they were there to determine, there was no mention of a significant gap. Mr. Pauley said there was no mention of a significant gap by the RF engineer that submitted his report as part of this application. Mr. Pauley stated part of the test that was applied by the federal courts in reviewing these situations also shows that there must be some sort of investigation into the least intrusive ...

Mr. Kirby asked, on the document from Mr. Bolane, you are saying it did not show a significant service gap in service, was that what he had just heard Mr. Pauley say.

Mr. Pauley stated he did not think it used the words significant gap in service.

Mr. Kirby asked if without using the words did it do the same thing.

Mr. Pauley stated you would have to ask Mr. Bolane, he was the RF engineer that submitted it.

Mr. Kirby stated they had a picture here and asked if he believed the picture represented what they had heard in testimony saying it represented as dropped calls.

Mr. Pauley stated it may, yes, it probably shows dropped calls. Mr. Pauley said the issue ...

Mr. Wallace stated he understood his point and did not disagree with it. Mr. Wallace said the letter from Mr. Bolane was not an affidavit, not testimony, and he was not there. Mr. Wallace noted he was not sure what credence the board should put to it. Mr. Wallace stated they might hear from Verizon's attorney, he might tell them what credence they should put to it. Mr. Wallace noted they did hear testimony today from both the RF engineer and the site person, and thought that testimony did, as Mr. Kirby mentioned, did refer to some of the exhibits and did talk about, at least Verizon's position, with regard to there being a gap in service. Mr. Wallace stated he understood it was helpful to focus on that letter, but he would focus more on what they heard today.

Mr. Pauley stated, from his recollection, the attorney for Verizon indicated it was a significant gap in service. Mr. Pauley stated he did not recall Mr. Shirey under oath saying it was a significant gap in service, maybe they would. Mr. Pauley stated as far as the data to support that, there was no showing of how many residents were impacted, how many New Albany residents were impacted, how many businesses ...

Mr. Kirby stated stop there, their jurisdiction did not count because the cell site crosses the boundary between the township, and the village, and the city, it's all Columbus. Mr. Kirby stated that was probably not appropriate here to make that distinction.

Mr. Pauley stated so a cell tower that's going into the City of New Albany, what he was suggesting, was that the number of New Albany residents that were impacted, if they were saying there was a significant gap in service in New Albany, then they should be able to demonstrate what portion and how much of New Albany was impacted.

Mr. Kirby stated what he was saying was that the amount that they had shown on the heat map was insufficient to make their case and asked Mr. Pauley to tell him what was the number that would make their case. Mr. Kirby asked if he had numbers for these. Mr. Kirby stated numbers to measure against, again the number 25 did not tell him anything unless he knew what he was measuring it against, he wanted to know the units on it. Mr. Kirby stated Mr. Pauley was asking, in the thing he had just handed them, to provide the number of people affected by the alleged gap. Mr. Kirby stated what he did not say was what constituted a service gap, how many people constituted a service gap or what percentage constituted a gap. Mr. Kirby stated when you say the alleged gap, if Mr. Pauley was saying they did not meet that, that suggested to him that Mr. Pauley knew what it was and they did not meet it because he knew what it was.

Mr. Pauley stated that specific criteria was taken from a Sixth Circuit Court of Appeals case in a determination of whether a significant gap existed for application of the Telecommunications Act. Mr. Pauley stated, again, he did not think it should be on the

residents that were individuals that were coming together to state their interests in this and to voice their objection, to go out and hire an RF engineer and a bunch of empirical data to disprove Verizon. Mr. Pauley stated Verizon had their opportunity to submit an application and it was this commission's job to determine whether or not that application met the New Albany zoning code, which it did not, and did it meet the Telecommunications Act for denial. Mr. Pauley stated that was what he was suggesting, the prongs they were to review this application under, that Verizon did not meet, they had not provided the data that the commission could sit here and say they had met their burden and we are convinced what they are giving to us was a demonstration that they searched and they considered the other technically feasible alternatives to this problem.

Mr. Kirby stated, hang on, switching to alternatives was different than determining whether a gap was there in the first place. Mr. Kirby stated they were talking about the gap just a second ago, you switched.

Mr. Pauley stated okay, he did not understand the question. Mr. Pauley asked if he was asking whether or not he thought that was a significant gap.

Mr. Kirby stated well, yes. Mr. Kirby stated he was looking at part A of what Mr. Pauley submitted that talks about, implying, the applicant had not demonstrated a significant gap and he wanted a good understanding of that and of Mr. Pauley's case and how he could support that claim.

Mr. Pauley asked, if the commission was to consider the application, what had the commission been provided. Mr. Pauley stated it had been provided a heat zone map of one (1) month of data with a hard number of dropped calls. Mr. Pauley stated if they were talking about providing numbers, how about the numbers or the percentage of total calls the dropped calls actually represent. Mr. Pauley stated how about the total Verizon customers that this impacts. Mr. Pauley stated how about the total of New Albany residents that this impacts. Mr. Pauley stated those are numbers that should be provided.

Mr. Kirby stated along with the criteria to evaluate them because knowing that it was X number, you really needed to know what state of the art, the expectation was, to evaluate that.

Mr. Pauley stated if those were questions that the commission had, then they should be posted to Verizon, they should not be posted to ...

Mr. Kirby stated he did.

Mr. Pauley asked did you get a straight answer.

Mr. Kirby stated he had gotten its proprietary, pretty much.

Mr. Pauley stated he did not have their proprietary information to provide to him.

Mr. Kirby stated he understood, he was putting a box around his claim to say how it was he said they did not demonstrate. Mr. Kirby stated what Mr. Pauley was saying was they did not show the data, not that their data was wrong.

Mr. Pauley stated they showed one (1) aspect of one (1) piece of data and that was a total number of dropped calls in a month. Mr. Pauley said, to jump past the numbers, this commission could either have substantial evidence or not substantial evidence. Mr. Pauley stated what they were going to hear from some of the members of the community was their property values were going to be diminished, the skyline of New Albany or the site lines of New Albany, were going to be diminished. Mr. Pauley stated aesthetics and property values, when testified by numerous people which they will hear, that could stand as substantial evidence. Mr. Pauley stated he thought that a presentation to this commission that there were too many unanswered questions about the technologically feasible alternatives that could be available, such as, for one instance that Crown Castle location that public data showed was available up to 105 feet, that was substantial evidence. Mr. Pauley stated this commission had to be satisfied that the questions that it was asking of Verizon, did they search technically feasible alternatives, what were their numbers based on, support, just as he was saying they had not met their burden, asking Verizon why is it a significant gap, were they telling him that a heat zone that was not even in the City of New Albany was a significant gap in service in New Albany.

Mr. Pauley stated, again, if you looked at their written application, saying he thought they had to go to Mr. Wallace's point, they had to go and address what was in the written record. Mr. Pauley stated the last page of that RF submission said it was addressing a gap in New Albany. Mr. Pauley stated if they pulled up figure 1 of their presentation, were those red heat zones actually in New Albany and were they addressing a problem for New Albany. Mr. Pauley stated, if you looked at figure 1, as well, where they were placing this, if you looked to the southeast, what they were saying was the gap in service to the southeast, he did not see that red line, when you looked at the orange surrounding, there were different heat zones they alleged to be the significant gaps in service. Mr. Pauley stated he thought when you were looking at their submission in their application, he thought some of those areas fell outside of New Albany.

Mr. Kirby asked why did that matter.

Mr. Pauley stated because it was a tower that was going into New Albany and when their submission said they were fixing ...

Mr. Kirby stated, fine, they would agree to disagree whether the political jurisdictions, and whether it was a township, or a city, or a village mattered, go ahead.

Mr. Pauley stated in looking at what can be addressed here, all he was suggesting was that they had not demonstrated what the area of coverage, say, of their existing towers were or what other co-location opportunities, that were not Verizon owned towers,

would their coverage area at all service any of those red gaps seen in figure 1. Mr. Pauley stated he thought those questions had to be posed and answered by this commission if they were to follow their code, which says they need to demonstrate that there was no technically feasible alternative. Mr. Pauley stated if the commission was comfortable with Verizon's engineer coming up and just plainly saying there was no feasible alternative, was that enough to approve this or should there be some scrutiny and should there be some direct answers to the questions they posed. Mr. Pauley stated he did not think it should fall on the residents and the citizens every time there was an application to identify and bring in their hoard of experts to disprove their case. Mr. Pauley stated there had to be some sort of burden. Mr. Pauley stated that if calling New Albany Country Club and letting it go to voice mail met that burden, he guessed that was on them, but that just did not pass the smell test to him or the residents here.

Mr. Pauley stated they would see a lot of his argument as it related to the Telecommunications Act in the letter, saying he was not going to exhaustively go through that. Mr. Pauley stated it pointed out weaknesses in their application, it pointed out areas that they, he thought, had been evasive about. Mr. Pauley said they had not been totally transparent with identifying other alternatives for this. Mr. Pauley stated by their own admission this had been going on for eight (8) years, so once they got stuck on TBS property there was no other investigation that went on in those eight (8) years. Mr. Pauley said they cite to an extensive negotiation, a negotiation with whom. Mr. Pauley asked if that was a negotiation with the New Albany Company why weren't the surrounding residents brought into that or made aware of those negotiations. Mr. Pauley stated such things as their bringing pictures of monopines now, even though that was against the deed restriction that is in place by the New Albany Company. Mr. Pauley stated he thought there had been misdirection and what the residents were trying to do was demonstrate, and make part of the record, that misdirection. Mr. Pauley stated by highlighting that, by the testimony that they will hear from the residents, this commission had been provided with substantial evidence to make the foundation of a denial. Mr. Pauley stated they were simply asking for a denial and it was just not coming up and saying we are angry residents and it's not going in our backyard, there were serious questions that needed to be asked, serious questions that needed to be answered. Mr. Pauley stated the commission had asked most of them and they had not answered any of them. Mr. Pauley asked if there were any more questions from the panel.

Mr. Kirby asked if Mr. Shirey could come back.

Mr. Kirby asked if Mr. Shirey was familiar with the Morse and Hamilton tower.

Mr. Shirey asked Morse and Hamilton.

Mr. Kirby stated the Crown Castle tower.

Mr. Shirey stated page five (5), upper map.

Mr. Kirby stated it was west of Hamilton and south of Morse.

Mr. Shirey stated that would be south, southwest of their existing Plain Township site and north of their second macro to the south, Gahanna north, macro to the south. Mr. Shirey stated it would be beyond the perimeter formed by their neighboring cell site.

Mr. Kirby stated it was in the RF footprint of two (2) other macro sites that were on Hamilton road.

Mr. Shirey stated well outside the search ring.

Mr. Kirby asked if such a location would provide coverage to that area.

Mr. Shirey asked the area of interest.

Mr. Kirby said yes.

Mr. Shirey asked would it sufficiently cover.

Mr. Kirby stated describe how it would or would not cover.

Mr. Shirey stated depending on the height.

Mr. Kirby stated 105 feet.

Mr. Shirey stated 105 feet, once again, without performing a coverage analysis of it, based upon his experience, 105 feet covering roughly, as he characterized earlier, mile and a half to two (2) miles, he did not believe the 105 foot tower would cover. Mr. Shirey stated Plain Township, being a 235 foot macro, did not serve sufficiently toward the TBS location.

Mr. Wallace stated Mr. Shirey had said a moment ago that he would have to conduct some type of analysis to determine that.

Mr. Shirey stated to guarantee it.

Mr. Wallace stated he understood his opinion off the top of his head was that, but was it fair to say he would have to conduct some more detailed analysis to determine for certain whether ...

Mr. Shirey asked to be 100% certain.

Mr. Wallace stated maybe not 100%, to a reasonable degree of engineering certainty.

Mr. Shirey stated he would testify tonight that a 105 foot monopole would not cover what they intend to cover with the TBS location.

Mr. Wallace asked and that was based on a reasonable ...

Mr. Shirey stated based upon his 24 years of RF engineering experience.

Mr. Kirby stated he had mentioned a 200 foot Plain Township tower.

Mr. Shirey stated Plain Township he believed was 235 feet. Mr. Shirey stated it was a self supporter they had, one of the original sites in the Columbus area.

Mr. Kirby stated this would be less coverage than they were getting out of that tower.

Mr. Shirey stated exactly, that's correct.

Mr. Kirby asked Mr. Bolane, RF engineer Verizon Wireless, was he a professional engineer.

Mr. Shirey stated he was not, another BS EE.

Mr. Kirby stated okay, thank you.

Ms. Wilttrout stated, with this Crown Castle tower, with the 105 feet, she understood in his estimation it would not provide the coverage that this proposed tower would provide, correct.

Mr. Shirey that was correct.

Ms. Wilttrout asked would it go to preventing, would the coverage it would provide fix the significant gap in coverage. Ms. Wilttrout asked, would it provide enough coverage that there would no longer be a significant gap in coverage.

Mr. Shirey stated not in the area of interest. Mr. Shirey stated the Crown Castle location was approximately here and you could see their existing sites here and here (showing these on the presentation). Mr. Shirey stated it was well outside search ring and the intended service area.

Ms. Wilttrout asked if it would make any impact on the red and the yellow seen there if there was a tower at the Crown Castle location. Ms. Wilttrout stated in your opinion it would be no difference if they put a tower there.

Mr. Shirey stated his opinion was no, it would not affect areas within the intended service area of the TBS location.

Mr. Kirby stated he thought to make sure they got Ms. Wilttrout's question answered, on the western edge of the service area, would it cover that red zone.

Mr. Shirey stated perhaps some offload and some service improvement outside of the intended service area of the TBS location.

Mr. Kirby stated, but it lacks enough to reach all the way east.

Mr. Shirey stated to resolve these issues further east.

Ms. Wiltrout asked which areas on there did he think constituted a significant gap in coverage.

Mr. Shirey stated that question had been asked and, once again, as their attorney mentioned, that was a term of art. Mr. Shirey stated he was an engineer.

Ms. Wiltrout stated she wanted his opinion as an engineer.

Mr. Shirey stated in his opinion any drop is significant. Mr. Shirey stated they were not going to resolve all issues, their aim was to resolve all the issues they could.

Ms. Wiltrout asked any drop was a significant gap in coverage, was that his opinion.

Mr. Shirey stated yes, with the dropped connections you see here on this map, that was significant.

Ms. Wiltrout stated that was not her question. Ms. Wiltrout asked was the red the significant, was the green the significant, what on that map did he believe ...

Mr. Shirey stated there were varying degrees of significant. Mr. Shirey stated red were the worst locations varying to low or little drops.

Ms. Wiltrout asked if the blue, the 14 to 27, would that be a significant gap in coverage.

Mr. Shirey stated less significant than the red.

Ms. Wiltrout asked so not significant. Ms. Wiltrout stated they were Congress's words, not hers, and she needed to understand.

Mr. Shirey stated he did not know if Congress had identified or put a percentage to what was significant. Mr. Shirey stated they had tried to resolve the issue that they have. Mr. Shirey stated this map, it represents the coverage portion, when they look at the capacity that was another factor.

Ms. Wiltrout stated they had not seen that yet, so she could not.

Mr. Shirey stated that was part of the affidavit also.

Ms. Wiltrout asked other members if they had seen anything about the capacity within the affidavit.

Mr. Wallace stated first of all, he was uncomfortable calling it an affidavit because it was not sworn. Mr. Wallace stated they could call it the letter.

Ms. Wiltrout mentioned the letter and asked was this the capacity.

Mr. Shirey stated he believed it was on page four (4).

Mr. Wallace stated part of the problem here was they had this letter that was unsworn, it had pictures in it that were not explained other than in the letter which was unsworn, and it was written by a different engineer than you (Mr. Shirey). Mr. Wallace stated Mr. Shirey had not attested to it or indicated he had read it and agreed with it, or have not indicated the same type of knowledge that Mr. Bolane had. Mr. Wallace stated Mr. Shirey had come in and said what he has said tonight under oath, but Mr. Wallace thought this letter was just useless. Mr. Wallace stated they could focus on it if he wanted.

Ms. Wiltrout stated she did not think she was going to get her question answered, she had asked it five times.

Ms. Leslie Timmons, 5055 Johnstown Road, swore to tell the truth. Ms. Timmons stated she had been here for every one of these meetings so far and likely would be here next Monday as well. Ms. Timmons stated obviously, she did not want it, she had made that clear every other time she had been there. Ms. Timmons stated she felt it unreasonably decreased their property value. Ms. Timmons stated the bottom line was they had moved there twenty (20) years ago, they were on a five (5) and a quarter tract of land, it's a beautiful piece of property, they raised three boys there, they've had numerous dogs there, they've had family outings, it has been home. Ms. Timmons stated this tower would be a physical imposition forty (40) feet from their property line. Ms. Timmons stated it impacted the investment they had made in the property. Ms. Timmons said it impacted their skyline. Ms. Timmons stated she had a tough time not getting riled up about this because Verizon sits here and says they had been working for eleven (11) years and were not going away. Ms. Timmons stated that was fine, neither were they. Ms. Timmons stated they had been there for twenty (20.). Ms. Timmons said her attorney made a point of saying it was New Albany residents that were going to be looking at this thing and the vast population of the dropped calls were in Columbus. Ms. Timmons stated she knew maybe that did not matter because it was trying to cover the greatest amount of area, but she did not see the New Albany residents getting the benefit from this the same way that Gahanna would or Columbus would and that's where the majority of the dropped calls were. Ms. Timmons stated other than the northern portion of the map, which she was not sure where this cell tower was really addressing because there were other Verizon cell towers already up there. Ms. Timmons stated they had residents there who had invested in the community, who were part of the community, who paid taxes in the community and a private, for profit business, she knew they were providing a service, but there were a lot of residents there who were saying that did not really matter that much, that they were not feeling the impact. Ms. Timmons stated they had been there eleven (11) years, there was some critical mass or significant drop, but eleven (11) years later she said they were all functioning fine.

Mr. Steve Tippet stated 5145 Johnstown Road, New Albany.

Mr. Kirby stated he needed Mr. Tippet to swear to tell the truth.

Mr. Tippet stated yes, he swore to tell the truth. Mr. Tippet stated he and his wife had been property owners since 1977, their house was on the map. Mr. Tippet stated he would echo what everyone said so far that it was a great imposition on property values to consider putting a 140 foot stainless steel pole in that neighborhood. Mr. Tippet stated he would hope that through this process that was unfolding tonight that people would seriously look at other alternatives, maybe some smaller sites and shorter poles. Mr. Tippet stated he would add, anecdotally, he and Pam had been Verizon customers for a long time on that map and they did not have any problems with coverage and had been happy with Verizon coverage. Mr. Tippet stated he would close by saying the commission had given serious consideration to this tonight, he appreciated their focused attention and hoped they would continue that attention into the future because it would take a while to hammer out a solution that was suitable to the residents and a lot of residents were opposed to this.

Mr. Paul Baily swore to tell the truth and stated he was a resident of the Oxford subdivision. Mr. Baily indicated where his home was and said he had a beautiful view of the Timmons home, primarily in the winter. Mr. Baily stated when there was not foliage it was significant. Mr. Baily indicated other lots in the Oxford subdivision he owned. Mr. Baily stated he built or owned thirty percent (30%) of the lots and had a huge personal investment there. Mr. Baily stated he was very concerned about the financial impact for all of them. Mr. Baily stated he did think it was suggested this night there were alternatives that had not been explored as significantly as they could be, and for that reason he thought it should be denied, plain and simple. Mr. Baily stated there were alternatives, they might require more money, more time, it was not ideal, but he thought that needed to happen. Mr. Baily stated he was asking the board to deny the request and seek alternatives.

Mr. Mark Fixari stated he swore to tell the truth. Mr. Fixari stated they had lived in New Albany for 26 years. Mr. Fixari stated, at the risk of being redundant because he stated some of this the last time he was there, they had seven (7) children they had raised here. Mr. Fixari indicated the other properties they had bought and another home they also owned. Mr. Fixari stated the kids were there and the grandkids were there and they still had some kids at home. Mr. Fixari stated it had been a legacy property for their family and it was a beautiful property. Mr. Fixari stated they had raised chickens and ponies, big garden back there, and had really enjoyed the view and the serenity of it. Mr. Fixari said he did not think there was any doubt about what it would do to their property values, there was certainly no doubt as to what it would do to the aesthetics.

Mr. Fixari stated he was really troubled by seeing folks drive hours to get here to solve a problem from a heat map that was not in their community and yet they were the ones given the burden of that. Mr. Fixari stated they had been through several things with New Albany and the city council and those things. Mr. Fixari stated what they had

found was that they always ended up doing the right thing, so they were very confident that everybody saw this the same way. Mr. Fixari stated it was really conspicuous, again, when their attorney came up with a site that you all asked the appropriate questions and, forgive the term, but his bu** sh** meter was just going off like crazy, you could not get a straight answer. Mr. Fixari stated they could go through more sites and he did not think that was their burden, that they would have to take the time to find alternatives, but it appears at this point that it might be. Mr. Fixari stated their kids were all here at this hearing, or some of the seven (7), and they were at the last one. Mr. Fixari stated they had spent a lot of time on lessons of giving but they wanted them to be here because they wanted them to see that giving was important to their family but it was also that they did not like to be taken from. Mr. Fixari stated that was what this felt like, thank you for your time.

Mr. Kirby stated he had a question for the Verizon side. Mr. Kirby asked what current cell covered, what tower covered, TBS.

Mr. Shirey stated he believed right now it would be the Plain Township site.

Mr. Kirby stated so a 200-some foot tall tower that was in the City of Columbus was providing coverage for New Albany.

Mr. Shirey stated yes.

Mr. Kirby stated so all the residents behind Home Depot and on the other side of the street, had a 200 foot tall tower in their yard to cover this whole western part of New Albany.

Mr. Shirey stated that was correct.

Mr. Kirby stated thank you. Mr. Kirby stated he wanted to flip that for the residents to know that somebody else had the eyesore for their cell coverage.

Mr. Fixari asked if it was on a residential property.

Mr. Kirby stated it was close.

Ms. Shayne Fixari swore to tell the truth and stated she just wanted to express her personal feelings about what happened and what was going on. Ms. Fixari stated this really took them by storm quickly. Ms. Fixari stated they were completely surprised that something like this would come to their residential environment. Ms. Fixari stated they had been there 26 years, they love their property, they bring their family. Ms. Fixari stated her message was this event, if it occurred, would have a significant and ugly aesthetic impact on New Albany, not just their property, but way beyond it. Ms. Fixari stated the balloon did not do any justice, they needed to know and understand that. Ms. Fixari stated secondly, it would reduce the property values of all of their properties and many, many surrounding people and many community members that were not

there tonight, unfortunately, and did not understand or even knew this was going on, she thought it was very sad.

Mr. Kirby called Mr. Joe Golian and asked him to swear to tell the truth.

Mr. Joe Golian stated he was on Whitehouse Lane which was the area off of US-62.

Mr. Kirby asked if he could swear Mr. Golian to the truth.

Mr. Golian stated they lived right across from TBS and lived there for over fifteen (15) years. Mr. Golian stated they had been residents of New Albany for almost twenty (20).

Mr. Wallace stated we need you to indicate ...

Mr. Kirby stated swear to the truth individually.

Mr. Golian stated yes, he thought he had done that earlier. Mr. Golian stated he swore, thank you. Mr. Golian said he had a couple of comments. Mr. Golian stated one was he did not like it from an aesthetic standpoint. Mr. Golian noted he thought everyone there felt the same. Mr. Golian said when they had moved to New Albany they felt one of the cornerstones was they had strict zoning for aesthetic purposes. Mr. Golian stated he thought the board ought to enforce those.

Mr. Golian said that aside, when he looked at the burden placed on the applicant here, and he attended the Planning Commission meeting when he had heard about it at the last minute, some of the questions he wanted to address to the applicant were the same questions they had addressed here today and he still did not have answers for. Mr. Golian stated Mayor Spalding asked a significant question about what was a significant gap. Mr. Golian said he thought a number of the other board members had asked that and he still did not have a straight answer as to what a significant gap was, one. Mr. Golian stated two, what data or information constitutes a significant gap. Mr. Golian stated he would like to be able to get that data and, if need be, have someone else look at it, evaluate it. Mr. Golian stated something concrete, was it dropped calls, what was it, what constituted a significant gap. Mr. Golian stated he would like to have those gentlemen produce evidence that, again, that was a significant gap. Mr. Golian stated secondly, where did the gap exist. Mr. Golian stated again, he was confused and he had brought this up at the last meeting, show him the data where the gap exists. Mr. Golian stated they saw a map there, again, that was located, significantly, in the outlying Columbus area and the Gahanna area. Mr. Golian stated, to Mr. Kirby, his question was that there was a tower outside of Columbus or outside of Columbus in somebody else's neighborhood to give us service. Mr. Golian stated, unfortunately sir, that was on commercial property, not in the back of a residential neighborhood. Mr. Golian stated most of them had houses that were three quarters of a million dollars and they had specific, again, requirements here in New Albany. Mr. Golian stated, secondly, there existed a tower off of Reynoldsburg-New Albany Road for some time and the residents in that area complained repeatedly about the aesthetic of that tower and it was removed. Mr. Golian stated he did not understand why a tower in their backyard was ...

Mr. Kirby asked what tower was he referring to.

Mr. Golian stated there was a tower off of Reynoldsburg-New Albany Road.

Mr. Kirby asked WCVO.

Mr. Golian stated yes. Mr. Golian stated people complained about that. Mr. Golian stated they had friends who complained all the time about looking at that tower and the aesthetic value of it and it was removed. Mr. Golian stated, again, the aesthetics, why was it any different in their end of town. Mr. Golian stated, again, addressing the significant gap, if the burden was on the applicant, he did not think they met it. Mr. Golian stated they produced nothing that at least we could substantiate, we could cross examine, we could have someone evaluate. Mr. Golian said we just had someone testifying and he was not even sure who, most of the testimony came from their counsel, not from the expert. Mr. Golian stated again, he had heard they needed a site analysis, well they should have had the site analysis before they came here so they had something concrete they could look at and he could put his hands on and he could give to someone else and question. Mr. Golian stated he could not do that.

Mr. Golian stated when he looked at these towers, and he heard testimony that was offered, he was still confused as to the range. Mr. Golian stated he was hearing a mile or a mile and a half and the expert could not even testify whether or not the coverage would be alleviated from these other towers. Mr. Golian stated we keep circling back around this ring and asked why that particular ring, why was that identified given the location of the dropped calls. Mr. Golian asked if they could go outside that ring. Mr. Golian stated he thought that tied to the alternative sites, which he thought was a burden. Mr. Golian stated he had heard nothing about any alternative sites outside of New Albany. Mr. Golian stated he asked that same question at the last meeting and asked the applicant to provide that information so they could evaluate it. Mr. Golian said here they were again today and they did not have that information. Mr. Golian stated there were commercial developments along Morse Road, there was commercial development in the vicinity of the apartments that tower could be placed in because that seemed to be where the significant problem was. Mr. Golian stated they had shown nothing about alternative sites to satisfy them. Mr. Golian stated they want to put it in our backyard, again, show us what they had done, show us why it had not worked, show us what they had done to get those alternative sites. Mr. Golian stated he thought there were a lot of unanswered questions here most of you asked that were not satisfied. Mr. Golian stated based upon that alone, he thought they needed to deny the application. Mr. Golian stated thank you.

Mr. Tim Timmons swore to tell the truth. Mr. Timmons stated not to let the record reflect he was putting on his glasses. Mr. Timmons stated he was going to put some flesh to the bone, saying he did not understand the legalese and everything else that went on. Mr. Timmons stated he had a job where occasionally he had to count to four (4) and there was a multi-million dollar scoreboard that helped him do so. Mr. Timmons stated he could tell you one thing, he grew up, and one of his fondest

childhood experiences, which was repeated, was going rabbit hunting with his father and grandfather in New Albany. Mr. Timmons stated his grandparents, his aunt and uncle, his folks, bought their dachshunds from Mrs. Casto, whose property they now owned. Mr. Timmons requested the slide with his home be put up. Mr. Timmons stated when he was much younger he never wanted for anything in his whole life. Mr. Timmons stated his dad worked in a factory and he got let go after about 24 years, so they did not have to pay him his pension. Mr. Timmons stated his father had ended up going to work for Steward & Silver, Inc. Mr. Timmons noted Steward & Silver, Inc. ended up supplying the concrete block for a lot of the homes in the very first parade out in New Albany. Mr. Timmons stated coming out here after his dad had been out of work for about a year and sort of struggling, keeping your lawn mowing money, your mom going to work, and everybody sort of pulling in the same direction, New Albany looked like heaven. Mr. Timmons stated in eighth, ninth grade he made a point that this was going to be where he was going to live and, if he had a family, this was where he was going to raise them.

Mr. Timmons stated he was an umpire for major league baseball, he was not a player, and he had taken a lot of shots to the head to build this. Mr. Timmons stated this right here was where Mrs. Casto's house was, this young lady right here, her father built it. Mr. Timmons stated they had taken this house that was right there, indicating on the presentation, and moved it over so they could go through the process they went through with this board to get approval to split the lot approximately here, he demonstrated on the presentation. Mr. Timmons stated he knew they were going to talk about setbacks and variance at a later date. Mr. Timmons stated this affects value and the investment that his family and he, in blood, sweat, tears, and money, they had made in this community. Mr. Timmons said they were now paying taxes, they were never in the village, they were in the win-win when they were here in an old house, they paid taxes to the City of Columbus. Mr. Timmons stated now they were paying taxes to the village. Mr. Timmons stated that supplied money to the schools, that supplied money to everybody's infrastructure here.

Mr. Timmons said the ideal site for the home that would be on this 2.67 acre lot, which they had gone through the process and spent considerable money to bury the electrical box, indicating on the presentation, right in the middle of these two properties, they obtained another tap which was right here for water, and sanitary, and all the infrastructure was built in. Mr. Timmons stated they also spent a considerable amount of money to bury all the electric down through here, all the way back to the Brightfellers; they had made a huge investment. Mr. Timmons stated so this lot here, the ideal site would be here. Mr. Timmons stated it would be hugely impacted and be probably less than 150 to 200 feet away from this proposed tower. Mr. Timmons stated he made that point now, he knew it was a setback issue, but really it was something that was going to unreasonably decrease the value of their property and their progress toward retirement. Mr. Timmons stated one of the reasons they came to New Albany and stayed here was because they understood hard work and they live with people that also understand hard work. Mr. Timmons stated everybody up here, the commission, had been good to them. Mr. Timmons stated they had applied for a variance to build a building here, which they elected not to build, even after getting approval, because they

thought maybe it was not going to be fair to all those folks who had made an investment there, maybe it was not going to be fair to the folks back there, and they wanted to be good neighbors to everybody. Mr. Timmons stated they made a decision, even after getting approval, that they would not do that.

Mr. Timmons stated the last thing he would say was they were residents of New Albany, they try and be good neighbors, he thought the residents of New Albany and the commission here should be taking care of New Albany residents. Mr. Timmons stated the dropped call problem was not in New Albany. Mr. Timmons said he understood, once again, that was legalese and he did not get that, but it seemed to him that if it was New Albany residents and it was something else that people needed help here, they were good neighbors, but that was not the case. Mr. Timmons stated he and Leslie had worked very hard and Leslie had carried a lot of water, dug worms, and caught snakes in the back yard and out of the creek. Mr. Timmons stated he would say one other thing and he knew the engineer spoke about the 150 year flood plain. Mr. Timmons said let him assure you, this was a pond and it was about a three (3) year plain from practical experience, so build a good footing if you win. Mr. Timmons stated thanks.

Mr. Kirby asked if there was anyone who had not turned in a speaker sheet that wished to speak and, if so, come up and give your name and swear to tell the truth, and address.

Mr. William Fannin, Jr. swore to tell the truth and stated he was the owner of William Fannin Realty and the Fannin Company. Mr. Fannin stated he was a second generation builder/realtor. Mr. Fannin stated they had been in this community since 1990. Mr. Fannin stated he was asked by his friends and customers, the Timmons, to speak based on his professional experience being a second generation builder. Mr. Fannin stated his experience was having a 130 foot tower on your contiguous property was going to unreasonably decrease the value of your property. Mr. Fannin stated it was going to discourage prospective buyers. Mr. Fannin said he had the property listed that Mr. Timmons just testified about, and it was on the market for \$650,000 for a 2.5 acre lot. Mr. Fannin stated that was market value because of all the improvements that they did, everything that he just testified about, running the utilities down, annexing to the city, putting the water and sewer in. Mr. Fannin said then having a cell tower, stuck right in the middle of the yard, was basically what they were talking about here. Mr. Fannin stated he had testified at the BZA the other day as well. Mr. Fannin stated the long and short was that this was about money. Mr. Fannin stated they had a billion dollar company here wanting to stick a cell tower in a residential neighborhood. Mr. Fannin stated, again, based on being a second generation builder, their company had been in business in Columbus for sixty (60) years in the central Ohio area, it was tough to sell residential property when there was a tower in your yard. Mr. Fannin stated thank you for letting him testify.

Mr. Kirby asked other members of the public.

Ms. Alla Tempesta swore to tell the truth and said she was currently building a house in Oxford right on the line to the Timmons property. Ms. Tempesta stated they had spent

a considerable amount of time looking for a property to build in New Albany. Ms. Tempesta said they fell in love with New Albany, moved their kids here while they were building in New Albany, and went through the process of finding something that would sustain their investment, not knowing that this would actually impact the process while they were not even living in their home. Ms. Tempesta stated she wanted to reiterate everything that had been said and her concern, as someone who had already made a substantial investment and may not even realize it, living there.

Mr. Kirby stated he wanted to make a motion to put all of the staff reports , related documents, including those that were passed out, into the record for CU-47-2019.

Mr. Wallace stated he thought what they ought to do was somehow list, or make some sort of package of what it was, because they had received a bunch of different things. Mr. Wallace noted there were a couple, some petition, or something, that was sitting here and there were others. Mr. Wallace stated he thought, in fairness, for a full record they probably might want to itemize it in some way or at least put a package together for the minutes and maybe identify them by general category.

Mr. Wallace stated they had the case law material that the applicant submitted.

Mr. Kirby stated that was from staff.

Mr. Wallace stated it had Mr. Perotti's name on it. Mr. Wallace asked if there was anything there beside the cases.

Ms. Wiltrout stated there were pictures.

Mr. Wallace asked Mr. Perotti what they should call that.

Mr. Perotti stated Exhibits 1, 2, 3, whatever.

Mr. Wallace asked how about we say applicant's submission of case law and FEMA data. Mr. Wallace stated they had the applicant's submission of the monopine photographs, there were two (2) packages of that. Mr. Wallace stated they had, he believed a petition.

Mr. Kirby stated he wanted to talk about that before they do anything with a motion. Mr. Kirby stated they had a petition from Change.org.

Mr. Timmons stated it was a petition, all New Albany residents. Mr. Timmons stated Change.org did show where you were physically at your cell phone location, so some people were in the Virgin Islands, but those were all New Albany residents and there were 330 plus signatures on that.

Mr. Kirby, reading from the list of those who signed the petition, stated A, A, A, _ Q.

Mr. Timmons asked if there was an option to be anonymous but you had to put in your address.

Ms. Timmons stated she set it up online. Ms. Timmons stated in the process she had to put her email in and it automatically, as she set it up, took her vote. Ms. Timmons stated she did not know, exactly, because once she was the administrator she could not see how other people accessed it and what was required of them.

Mr. Wallace stated just describe what it was and indicate for the record that you would like it submitted for whatever consideration.

Ms. Timmons stated it was an online petition she sent to people's emails that she knew were residents of New Albany, and text messages, that they had the option to get on, look at what she wrote, which should be submitted in that, and then sign it electronically.

Mr. Wallace asked, and she wanted it submitted.

Ms. Timmons stated yes, please.

Mr. Wallace asked Mr. Pauley if he wanted the letter he had written submitted also.

Mr. Pauley stated yes.

Mr. Wallace asked if there was anything else he had missed, other than the application itself and those materials.

Mr. Kirby stated material from staff was already counted.

Mr. Wallace stated he thought so but he just wanted to be sure he had not missed anything.

Mr. Kirby stated including the stuff that was passed out tonight.

Mr. Wallace asked Mr. Banchefsky if he wanted to make his email part of the record or not.

Mr. Banchefsky stated not.

Moved by Mr. Kirby to accept everything that was passed out as part of the packets, the other stuff from staff, and the documents listed by Mr. Wallace, and the staff reports and other related documents into the record for CU-47-2019, seconded by Mr. Wallace. Upon roll call vote: Mr. Kirby, yea; Mr. Wallace, yea; Mr. Schell, yea; Ms. Wiltrout, yea; Mr. Shockey, yea. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5-0 vote.

Mr. Wallace stated, based on what they had heard tonight, he thought he would like to make a motion to table this until the next regularly scheduled meeting. Mr. Wallace stated he had heard testimony from Verizon's engineer and site expert, testimony from residents, heard a presentation from an attorney for some of the residents that were

there, he was aware of the provisions §1179 that had to be met by the applicant, he was aware of the Sixth Circuit and other case law that set forth what the standard was that the applicant needed to meet, he was aware of the FCC Act.

Mr. Kirby stated Telecommunications Act of 1996.

Mr. Wallace stated yes, that would be it. Mr. Wallace stated one thing that was important under New Albany ordinances was that there be some showing of whether there was a public property area available for the location of the tower. Mr. Wallace stated he was not convinced that aspect of the applicant's requirement had been fully explored with the evidence heard so far. Mr. Wallace stated he also was not certain they had heard enough information on the existence of less intrusive methods that had been put forward as well. Mr. Wallace said he also was not certain whether Verizon had established the co-location requirements. Mr. Wallace noted, in addition, there was the issue of the city being able to demonstrate there were less intrusive means that would be available than what they had heard so far. Mr. Wallace stated based on that, he would like to table the application to at least allow the city to obtain some sort of independent expert that could review some of the issues and provide some additional testimony at the next regularly scheduled meeting. Mr. Wallace stated in connection with that, he would like to see if Verizon would offer its site people and engineering people to assist this independent expert in their review of the information.

Mr. Perotti stated no. Mr. Perotti said he had not brought this up because they had all been there quite some time tonight. Mr. Perotti stated under the Telecommunications Act, and this was a telecommunications case, it was the applicant's prima facie case to establish that there was a significant gap and that it was filled through the least intrusive means. Mr. Perotti stated that was just a term of art that courts had come up with. Mr. Perotti stated once the applicant, through expert testimony, had established a significant gap, and there was no evidence to impeach Mr. Shirey's testimony, and there had been alternative sites evaluated and dismissed based on a number of reasons, the burden then shifted to any objectors or to the municipality to show technologically feasible alternatives. Mr. Perotti stated it was the obligation, as the attorney representing the objectors stated, it was their obligation to hire an RF engineer, to hire an expert to somehow rebut Verizon's expert testimony. Mr. Perotti stated if the municipality desired to hire an expert to look into this matter, that was in the municipality's purview and the objectors' purview, but Verizon stood by its application and just could not cooperate on evidence that would somehow cut against what Verizon's expert had testified to.

Mr. Wallace stated, okay, that's fine, saying he appreciated Mr. Perotti clarifying. Mr. Wallace said, putting aside Verizon's position that they did not want to cooperate with any expert that the city would retain, he still would like to move to table to give the city the opportunity to do that and then present whatever information the city might want to present at the next regularly scheduled meeting, if that would be sufficient time for the city to do that.

Mr. Kirby asked for Mr. Banchefsky to comment.

Mr. Banchefsky stated he thought they could get an expert, they were looking for an expert to do just that. Mr. Banchefsky stated his hope would be that would be completed by the next meeting. Mr. Banchefsky said if they had to have a special meeting in order to meet the telecom deadlines they could certainly do that. Mr. Banchefsky stated there was no problem with the city moving forward with that. Mr. Banchefsky stated he would point out that if it was tabled then they would table the BZA hearing scheduled for next week because this was a precursor to that moving forward. Mr. Banchefsky stated there would still be a meeting, but this item would be tabled at that meeting.

Moved by Mr. Wallace to table CU-47-2019 till the next scheduled meeting of the Planning Commission, seconded by Ms. Wiltout. Upon roll call: Mr. Wallace, yea; Ms. Wiltout, yea; Mr. Schell, yea; Mr. Kirby, yea; Mr. Shockey, yea. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5-0 vote.

Other Business

Review and Recommendation to City Council for Updates to Codified Ordinances Section 1165—General Development Standards

Ms. Russell presented the staff report.

Mr. Wallace asked if this was sort of a continuation of what they had heard last month.

Ms. Russell stated correct.

Mr. Wallace asked if one of the main things they did was decide they thought they needed a more defined definitions section.

Ms. Russell stated correct.

Mr. Wallace asked if there were any other changes, substantive changes to the text.

Ms. Russell stated that last go around with a text there was a typo in the tiers so it read 8, 1, 12, so they updated that and then they added page numbers.

Mr. Wallace stated he thought he was in a position to make a motion.

Mr. Shockey stated he had questions because he was not at the prior meeting. Mr. Shockey stated under detached structures, d, he just needed some clarification. Mr. Shockey stated "shall be located ten feet from any side yard." Mr. Shockey stated he wanted to know did they mean by that, as this was in his wheelhouse, ten (10) feet from the side yard for the subject lot, the setback, or did they mean ten (10) feet from the neighbors' side yard.

Ms. Russell stated they meant to the lot line, the side lot line. Ms. Russell stated the neighbors would share the side lot line.

Mr. Shockey stated so it's located ten (10) feet from any side yard.

Ms. Russell stated they could add side lot line instead of side yard if that provided more clarification.

Mr. Mayer stated it would be the subject property's here.

Mr. Shockey stated what he saw in the ordinance, the number of places they talk about side yards in terms of setback, in terms of distance to the lot line, front yard the same way. Mr. Shockey stated he wanted to be clear with that because someone was going to ask that. Mr. Shockey stated that was the same question he had on e. Mr. Shockey stated its thirty (30) feet from the rear property line, okay.

Mr. Mayer stated he knew in their current definitions section of their codified ordinances, he believed it did define what the side and rear ...

Mr. Shockey stated if they did not need to make any change then do not, but the question that he had was, like the engineers and lawyers had, what does the language mean. Mr. Shockey stated then, on number six (6), right below that, twenty percent (20%) of lot coverage for accessory structures. Mr. Shockey stated he was sure it did not mean that on a one (1) acre lot that was 8,000 square feet, were they talking about a maximum of twenty percent (20%) lot coverage for all improvements.

Ms. Russell stated it was her understanding that they were doing it just for the accessory structures because of the other stipulations they have within the text. Ms. Russell noted you could only have two (2) detached structures, so you could only have, for example, a detached garage and a pool house.

Mr. Shockey asked twenty percent (20%) of what then, of the lot size.

Ms. Russell stated yes, it was the lot size.

Mr. Shockey stated, so a one (1) acre lot is 40,200 square feet, so ten percent (10%) of that was 4,000, twenty percent (20%) was 8,000, so that computes to be 8,000 square feet or was he not correct.

Ms. Russell stated she thought that was correct.

Mr. Shockey stated you could not have an 8,000 square foot accessory structure.

Mr. Mayer stated he thought that was a good question. Mr. Mayer stated he thought there were various limits and catchalls in there. Mr. Mayer stated that what they had discussed at the previous meeting was that there could be scenarios where somebody wanted to cover their entire property in an open sided pergola or you just did not know what. Mr. Mayer stated there could be some cases where, without these additional sort of catchalls, like twenty percent (20%), that somebody could have the opportunity

to completely cover their backyard with a structure that was an open sided pergola if there were no lot coverage amounts.

Mr. Shockey stated lot coverage in the commercial world was the amount of coverage, impervious to buildings and blacktop, and the open area. Mr. Shockey stated he saw this as somewhat conflicting, trying to decide what twenty percent (20%) lot coverage was, but asked if they were clear about it. Mr. Shockey stated this was R1 and R1 was a 40,000 square foot lot.

Mr. Mayer stated their code defined what lot coverage was and typically lot coverage, when you were talking about structures, it was a home, so it was something with a roof and four (4) sides. Mr. Mayer stated what they had done was take how they defined lot coverage but replaced that with open-sided structures. Mr. Mayer stated that way, without that, there was no maximum lot coverage for these recreational amenities. Mr. Mayer stated these things had no lot coverage amount without that. Mr. Mayer stated they had a discussion where, you were allowed today, with this code, to basically cover your whole back yard with a patio or with a deck. Mr. Mayer stated where they had a concern, which they had heard from this board and from the BZA, was that once you got to structures right above grade that there could be a concern, they wanted to put a safety net in place there with that lot coverage.

Mr. Shockey stated he did not have to go on, if he was satisfied with what that meant, then he was just reading it without having the benefit of hearing the conversation about it.

Mr. Mayer stated they just wanted to share the background and what the intent of that was and what they felt they had set that up for. Mr. Mayer stated they were certainly open to, and wanted to hear, his opinion about it. Mr. Mayer stated that was the coverall, the safety net, after talking with their staff at various levels.

Mr. Shockey stated he hoped it did not mean 8,000 square feet, that was a pretty big accessory building.

Ms. Russell stated she did not think it would just based on the tier system. Ms. Russell stated so for a one (1) acre lot they could have, based on if they were going to be over an acre, or under an acre, or around there, they were going to have only 1,200 square feet per structure. Ms. Russell stated including the lot coverage and the stipulation you could only have two (2) detached structures on a lot, that meant they would maximize that at 2,400 square feet between both structures.

Mr. Shockey stated he knew they still had to fit within the buildable area.

Ms. Russell stated right. Ms. Russell stated, just for clarification too, as Mr. Mayer stated, lot coverage was only for buildings. Ms. Russell stated the code would require, or allow, a patio or deck to take up as much space as they wanted as long as they met the setbacks that existed now so it did not create a non-conformity.

Mr. Shockey stated good enough.

Mr. Kirby asked if they could recommend it with minor edits.

Mr. Mayer stated sure.

Mr. Wallace stated in §1165.04(a)(2)(D) change "side yard" to "side lot line" and change, in that same subsection (E), "rear yard" to "rear lot line".

Mr. Mayer stated got you and asked Ms. Russell if she had gotten that.

Ms. Russell stated yes, thank you.

Moved by Mr. Wallace to recommend to City Council the changes and updates to Codified Ordinances Section 1165—General Development Standards, as amended, seconded by Mr. Kirby. Upon roll call vote: Mr. Wallace, yea; Mr. Kirby, yea; Ms. Wiltout, yea; Mr. Shockey, yea; Mr. Schell, yea. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5-0 vote.

With no further business, Mr. Kirby polled members for comment and hearing none, adjourned the meeting at 10:50 p.m.

Submitted by Josie Taylor.

APPENDIX



Planning Commission Staff Report July 15, 2019 Meeting

COURTYARDS AT NEW ALBANY DRIVEWAY WIDTH & STREET TREE SPACING ZONING TEXT AMENDMENT

LOCATION: 7100 New Albany Condit Road (PID: 222-001972)
APPLICANT: Epcon Communities c/o Aaron L Underhill, Esq.
REQUEST: Text Amendment
ZONING: I-PUD Infill Planned Unit Development (Yerke West PUD Text)
STRATEGIC PLAN: Office District
APPLICATION: TM-59-2019

Review based on: Application materials received June 13 and June 21, 2019.

Staff report completed by Chris Christian, Planner.

I. REQUEST AND BACKGROUND

The applicant requests a modification to the zoning text for the Courtyards at New Albany subdivision to allow driveways to have a maximum width of 16 feet at the right-of-way. Additionally, the applicant is requesting a modification to allow street tree installation to deviate from the 1 tree per 30 feet requirement, as necessary, to avoid interfering with other required improvements, including the installation of a driveway to ensure the total number of committed trees from the final development plan are installed.

The current text does not specify the maximum allowable driveway width therefore C.O. 1167.03(d) applies which states that for all single family residences, all driveway curb cuts shall be designed to accommodate a maximum 12-foot driveway at the right-of-way line. The applicant states that the current driveway width restriction makes it difficult to park two cars side by side.

II. SITE DESCRIPTION & USE

The Courtyards at New Albany subdivision contains 105 age-restricted lots. The subdivision is approximately 35.0+/- acres. The subdivision is currently in the public infrastructure improvement process.

The preliminary and final development plan was approved on June 18, 2018. A plat for phase 1 of this development was approved by the Planning Commission on June 18, 2018.

II. New Albany Strategic Plan

The majority of the site is located in the 2014 New Albany Strategic Plan's Office Campus future land use district. However given the proposed use, staff has evaluated this proposal against the Town Residential District standards. The 2014 New Albany Strategic Plan lists the following development standards for the Town Residential District:

- a) Houses should front onto public open spaces and not back onto public parks or roads.
- b) Houses should be a minimum of 1.5 stories in appearance and a maximum of three stories.
- c) Rear and side-loaded garages are encouraged. When a garage faces the street, the front facade of the garage must be set back from the front facade of the house.
- d) The maximum width of a garage door facing the street is ten feet.
- e) Open space should be sited to protect and enhance existing natural features and environmentally sensitive habitats
- f) Neighborhood open spaces and parks should be located within 1,200 feet of all houses. They should vary in size and be easily accessible to pedestrians.
- g) Streets should have five-foot wide sidewalks on both sides of the street, other than in locations approved for eight-foot leisure trails.
- h) Leisure trail connections must be established throughout.
- i) Deciduous street trees should be planted 30 feet on center.
- j) Primary roads should be designed according to its designated corridor typology
- k) Sidewalks should be located on all internal subdivision streets and leisure trails located along all external roadway frontages with connections from sidewalks to the leisure trails.
- l) Cul-de-sacs are discouraged in all developments and a multiplicity of connections should be made.

III. PLAN REVIEW

Review is based on the city's Strategic Plan, existing zoning text, and planning, subdivision and zoning regulations, including the design standards. Primary concerns and issues have been indicated below, with needed action or recommended action in underlined text.

Per Codified Ordinance Chapter 1111.06 in deciding on the change, the Planning Commission shall consider, among other things, the following elements of the case:

- (a) Adjacent land use.
 - (b) The relationship of topography to the use intended or to its implications.
 - (c) Access, traffic flow.
 - (d) Adjacent zoning.
 - (e) The correctness of the application for the type of change requested.
 - (f) The relationship of the use requested to the public health, safety, or general welfare.
 - (g) The relationship of the area requested to the area to be used.
 - (h) The impact of the proposed use on the local school district(s).
-
- 1. The applicant requests a modification to the Yerke West text section XI(b) to allow a maximum 16 foot drive for all homes in the subdivision. The current text does not specify the maximum allowable driveway width therefore C.O. 1167.03(d) applies which states that for all single family residences, driveway curb cuts shall be designed to accommodate a maximum 12-foot driveway at the right of way line. The applicant

states that this restriction makes it difficult to park two cars next to each other in the driveway and also causes maneuverability issues when more than one car is present in the driveway.

2. The applicant is also requesting a modification to Yerke West text section VIII(D) to allow tree spacing on public streets to deviate from the text requirement of 1 tree per 30 feet to avoid interfering with required improvements. This provision exists in the existing approved text to provide a desirable streetscape. The applicant states that they commit to provide the number of street trees approved as part of the final development plan but may need to deviate from the 1 tree per 30 feet spacing requirement in order to accommodate the wider driveways.
3. The applicant states that the current driveway width restriction makes it difficult to park two cars side by side in the driveway and causes maneuverability issues due to the driveways being tapered at aggressive angles at the right of way. The 12 foot wide driveway width requirement at the right-of-way is the city's code requirement found in 1167.03(d). This is a one size fits all requirement that is meant for a typical subdivision where the lots are larger and the homes are setback further from the street and there is more opportunity to have a longer driveway. The homes in the Courtyards at New Albany subdivision are only setback 20 feet from the right of way which is uncommon in the city therefore the request to allow for wider driveways is appropriate.
4. The typical lot in the subdivision has 52 feet of frontage. Under the current zoning requirements, curb cuts take up approximately 23% of a typical lot frontage. Under the new requirements, the typical lot frontage that is taken up by the curb cut would be approximately 30% with a 16 foot wide driveway. This change does not appear to be a substantial.
5. By allowing wider driveways, the amount of green space provided by the street yard is reduced. However, the applicant states that the number of street trees provided will not be affected as a result of the wider driveways. The 2014 New Albany Strategic Plan highlights the importance of high quality residential design and maintaining open space in residential districts. In order to ensure that the increased paved areas in front of homes does not reduce the number of street trees planted, staff recommends a condition of approval that a street tree planting plan be submitted for staff review with the final engineering for each section or phase of the subdivision to ensure compliance with the number of street trees committed during the final development plan and to ensure that proper spacing of street trees is achieved.
6. In June 2019 the Planning Commission reviewed and approved a similar request for the Nottingham Trace subdivision. The Nottingham Trace request was to allow for 16 foot wide driveways for homes constructed with two car garages and 18 foot wide driveways for homes with three car garages. The lots in the Nottingham Trace subdivision have the same average lot width of 52 feet and the same 20 foot required front yard setback which causes constraints for maneuverability in the driveways. Staff recommends a condition of approval that two foot tapers on both sides of the driveways be maintained throughout the subdivision. This same condition was placed on the Nottingham Trace approval.

IV. RECOMMENDATION

Basis for Approval:

Staff recommends approval of the text modification to allow for wider driveways in the Courtyards at New Albany subdivision and to allow deviation from the tree spacing requirements of the text. The applicant has demonstrated that 12 foot wide driveways causes maneuverability issues. To ensure the number of street trees provided match the final development plan approval and to ensure proper street tree spacing, staff recommends that a tree planting plan be submitted for each phase or section of the development before final engineering approval is granted.

V. ACTION

Suggested Motion for TM-59-2019:

Move to approve development text modification application TM-59-2019 with the following conditions of approval (conditions of approval may be added):

1. A street tree planting plan must be submitted for staff review with the final engineering for each section or phase of the subdivision to ensure compliance with the number of street trees committed during the final development plan and to ensure that proper spacing of street trees is achieved.
2. Two foot tapers on both sides of the driveways be maintained throughout the subdivision.

Approximate site location:



Source: Google Maps



**Planning Commission Staff Report
July 15, 2019 Meeting**

**NEWTON COURT
PRELIMINARY AND FINAL ROAD PLAT**

LOCATION: Generally located north of Innovation Campus Way and east of Harrison Road
APPLICANT: EMH&T c/o Katie Miller
REQUEST: Preliminary and Final Road Plat for Newton Court
ZONING: Limited General Employment (L-GE)
STRATEGIC PLAN: Office Campus
APPLICATION: PP/FPL-64-2019

Review based on: Application materials received June 28, 2019.

Staff report completed by Jackie Russell, Development Services Coordinator.

III. REQUEST AND BACKGROUND

The application is for a combined preliminary and final plat for dedication of right-of-way for the creation of Newton Court. This access point is important for the beginning of a future roadway to gain additional connections within the New Albany International Business Park in the future. This Newton Court dedication will provide access to new, individual development sites within this section of the Business Park.

IV. SITE DESCRIPTION & USE

The proposed right-of-way dedication will provide additional connections within the New Albany International Business Park. The area is currently undeveloped. The property is zoned L-GE and allows the same uses as the Personal Care and Beauty Park such as office, distribution, and warehousing uses.

V. EVALUATION

Planning Commission's review authority of the preliminary and final plat is found under C.O. Section 1187. Upon review of the final plat the Commission is to make recommendation to City Council. Staff's review is based on city plans and studies, zoning text, zoning regulations.

- This plat will dedicate right-of-way to the City of New Albany for the creation Newton Court.
- The Newton Court dedication extension consists of approximately 516 +/- feet of new right-of-way north of Innovation Campus Way.
- This proposed street dedication location is identified as a future connection in the 2014 New Albany Strategic Plan Mink Area Plan. Similar to Innovation Campus Court, this

dedication may be extended in the future to provide a connection to Clover Valley Road for future development of parcels within this area of the business campus.

- Similar to the recent Innovation Campus Way extension, the requirements of 1187.08 are eliminated since the purpose of the road is intended for commercial use and the design allows for the road to be extended in the future.
- Since the proposed right-of-way does not extend to another public street the termination point is designed as a cul-de-sac to allow for safe of cars and trucks turnaround and for future extension.
- This road is 516 +/- feet in length. There are no reserves being platted or lots being created within this new road extension.
- The plat dedicates 50' of right-of-way.
- The proposed Newton Court is identified as an Interior Commercial Road and meets the recommendations of the 2014 Strategic Plan Addendum's for the Mink Area for this road type. The plan indicates the road should be designed at a smaller scale than other commercial roads and provide two travel lanes, which are provided, to create interior connections within the business park.

VI. ENGINEER'S COMMENTS

The city engineer reviewed the plat and road improvement plans and has the following comments:

1. A 75' drainage easement must be added for the 42" storm sewer that cross through the platted area.
2. Refer to Exhibit A attached. Add additional plat notes similar to what is provided on this exhibit.

Staff recommends a condition of approval that all comments from the city engineer must be satisfied.

VII. RECOMMENDATION

Basis for Approval: The road plat is consistent with the overall vision for the area and will serve as an important access point for development sites within the Business Park.

VIII. ACTION

Should the Planning Commission find that the applications have sufficient basis for approval, the following motions would be appropriate:

Suggested Motion for PP/FPL-64-2019:

Move to approve Certificate of Appropriateness application PP/FPL-64-2019 with the following condition(s), subject to staff approval:

1. Address the comments of the City Engineer to the satisfaction of the City Engineer.

Approximate Site Location:



Source: Google Maps



Planning Commission Staff Report July 15, 2019 Meeting

CELL TOWER CONDITIONAL USE

LOCATION: 5089 Johnstown Road (PID: 222-001516-00).
APPLICANT: UAS Inc. c/o Rob Ferguson
REQUEST: Conditional Use
ZONING: R-2
STRATEGIC PLAN: Neighborhood Residential
APPLICATION: CU-47-2019

Review based on: Application materials received May 17, 2019

Staff report prepared by Chris Christian, Planner

IX. REQUEST AND BACKGROUND

This application was last heard by the Planning Commission on June 17, 2019 and was tabled until the next regularly scheduled meeting. Modifications have been made to the staff report based on comments at the June 17, 2019 Planning Commission meeting, further evaluation of the application and input from New Albany residents.

The applicant requests approval of a conditional use for a cell tower to be located on a residentially zoned property. C.O. 1179.06 states Wireless Telecommunications Facilities that include towers, are permitted as a conditional use on any property with an institutional use (e.g., religious, education, recreation, government, park, library, municipal government, hospital, school, utility). The applicant is proposing to install a 130 foot cell tower on the Temple Beth Shalom property located at 5089 Johnstown Road. The property has a residential zoning, but contains a religious use on the property. Therefore a conditional use application must be reviewed by the Planning Commission.

As part of this project, the applicant is also seeking a variance to C.O. 1179.06(3)(a) to allow the proposed cell tower to be setback 40 feet away from a residential lot where code requires a minimum 200 foot setback. The Board of Zoning Appeals will evaluate this variance request on July 22, 2019.

X. SITE DESCRIPTION & USE

The site is located on the west side of Johnstown Road, south of Thompson Road. There is an institutional use on the property, the Temple Beth Shalom. The property is adjacent to another institutional use as well as single family residential and the Oxford subdivision.

XI. EVALUATION

Standards for Conditional Uses:

The general standards for Conditional Uses for wireless telecommunications facilities are contained in Codified Ordinance Section 1179.07. According to the code section, a wireless telecommunications facility which includes a tower may be permitted as a conditional use for review, the applicant must prove that a newly constructed tower is necessary because co-location or an existing tower is not feasible in accordance with C.O. 1179.08.

C.O. 1179.08(c) states a conditional use permit shall be issued only if there is not technically a suitable space reasonably available on an existing tower or structure within the coverage area to be served. With the permit application, the Applicant shall list the location of every tower or antenna support, or structure within the coverage area that could support the proposed antenna. The Applicant must demonstrate that a technically suitable location is not reasonably available on an existing tower or antenna support structure. If another tower or antenna support structure is technically suitable, Applicant must show that it has offered to allow the owner to co-locate the wireless telecommunications facility on another tower within the City owned by Applicant on reciprocal terms, and the offer was not accepted, or the other tower is presumed to be reasonably available.

- The applicant states there are no towers within a half mile of the proposed location that are suitable to remedy the issues customers are having. There are towers over a mile away that are suitable towers for co-location, and the applicant has already co-located on these towers.
- During the June 17th meeting the applicant stated there is an existing electrical transmission tower in the area but that is not preferred nor does it provide good service.

(a) A wireless telecommunications facility which includes a tower may be permitted as a conditional use in a residential or commercial district. In order to be considered for review, the applicant must prove that a newly constructed tower is necessary because co-location or an existing tower is not feasible in accordance with Section 1179.08. The following steps must also be taken for the application to be considered for review in this category:

- C.O. 1179.08(a) states that in order to encourage the location of wireless telecommunications facilities on publically-owned property, the City shall undertake an identification of publically-owned properties that the City determines are suitable for such use. At the June 17th meeting the Planning Commission requested the applicant provide data that supports the claim that there is no suitable land at Thompson Park to locate the cell tower. The applicant has not submitted any new documentation to show they investigated, thoroughly, the possibility of other viable alternatives within Thompson park.
- The applicant stated at the June 17, 2019 Planning Commission meeting that the service provider has explored the possibility of locating the cell tower on the Thompson Park property but stated that due to floodplain concerns, the provider did not pursue this option. However, the applicant has not provided evidence that there is no possibility of locating the tower at Thompson Park.
- Thompson Park is located approximately 3,400 feet from the US 62 and Thompson Road intersection which the applicant says is the center of the search radius. Although

the site is a slightly more than one-half mile from the center of starting search area, the applicant has not provided clear evidence of why this is starting point of the search area. Additionally, the current proposed tower location does not serve one of the highest dropped call areas. It appears moving the tower west to Thompson Park would result in the new service area covering this area of highest dropped calls.

- One resident questioned if this tower was in the 100 year floodplain. The city engineer reviewed the application and the surrounding area and identified a stream that is a tributary to Rocky Fork Creek that is an unstudied tributary. Please provide floodplain information for the current site to ensure that the cell tower is not being developed within the 100 year floodplain. According to C.O. 1155.04(a)(2) no residential, industrial, and/or commercial development can be developed within the 100 year floodplain. C.O. 1155.04 states that in all areas of special flood hazard where base flood elevation data are not available, the applicant shall provide a hydrologic and hydraulic analysis is completed that generates base flood elevations for all development proposals. Additionally, there is a 20 foot setback requirement from the 100 year floodplain.

- The applicant has not submitted any documentation showing the current location is not within or a minimum of 20 feet away from the 100 year floodplain.

(1) *The Applicant shall demonstrate that the Tower must be located where it is proposed in order to service the applicant's service area. There shall be an explanation of why a Tower and this proposed site is technically necessary.*

- The applicant has submitted documentation showing the number of 4G dropped calls during April 2019 in the area surrounding this site. The applicant states that this tower will reduce the number of dropped connections within the documented outlined area. The applicant states the proposed tower location will also provide capacity relief to the adjacent site to the south. However no empirical data has been provided in support of this capacity issue.
- While the applicant has supplied documentation showing the number of dropped calls, it does not provide any context to the total number of calls made or total number of homeowners served in the area. The “raw” number of dropped calls does not provide a sufficient explanation of the tower is technically necessary since there is no other data with which to compare it.

Additionally the map showing the dropped calls is only one month of data. The limited scope of data does not provide enough explanation of why the tower and site is technically necessary. The applicant has not submitted evidence that there is no other alternative to the installation of the proposed tower at this site. Therefore, staff believes that this code requirement is not being met.

(2) *Where the wireless telecommunications facility is located on a property with another principal use, the applicant shall present documentation that the owner of the property supports the application and that the vehicular access is provided to the facility.*

- The applicant has provided written documentation from the property owner stating that they support the application.

(3) *The applicant shall present a site/landscaping plan showing the specific placement of the wireless telecommunications facilities on the site; showing the location of existing structure, trees and other*

significant site features; and indicating type and locations of plant materials used to screen the facilities, and the proposed color of the facilities.

- The Temple Beth Shalom site is approximately 6.65 acres and is adjacent to another institutional use property, single family residential and the Oxford subdivision. The cell tower will be located 250+ feet away from the Temple Beth Shalom, 600+ feet from the Oxford subdivision and 500+ feet from the nearest single family home.
 - The applicant is proposing to install a 130 foot cell tower with a 10 foot lightning rod on the property for a total height of 140 feet.
 - This property is adjacent to on the edge of the community where the general vicinity is mostly rural in nature and has larger, single family residential lots.
 - The tower is going to be located in the rear of the Temple Beth Shalom property where the primary building is set back approximately 370+/- feet from Johnstown Road and approximately 880+/- feet from Thompson Road.
 - The tower will be located in a 31'x50'x7' fenced area and all ground equipment will be installed within the fenced area.
 - The applicant has provided a landscape plan as a part of the submittal and it appears that the proposed landscaping will screen ground equipment and mechanical units associated with the tower. The applicant will install twenty, five foot tall arborvitae trees to screen ground level equipment.
 - The cell tower will be installed in the back of the Temple Beth Shalom property. There is an existing tree stands that between the cell tower and the adjacent residential properties to the west and north.
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- (4) *Applicant shall present a signed statement indicating:*
- a. *The applicant agrees to allow for the potential co-location of additional wireless telecommunications facilities by other providers on the applicant's structure or within the same site location; and*
 - b. *That the applicant agrees to remove the facility within one hundred eighty (180) days after the site's use is discontinued.*
 - The applicant has provided a letter stating that the tower will be removed with 180 days after the use is discontinued and agrees to allow for the potential co-location of additional wireless telecommunications facilities by other providers.
- (b) *A conditional use permit must be approved by the Planning Commission with a subsequent building permit issued for construction of new Towers in nonindustrial districts. Co-location of antennas on a single tower, antennas attached to existing structures/buildings, towers located in industrial districts, or replacement towers to be constructed at the site of a current tower are permitted uses and will not be subject to the conditional use permitting process.*
- The applicant is required to submit permits for construction to be reviewed by city staff if the application is approved by the Planning Commission.
- (c) *Any decision to deny a request to place, construct or modify a wireless telecommunications facility and/or tower shall be in writing and supported by evidence contained in a written record of the proceedings of the Planning Commission.*

XII. RECOMMENDATION

During the June 17, 2019 Planning Commission meeting the board requested additional information as to the technical need for the proposed location and the critical need the applicant states exists in the area. The applicant states that the company seeks to fill a service gap that cannot be remedied via co-location. While the applicant stated they considered Thompson Park, they have not provided evidence the park's location could not provide service to the targeted area and there is not any viable alternative location within the park. Additionally, while the applicant has provided documentation showing the number of dropped calls in the area, no information has been provided demonstrating if there is a significant need for a new tower since there is no comparative data to provide context to the number of dropped calls.

The applicant has yet to provide information to address the Planning Commission's questions and comments as to the necessity of a tower at this proposed location. Therefore staff recommends denial of the conditional use application.

XIII. ACTION

The Commission shall approve, approve with supplementary conditions, or disapprove the application as presented. If the application is approved with supplementary conditions, the Planning Commission shall direct staff to issue a zoning permit listing the specific conditions listed by the Planning Commission for approval.

Should the Planning Commission find that the application has sufficient basis for approval, the following motion would be appropriate:

Move to approve application CU-47-2019 with the following conditions:

- 1) The variance application must be approved.

Approximate Site Location:



Source: Google Maps