

**PLEASANT PRAIRIE PLAN COMMISSION MEETING
VILLAGE HALL AUDITORIUM
9915 39TH AVENUE
PLEASANT PRAIRIE, WISCONSIN
5:00 P.M.
February 9, 2009**

A regular meeting for the Pleasant Prairie Plan Commission convened at 5:00 p.m. on February 9, 2009. Those in attendance were Thomas Terwall; Donald Hackbarth; Wayne Koessl; Andrea Rode (Alternate #2, voting member); Jim Bandura; John Braig; and Larry Zarletti. Michael Serpe and Judy Juliana (Alternate #1) were excused. Also in attendance were Mike Pollocoff, Village Administrator; Peggy Herrick, Assistant Village Planner and Zoning Administrator; and Tom Shircel, Assistant Village Planner and Zoning Administrator.

- 1. CALL TO ORDER.**
- 2. ROLL CALL.**
- 3. CORRESPONDENCE.**
- 4. CONSIDER THE MINUTES OF THE JANUARY 26, 2009 PLAN COMMISSION MEETING.**

Larry Zarletti:

Move approval.

John Braig:

Second.

Tom Terwall:

MOTION BY LARRY ZARLETTI AND A SECOND BY JOHN BRAIG TO APPROVE THE MINUTES OF THE JANUARY 26, 2009 PLAN COMMISSION MEETING. ALL IN FAVOR SIGNIFY BY SAYING AYE.

Voices:

Aye.

Tom Terwall:

So ordered.

5. CITIZEN COMMENTS

Tom Terwall:

If you're here for Item A on the agenda which is a public hearing, we'd ask that you hold your comments until the public hearing is held. Or, if you're here for any other item on the agenda or an item not on the agenda now would be your opportunity to speak. We'd ask that you step to the microphone and begin by giving us your name and address. Anybody wishing to speak?

6. NEW BUSINESS

- A. PUBLIC HEARING AND CONSIDERATION OF A CONDITIONAL USE PERMIT INCLUDING SITE AND OPERATIONAL PLANS for the request of Mark Layne of JAK Associates, agent, on behalf of MediaFLO USA, to co-locate one (1) antenna on the existing 411 foot high guy-wired tower, to construct an associated 10' x 12' equipment shelter at the tower base and to install other associated improvements on property owned by NextMedia Operating, Inc., located at 8500 Green Bay Road.**

Tom Shircel:

Thank you. These are the findings of fact for this case.

1. Mark Layne, agent, on behalf of MediaFlo USA, which will hereby be known as MediaFlo, is requesting a conditional use permit and site and operational plan to commence the operation of a multimedia network for handheld wireless devices on property owned by NextMedia Operating, Inc., which is a WLIP and WIIL radio station site at 8500 Green Bay Road which is further identified as Tax Parcel Number 91-4-122-103-0141.
2. As background information, in 1983 Kenosha County and the then Town of Pleasant Prairie granted zoning and building permits respectively for radio station building and associated site improvements which included the 411 foot guy-wired lattice transmission tower.
3. MediaFLO is a subsidiary of Qualcomm, Inc. MediaFLO is seeking to expand its wireless network into southeast Wisconsin through the provision of reliable service to Pleasant Prairie. MediaFLO through its FLO TV service provides the opportunity for consumers to watch live TV, simulcast and time-shifted full length television programming on their mobile phones and other wireless devices wherever consumers travel. In order to provide this service the co-location of wireless equipment on its existing guy-wired tower is necessary. FLO TV is currently available to over 50 metro areas across the US and coverage continues to expand. For further information pertaining to this application you can look further into your site and operational application form that's been attached to your agenda.
4. MediaFLO plans to carry out the following at this site:

- a. Co-locate one 12 foot long antenna mounted at a height of 330 feet on the existing 411 foot tower.
 - b. Construct a 12 foot by 10 foot equipment shelter located approximately 117 feet northeast of the tower base within a 30 foot by 30 foot lease area. The lease area will contain the equipment shelter and other improvements associated with the MediaFLO operation.
 - c. Construct an aggregate gravel access drive that will extend from the existing gravel access drive to serve the new equipment shelter.
 - d. Install a six foot high chainlink fence with three strands of barbed wire atop the fence for a total height of seven feet located around the perimeter of the lease area.
 - e. Install two 1.8 meter satellite dishes side mounted on the equipment shelter.
 - f. Install two small global positioning antennas side mounted on the equipment shelter.
 - g. Install a heat exchanger to be wall mounted on the equipment shelter.
 - h. Install an air conditioner to be wall mounted on the equipment shelter.
 - i. Install other associated equipment to be housed within the equipment shelter.
 - j. Plant landscaping consisting of eight 6 foot high arborvitae.
5. In order to provide access to the MediaFLO equipment shelter, an access and utility easement utilizing the existing Green Bay Road driveway, existing parking lot and the existing equipment shelter gravel access drive is proposed. The easement will allow MediaFLO access and utility rights to its facilities.
 6. The new MediaFLO equipment shelter will not be located within the 100 year floodplain, nor will it be located within the wetlands on the site. A portion of the new gravel access drive which is proposed to branch off from the existing gravel access drive will be located within the limits of the 100 year floodplain. The portion of the new access drive located within the floodplain shall not obstruct flow or increase the upstream or downstream regional flood height by .01 feet or more. The applicant does not intend to disturb the existing surface drainage characteristics with the construction of the new equipment shelter access drive. In order to accomplish this, the topsoil of the access drive is to be scraped and the new roadway aggregate will in fill where the topsoil was removed thus maintaining the existing grades and not impeding the 100 year floodplain.
 7. The current zoning of the NextMedia property is I-1, Institutional District, and the wetlands are zoned C-1, Lowland Resource Conservancy District, and there's a Floodplain Overlay District where the 100 year floodplain exists. The proposed communication structure and associated equipment require a conditional use permit from the Plan Commission.
 8. The existing 411 foot tall tower is considered a nonconforming structure in that it does not comply with the setback requirement of Section 420-89 B.(3) entitled Commercial Communication Structures of the Village Zoning Ordinance which requires that lattice towers with guy wires be set back the height of the tower to all property lines and guy wires be set back half the height of the tower but in no case closer than 50 feet to any property line. Because the height of the 411 foot nonconforming tower is not being increased, the guy wires and guy anchors are remaining as is and the degree of

nonconformity is not being increased, the proposed addition of the one antenna to the nonconforming tower is acceptable.

9. The location of this facility and the co-location of the antenna on the existing tower will avoid the unnecessary proliferation of communication towers throughout the Village.
10. Next are some staff proposed changes. To be consistent with other recent Plan Commission equipment shelter approvals, the MediaFLO equipment shelter shall incorporate:
 - a. Similar exterior building material finishes to match the existing NextMedia equipment shelter on the site.
 - b. A gabled, pitched asphalt shingled roof rather than roof.
 - c. The lease area perimeter chainlink fencing consisting of black vinyl coating and chain link fence.

Just to bring the Commission up to date, this afternoon I've been on phone conversations with representatives from MediaFLO, and we've come to a compromise. MediaFLO does not think the shelter given its location which is pretty non visible from roadways and abutting properties, they don't think it should have a brick exterior or a concrete block exterior. They're proposing an aggregate stone exterior. And they also don't think it should have a pitched roof, it should be a flat roof. So we've come to a compromise that we're going to allow the aggregate exterior rather than a brick exterior but it should have a pitched roof. So that's the compromise we've come to and it's up to the Plan Commission if they're acceptable to you or not.

11. Pursuant to the plans, the perimeter of the lease area shall be landscaped with a 6 foot tall arborvitae along the north, south and west sides of the leased areas with mulch or decorative stone at the base of the landscaped areas.
12. The Communication Act of 1934 is a federal regulation which governs the telecommunications industry. Section 322 of the Act, as amended by subsection (6)(iv) of the Telecommunications Act of 1996 provides guidelines to state and local governments regarding the siting of antenna facilities. One such guideline governs what information may be considered during the zoning approval process. That is, as long as the antenna facility complies with the emissions standards established by the Federal Communications Commission Section 704(b), it is considered that there are no health or safety risks proposed by the equipment. Specifically, local zoning authorities such as the Plan Commission may not directly or indirectly consider health and safety issues during the zoning process when considering a telecommunications facility which falls under this section.
13. According to the Village Attorney, Section 704 of the 1996 Telecommunications Act specifically prohibits the state and local units of government from denying a wireless company request for a local zoning approval based upon environmental or health effects or concerns if the wireless communication company complies with the federal regulations of RF emissions.

14. The petitioner and all of the abutting and adjacent property owners within 300 feet were notified via US mail on January 26, 2009 of this meeting. Notices were published in the *Kenosha News* on January 26th and February 2, 2009.
15. The Village had e-mailed or faxed the petitioner a copy of this staff report last Friday on February 6th.
16. Finally, according to Section 420-145 F. of the Villages General Zoning and Shoreland/ Floodplain Zoning Ordinance, the Plan Commission shall not approve a conditional use permit unless they find after viewing the findings of fact, the application and related materials and information presented at the public hearing that the project as planned will not violate the intent and purpose of all Village ordinances and meets the minimum standards for granting a conditional use permit. Furthermore, the Plan Commission shall not approve any site and operational plan application without finding in a decision that the application coupled with the satisfaction of any conditions of approval will comply with all applicable Village ordinance requirements and all other applicable federal, state or local requirements relating to land use, buildings, development control, land division, environmental protection, sanitary sewer, water service, storm water management, noise, streets and highway and fire protection.

With that I know a representative is in the audience and there are a list of conditions as set forth in the staff report, 1 through 34. With that I'll turn it back to the Plan Commission.

Tom Terwall:

Thank you, Tom. Is there anybody wishing to speak on this matter? Anybody wishing to speak?

Mark Layne:

My name is Mark Layne. I'm representing MediaFLO. I'm mostly just here to answer your questions if you have questions. Tom did a great job explaining what the proposed project is. So if you need me I'm here.

Tom Terwall:

Is there anybody else wishing to speak? Anybody else? Hearing none, I'm going to open it up to comments from Commissioners and staff and I'll begin. Tom, do we get certification of any kind from the FCC that this does meet the requirements of Section 704©?

Tom Shircel:

We do request that in the comments that they do provide, that the applicant does provide us with those necessary permits or approvals.

Tom Terwall:

So we will have that before?

Tom Shircel:

Yes.

Tom Terwall:

Okay. And my second question is regarding the pitched roof versus flat roof. Why is that a condition? I don't think you can even see this building from Green Bay Road, can you?

Tom Shircel:

It's difficult to see. There's a big berm along Green Bay Road along with the radio station building. To the south there's the Roger Prange building. To the north maybe from Bain Station Road you're able to see it. You'll be able to see the equipment shelter. We're requesting the pitched roof to be consistent with past approvals of equipment shelters for communication projects.

Mike Pollocoff:

For just the continuity of it if we permit a flat roof then the next or subsequent user is going to say let me have a flat roof.

Tom Terwall:

And I guess I draw the difference as is this visible or isn't. I agree if it's visible it ought to be pitched. If it's not visible I don't know if it makes a difference.

John Braig:

Speaking of the buildings, can you define or describe an aggregate as opposed to masonry?

Tom Shircel:

Aggregate has that stone surface, sort of stone sunken into concrete, tan colored, light brown colored, different colored stone. Can you picture that? Actually, there's a similar facility which, again, you can't see from the road. It's the Lakeview Substation communication tower south of Springbrook Drive in the Lakeview Corporate Park. That has an aggregate finish on the outside and that one does have a pitched roof as well so that's what we're talking about here.

John Braig:

And the other point I want to make is virtually every tower that's constructed in the area is going to have co-location of other antennas on it. I wonder if we should look at the initial building being built to house two or three additional antennas at some time in the future. Is that something that could—I kind of hate to see an antenna sticking up somewhere with three, four, five different buildings or sheds or structures around it rather than one common one. I can see there's some problems there, but if you made it like L-shaped, because I can appreciate you've got to get a lot of cabling out of the structure and up the antenna. But I think it's something you could look at or consider.

Tom Shircel:

Sure.

Tom Terwall:

I think another issue, though, John is it could be multiple vendors co-locating on the same tower.

John Braig:

Oh, yes. All you'd have to do is just structure a dividing wall in the common building.

Larry Zarletti:

Who would pay for the first building that was size enough for everyone to come to at some point?

John Braig:

The same guy that paid for the tower. Not that complicated.

Tom Shircel:

Or else the constructor could build one building with multiple users, separate doors for each user—

John Braig:

Absolutely.

Tom Shircel:

And maybe that first applicant could build the building and get some sort of recovery as the next one comes along.

John Braig:

Certainly. He's building the tower so that's his expense, the structure. A little shelter building like this is like building a garage.

Mike Pollocoff:

We haven't had any luck in getting that accomplished. Everybody has indicated that their insurance carriers and their company's operating procedures do not allow anybody else to go into their building. They don't want to be dependent on any other—

John Braig:

I agree with it. But building a structure I'm envisioning would meet all those requirements. It would be the same—just for example let's say there were four buildings. You put two in a north/south direction, two in an east/west direction as an L so they all have reasonable access to the tower, but each one would be totally separate other than when you start the initial construction you have one. And when the next party or antenna is to be built on it you would build a dividing wall at some point and carve off a certain amount of space. It's just the idea of two or three or four structures at the base of a tower is in my mind objectionable.

Tom Terwall:

Tom, is this going to be block or pre-cast panels?

Tom Shircel:

Maybe the applicant could further describe that.

Mark Layne:

It's a prefabricated structure. In fact, there's one at your police station. There's a U.S. Cellular tower at the police station on Green Bay Road. The structure that's sitting at the base of that tower is the same type. I don't know if it's the same brand, there's a couple manufacturers, but it's a prefabricated concrete building, and the concrete panels have that aggregate stone finish on the outside of it.

Tom Terwall:

Is that what we have out here, too, Mike?

Mike Pollocoff:

Those are lanin stone.

Wayne Koessl:

Mr. Chairman, I think we're kind of getting away from the point here looking for future buildings for future antennas. Especially this one is so far out of sight no one is going to see it unless they go back there hunting. If there aren't any more questions I'd move we approve it subject to the conditions outlined by staff.

Tom Shircel:

If I could just further again explain that. The conditions in the staff report are different than what we're talking about so I think we need to specify exactly what kind of shelter you want MediaFLO to put up.

Tom Terwall:

But what came out of the discussion this afternoon was the compromise shows for precast building with stone and a pitched roof, is that correct?

Tom Shircel:

That's correct.

Wayne Koessl:

Mr. Chairman, I'd include that in my motion.

Tom Terwall:

Is there a second?

Larry Zarletti:

Second.

Tom Terwall:

MOVED BY WAYNE KOESSL AND SECONDED BY LARRY ZARLETTI TO APPROVE THE CONDITIONAL USE PERMIT SUBJECT TO THE TERMS AND CONDITIONS OUTLINED IN THE STAFF MEMORANDUM, INCLUDING THE SWITCHING TO PRECAST STONE FINISH MATERIALS. ALL IN FAVOR SIGNIFY BY SAYING AYE.

Voices:

Aye.

Tom Terwall:

Opposed? So ordered.

B. Consider Plan Commission Resolution #09-01 to initiate zoning map amendments related to land within the Chiwaukee Prairie/Carol Beach Land Use Plan area.

Peggy Herrick:

Thank you. This is a resolution to initiate a zoning map amendment related to land in Carol Beach and the Chiwaukee Prairie area. As you are aware, every year The Nature Conservancy and the DNR and the Village acquire land pursuant to the plan. So this resolution initiates the process for us to begin evaluating those properties that were acquired and to bring back a public hearing and a petition to amend those properties. In addition, in reviewing the maps, it was noticed that there are some other properties that are owned by the Village and the DNR and other agencies that should have been rezoned into the C-3 so those will be brought at that public

hearing to be discussed at that time as well. So, again, this resolution initiates the process for us to petition to amend the official zoning map. These changes will be evaluated and brought back to the Plan Commission with a public hearing for further recommendation to the Village Board.

Tom Terwall:

Is there a motion to adopt?

John Braig:

Move approval.

Jim Bandura:

Second.

Tom Terwall:

MOVED BY JOHN BRAIG AND SECONDED BY JIM BANDURA TO ADOPT RESOLUTION 09-01. ALL IN FAVOR SIGNIFY BY SAYING AYE.

Voices:

Aye.

Tom Terwall:

Opposed? So ordered.

C. Consider Plan Commission Resolution #09-02 to initiate amendments to the Village Zoning Ordinance, including the Official Zoning Map as they related to the 2035 Comprehensive Plan update.

Peggy Herrick:

This resolution initiates zoning map and zoning text amendments as may be required as we continue with updating our Comprehensive Land Use Plan as required by the Smart Growth legislation. As you are aware, the Smart Growth legislation requires that municipalities participate in planning, development and zoning activities, adopt a Comprehensive Plan that meets the State's new requirements before January 1, 2010. As you are also aware, we are working on a Multijurisdictional Comprehensive Plan as a result of a grant given to Kenosha County in 2006, and you have been reviewing chapters as we bring those forward. We are currently through SEWRPC working on the land use element, and as part of that we are evaluating our current land use plan and we'll be making recommendations for future changes up to 2035.

And in addition, the Smart Growth law requires that zoning map and texts and any ordinance related to development of land is in conformance with that Comprehensive Land Use Plan. So this is an opportunity for us to review our land use plan and review our zoning and make any

corrections or modifications that may need to be made. However, this doesn't mean we're going to be pre-zoning all and to meet the 2035 Comprehensive Plan. There will be urban reserves put on it. For instance, a property that's being farmed can continue to be farmed, but the 2035 plan doesn't indicate that that ultimate land use is agricultural, that that use might be residential or commercial, whatever it may be. But in order to meet the requirements of the Smart Growth both plans have to be consistent. So our intention is to make them consistent by explaining in the land use plan that those uses, agricultural for instance, can continue but the ultimate plan is for those to be in the zoning district that they're in.

Part of the problem with pre-zoning land, especially for agricultural or any purpose, the lot and the use becomes nonconforming, and that proves to be of great concern not only to the property owner but to the Village for improvements as someone might want to make. So we need to start looking at our land use map, our zoning map and the zoning text to make sure that these things work together. So this resolution initiates the process for the Village to start looking at those things and then bring forth any changes back to the Plan Commission at a public hearing for consideration and approval eventually by the Village Board.

Tom Terwall:

Given the current fiscal situation at the local, State and federal level, is Smart Growth going to continue you think or is somebody going to say pull the plug on this, we can't afford it?

Peggy Herrick:

There's been talk to do that both ways and to extend the time frame to 2010. Right now no decisions have been made so we're going under the assumption that 2010 is still the date unless something else happens. One thing that the Village is concerned about is having these plans adopted by 2010, the Comprehensive Plan. The best data that we currently have for population and projections like that is the 2000 census. Does that make sense to all this planning and update the plans for 2010 when the 2010 census data information may not come out until the beginning of 2012. So there are some concerns that we have.

Another concern is that the grant granted to the County and given to the County stated that we have to approve the plan in three years. That three years comes up this May. So we do have some time issues and things we need to work out. There may be a possibility that the State says something in our favor as well.

Mike Pollocoff:

I think just as a matter of public policy, whether you're in Pleasant Prairie or Ashland, to take a look at a snapshot of the last ten years and look at what development activity was, and then be where we're at now and then base all your 2035 plan on the previous ten years, I think everybody owes it to their communities and for their own sanity say let's take the 2012 data and go from that point forward. You're looking at a totally skewed outlook. I'm not sure that 2010 will change that much, but I really think that 2010 data that doesn't arrive until 2012 is going to give every local planning agency as well as the regional planning agencies two years of taking a look to see how this thing is developing. And I think it's going to be a lot better plan with more current data than pretending that nothing has happened in 2008 and '09 and we're just going to go with 2000 data. That just doesn't make sense.

Tom Terwall:

The only problem I see with that, Mike, is that's way too logical, way too logical. Maybe Assemblyman Steinbrink can push that through the Legislature. We're looking for help here, John. Any other comments or questions? If not I'll take a motion.

John Braig:

Move approval.

Larry Zarletti:

Second.

Tom Terwall:

MOTION BY JOHN BRAIG AND A SECOND BY LARRY ZARLETTI . ALL IN FAVOR OF ADOPTING RESOLUTION 09-02 SIGNIFY BY SAYING AYE.

Voices:

Aye.

Tom Terwall:

Opposed? So ordered. Mike, before we vote to adjourn, yesterday's *Kenosha News* that listed property sales that have occurred in Kenosha County in the last week, one of them was a property that the Village bought for \$30,000. What is it and what is it for?

Mike Pollocoff:

It's on Lakeshore Drive where Tobin Creek comes out. You know where the bridge is? The bridge is in the right of way but the land behind it is private property and we received a grant to purchase that property. So that makes that park area a lot more contiguous. It was held by somebody in Chicago that was convinced at some point they would build a beautiful home on the stream and the lake. He sold it to somebody who came in and we said you can't build on that. He had paid more than \$30,000. I believe the Village put \$10,000 into it which we had in our budget, and then the DNR gave us \$20,000 to complete the acquisition. But it was a sizable parcel.

Tom Terwall:

Will we maintain ownership or will that go to the DNR?

Mike Pollocoff:

No, it will be part of the Village Park so that will be ours. We discovered way back when, when it comes to shore protection everybody is hands off and it falls back in our lap so we just as soon control that land when that time comes back.

Tom Terwall:

When I saw that I thought maybe the Village was just trying to accelerate the sale of properties again.

Don Hackbarth:

I apologize, but could we go back to the minutes of last month's meeting. On page number 7 remember we discussed the sign ordinance. I believe we discussed it all the way through page 7 and it gets down to Jim Bandura saying good and there's nothing recorded on the vote. I don't see the vote in there. I just see the next comment as Tom Terwall if there's no further let's adjourn. There's something missing there because we all voted on approving that.

Tom Terwall:

It's there . . . (inaudible) . . . page 8

Don Hackbarth:

I'm sorry, it's there.

7. ADJOURN.

Larry Zarletti:

Mr. Chairman, I move adjournment.

John Braig:

Second.

Tom Terwall:

All in favor signify by saying aye.

Voices:

Aye.

Tom Terwall:

Opposed? So ordered.

Meeting adjourned: 5:35 p.m.