

WALES TOWNSHIP ZONING BOARD OF APPEALS
PUBLIC HEARING FOR EXCLUSION FOR DRIVEWAY PAVING
AT SITE OF PUBLIC SAFETY COMMUNICATIONS TOWER
FEBRUARY 8, 2007

Hearing opened by Chairman John Minor at 7:30 P.M.

Present: John Minor, Dave Shannon, Ron Lepak, Richard Hart. Also present Twp. Planner Richard Smith, Twp. Supervisor Eugene Jakubiak, applicant representatives, Cherie Bartram, County Administrator and Dispatch Director Shaun Groden, Recording Secretary Marie Muller and 1 person.

Chairman J. Minor noted that all notices were mailed to nearby residents and a notice was published in local paper. J. Minor gave a brief explanation of procedures that would be followed in conducting hearing.

S. Groden gave presentation on behalf of County Dispatch Commission, noting lack of funds for a paved driveway and that other municipalities did not have that requirement. Therefore this was not something that seemed to be an issue when plans were drawn up and discussed. The issue of location was made in accordance to township requirements and an approval was given for the extra height required. This tower will be a large improvement to the 911 service for the county. He feels government entities should be given special consideration. J. Minor, "The location or height is no longer an issue but the driveway paving is. Under the new enabling act you have to prove uniqueness and practical difficulty along with hardship. Everyone was aware at the beginning of our ordinance requirements." S. Groden, "Your Planning Commission had indicated it was not a requirement and this added expense would be a poor use of tax payers dollars." J. Minor, "Why do you say it is a poor use of tax payers dollars?" S. Groden, "This is not a commercial tower it is only for the benefit of the community." J. Minor, "Under state law we can not treat you differently than other individuals." C. Bartram, "This location was chosen because of the strong microwave path for reception." S. Groden, "Again this is not like a commercial tower it is for public safety for 911 dispatch." Dick Smith, "Currently there is no distinction in our zoning for public or commercial towers, perhaps there should be, but currently there is none." J. Minor, "This board can only apply the law of our ordinance. The Planning Commission can make recommendations but we are not obligated to act on them. This driveway was on the first drawings. Others in the township have complied even with economical hardships." C. Bartram, "I had not heard of this until just recently." Dick Smith, "This has been an ongoing application since as early as Feb. 2006 as a site plan for Goodells Park. The problem has been ongoing as to any personal contact with those in charge of this project." S. Groden, "Why wasn't this dealt with when there was a hearing in Oct.?" J. Minor, "This was not part of the application request at that time. Only the height of the tower was addressed on that previous application. Paving of the driveway was discussed and direction was given as to how it could be addressed. This hearing was one of those alternatives. Supr. Eugene Jakubiak, "Wales Township offices have on many occasions sent out copies of the

paving ordinance.” Dick Smith, “ I personally faxed the ordinance paving requirements to Motorola and others involved with this project.” S. Groden, “ Well my hardship is that I was not aware of this ordinance until just recently. I will have to go back to committee to now include costs estimated at \$80,000.00.” J. Minor asked for any other public input. There was none he went on to read a memo noting that with new enabling act it is very clear that we do not have power to give use variances. Q. R. Hart, “ Self created means it can’t be created by petitioner?” A. J. Minor, “ The planner and Supervisor had constantly made applicant aware of paving. The applicant has self created the hardship. That it would not be cost effective, there are court cases that would not except cost as a hardship. Q. R. Lepak, “ Could the road commission not approve driveway?” A. J. Minor, “ The driveway would have to be permitted and approved like any other in County. This would be a slap in the face to any other resident if we didn’t require that the driveway be paved.” Q. S. Groden, “ How would it be a slap in the face?” A. J. Minor, “ As an example we have a cell tower off of Lapeer Road where we required them to put in the paved driveway, and any other applicant in the future.” Q. R. Lepak, “ Planning Commission made recommendation for us to grant exemption to paving requirement.” A. J. Minor, “ I was at that meeting and strongly objected to recommendation.” Dick Smith, “ Planning Commission recommendations are given to give this board guidance. Eugene Jakubiak, Twp. Supervisor, “ This issue of paving was not on the previous application and this may look like an unwise use of tax dollars but our ordinance is clear that paving is now required.” Dick Smith read planners recommendation that variance be denied noting that this is a non use variance, and that a text amendment to this ordinance would be a better alternative for applicant.” Q. J. Minor, “ Is there any state law or federal law that would exempt than from following our ordinance?” A. D. Smith, “ I asked the Marysville fire chief and Motorola if they had any basis for exemption, and never got any response. It is not out job to prove exemption and I’ve heard from no one that they have found any federal or state law that gave them this kind of exemption.” Q. S. Groden, “ What kind of time table do we have with permit?” A. D. Smith, “ If you find exemption your fine, if your going to need extension on building permit you will have to deal with building inspector’s requirements most permits are good for one year.” No further comments hearing closed.

Board went on to discussion. J. Minor noting they could do one of two things table this and give applicant more time to try to look into exemption, or they can motion and decide on application now. After some discussion it was decided to bring this to a motion. **Motion** by Ron Lepak and seconded by Dave Shannon to deny as we do not have jurisdiction in changing the ordinance as it is written. Roll call vote: R. Lepak, yes, D. Shannon, yes, R. Hart, yes, J. Minor, yes. J. Minor gave statements as is indicated in written letter submitted. Motion to exempt paving denied. Hearing adjourned 8:40 P.M.

Respectfully submitted,

Marie J. Muller
Zoning Board of Appeals Secretary