

# PLANNING COMMISSION MEETING APRIL 1, 2008

The Van Buren Planning Commission held its monthly meeting Tuesday, April 1, 2008 at 7:00 P.M. in the City Council Room of the Municipal Complex. The following items were on the agenda:

1. Approval of minutes from last meeting

PLANNING COMMISSION ADJOURNS  
BOARD OF ADJUSTMENTS CONVENES:

2. Public Hearing on a Conditional Use Permit application for construction of a wireless telecommunications facility by Verizon Wireless Van Buren DT AR/165333A

BOARD OF ADJUSTMENTS ADJOURNS  
PLANNING COMMISSION RECONVENES:

3. Public Hearing for discussion and review of a proposed R-3B zone to address condominiums in the City of Van Buren.
4. Any other business that comes before the Commission

PRESENT: Andrew Dibble, Chairman  
Philip Bagby, Co-Chairman  
Jay White  
John Symonds  
Mark Evans  
Sue Moore  
Frank Newman  
Woody Nelson

ABSENT: Dorvan Wiley

OTHERS PRESENT: David Martin, Chief Building Inspector  
Brad Baldwin, City Engineer  
Don Jenkins, City Atty.  
Greg & Leah Harger

Don & Alice Swaim  
Trina Yerby  
Kathleen Johnson  
Gene Rankin  
Wilma Rice  
Sandra Smith  
Lisa & Shelby Darden  
James Hawkins  
Rick Mooney  
Janean Sanders  
L. Carter - 414 Main St.  
Gayle Cooper  
Bill Swaim  
Pat Swaim  
Dwight & Alice Hopkins  
Sonny Yemm  
James Felton  
Kevin Johnson  
Lisa Criser  
Milli Criser  
J. R. & Rita Young  
Gerald & Danalene Porter  
Ron Gentry  
Sherri Gentry  
Guy & Darlene Marley  
May - 14 Steward  
S. Riley 323 Cane Hill  
Patricia Selman  
Barb Little  
Kathy Hubbs  
Sam Yerby  
Rex Yerby

At 7:00 PM, Chairman Andrew Dibble called this meeting to order. The first item for consideration was the approval of the minutes from the last meeting. After some discussion, Woody Nelson made a motion to accept the minutes as written, and this motion was given a second by John Symonds. The motion carried with a unanimous vote.

PLANNING COMMISSION ADJOURNS  
BOARD OF ADJUSTMENTS CONVENES:

The Board of Adjustments convened at this time to hold a Public Hearing on a Conditional Use Permit application for the construction of a wireless telecommunications tower facility by Verizon wireless, Verizon being represented by Sonny Yemm, an attorney from Fayetteville, Arkansas. This tower would be placed on property belonging to Ralph and Gayle Cooper. Sonny Yemm introduced himself at this time, and went on to comment that Gayle Cooper was present and wanted to make a statement to the Planning Commission. Mrs. Cooper came before the Commission and introduced several friends and neighbors that accompanied her to this public hearing. Mrs. Cooper commented Verizon began work on this potential site about 16 months ago, which involved planning, testing and researching to get to this point. Research included an archeologist doing studies to verify if there was any Indian activity in the area of the site that would be damaged by the process, according to Mrs. Cooper. Mrs. Cooper went on to say the company had received an okay from the Arkansas Historical Preservation Program stating that this tower would not make an adverse effect on historical preservation in this town. Mrs. Cooper went on to comment that no one contacted her or the company involved to get information before printing newspaper articles, or leaflets that were passed out concerning this tower. Mrs. Cooper commented that if there was a petition circulated that people had not been correctly informed to make a valid decision on this matter, as all of the information had been extremely exaggerated with major facts incorrectly given to the public. Mrs. Cooper commented the tower they were requesting the conditional use permit for was not a structural tower. Mrs. Cooper commented this tower would have no guide wires, no lights, and many people had been informed there would be. She commented this would be a "stick" pole, not as big around as the trees around it. Mrs. Cooper went on to pass out photos of helium balloons that were placed 150 feet in the air on fishing line at the site location, and Mrs. Cooper drove from the location, down Hwy. 59, down Main Street, to the Drennen-Scott House, taking photos to show these balloons did not show up, and in the photos where they did show up the balloons were barely visible. At this time, attorney Sonny Yemm came forward, and referred to the packet for the conditional use permit. He commented the design of this tower is a very subtle design, and that the FAA has approved this packet. Mr. Yemm commented they get the FAA approval before the conditional use process, because FAA approval is mandatory. Mr. Yemm went on to describe the site to the Commission, and explained how this site can be removed and the land is just as it was before the site was constructed, once the tower becomes obsolete in the future. Woody Nelson commented and confirmed that the wiring for this tower is all internal. Mr. Yemm commented this tower could have wires on the outside, if used as a co-existing tower, which it more than likely will be. Mr. Yemm commented this design is designed to be very subtle, to fade in to the background. He also commented that as the city continues to grow the need for these towers would grow. He commented to get the type of

coverage this tower in this location will provide, if they do not place a tower in this location on the high ground, it would take several towers throughout the city to give the same type of coverage for the city. John Symonds commented about the fact this tower would be shared which would mean the possibility of more antennas being added to the top of this tower. Mr. Yemm pointed out the tower ordinance adopted by the City of Van Buren puts a premium on co-location over erecting more towers, so the company must make their tower available according to local ordinance. At this time Mr. Dibble asked if anyone had any other questions for Mr. Yemm, to which no one responded. Chairman Dibble asked if anyone had any more comments in favor of this request. With no response, Mr. Dibble then commented he would like to remind the public of limiting comments, yet the Commission was open for the public input on this matter, and asked if there was anyone who would like to speak against the request in front of the Commission.

Milli Criser at 600 Buena Vista approached the Commission and commented that no one has approached her about this tower, and the location is about two blocks from her house. She went on to say to the West she has three television towers in view, and she commented she knows that this tower will be visible from her location, also. Ms. Miller commented she objects to the tower.

Trina Yerby was next to address the Commission. Mrs. Yerby commented she and her husband own property three houses down from the proposed site. Mrs. Yerby said she would like to state right off the bat that they do object to this proposed tower. Mrs. Yerby commented with all due respect to the petitioner, a balloon is not a tower. Mrs. Yerby commented her husband's family has been located on this land for over 60 years, and their neighbors, the Swaims, have been on that land equally as long. She commented that they all have a vested interest in preserving the beauty and integrity of the neighborhood. Mrs. Yerby commented the construction of such a tower in their neighborhood would literally spoil the natural beauty that has been enjoyed in their neighborhood for so many years. Mrs. Yerby expressed that being in that neighborhood gives you the feel of being in the country because of the trees and natural rock formations and the caves that surround the area.

Next to address the Commission was Lisa Darden, who resides at 6 Walnut Street. Ms. Darden commented that she is a Verizon stockholder, and hopes to see Verizon come into our city, but not in her neighborhood due to the historic location. Lisa Darden had two questions, and the first one was to get verification on the height of the tower. There was a letter to the City of Van Buren that stated the tower would be 160 feet tall, and the public hearing notice in the paper stated the tower would be 150 feet tall. It was confirmed with the lightning rod at the top of the tower, the total height would be 160 feet. Ms. Darden's next question

was if this project was begun 16 months ago, why are the people surrounding this area just hearing about it the past three weeks. Another concern of Ms. Darden's was a cave under the proposed sight of the tower that is known as Beggar's Cave, and housed people during the Great Depression, and is also known for Indian artifacts that were found in the area. Above ground, in the summer, there is a cool pocket of air within the neighborhood that most likely comes from the fisher that runs back behind the opening of this cave. Ms. Darden's concern is the effect the drilling, etc., will have on this cave and this fisher, that goes back an undetermined length. She asked if an environmental impact study had been conducted to determine what sort of results this drilling and construction would have on this cave. The attorney representing Verizon commented an environmental study had been done, and no adverse impact would come to the surrounding area. Mr. Yemm commented that they were in compliance with all rules and regulations. He commented this tower will blend in with the surrounding trees and will barely be noticeable. He added that the company did consider location of the tower in the area of Van Buren where several communication towers are located in the city, but the fact remained they could not get the reception needed from that location.

At this time it was noted there were letters from people that could not attend this meeting, and these letters were in opposition of the tower. Mr. Bill Swaim stepped up at this time to address the Commission. Mr. Swaim commented he owns property at 403 Alta Vista, which is about 400 feet due west of this proposed tower location. Mr. Swaim commented this tower would destroy the neighborhood. He commented that when the ordinance was built on 19<sup>th</sup> Street, the outcry from the citizens put into place the present ordinance in place. Mr. Swaim commented he was now asking the Commission to uphold that ordinance and reject this conditional use application to keep from placing this tower in a residential neighborhood. Mr. Swaim commented there was a flag pole that sits near where this tower would be located and that 20 feet of this flag pole can be seen from the Drennen-Scott Home, and that there is no way the tower will not be visible from this location, when it is 160 feet. Andrew Dibble asked Mr. Swaim to elaborate on how this tower will cause detriment to his property. Mr. Swaim commented it would cut the value of it, because nobody will want to look at that tower. At this time Mr. Swaim respectfully asked the Planning Commission to reject this request.

Next to address the Commission was Alice Swaim who resides at 405 Alta Vista. Mrs. Swaim commented she is a block from the location of the tower, and resents the idea of the tower going in at this location. Mrs. Swaim feels every time she is outside, she will be staring at this tower. She also commented the only thing she sees the tower is going to do is bring in royalties to the people placing it there and she resents that.

Leah Harger was next to address the Commission. Mrs. Harger commented she resides in Prairie Grove, but plans to come back home to Van Buren and reside on her lot, which is on the bluff just West of the proposed tower location. Mrs. Harger commented she has worked hard to get to where she could come back here and retire on this land that has been in her family for quite some time, and now that she and her family are within a few years of doing this, to know this tower is being proposed to be placed in this area makes her very sad. Mrs. Harger asked the Commission if any of them had visited Northwest Arkansas to see the issues they have encountered trying to make these towers blend in. Leah Harger commented whether it is a small pole or not, at 160 feet, it will be prominent. Mrs. Harger then formally stated her opposition to this communications tower being allowed in this neighborhood.

Guy Marlin resides at 113 Elm Street. Mr. Marlin had two questions to ask the Commission, the first being would any of the commissioners' want this cell tower in their neighborhood. His next question was if this tower is built, does this open the door for this to happen again and again? Mr. Marlin commented he thinks this is something that needs to be considered. Mr. Marlin asked the Commission to consider these two questions before they vote.

Chairman Dibble commented he did visit with Mr. Cooper, and also a neighbor across the street from the property where the tower would be placed, and that person was not in opposition to the tower. Mr. Dibble commented that the tower does sit a fair distance back from the bluff, and it does comply with our regulations for cell towers. Mr. Dibble then asked the City Attorney if he had anything to add. City Attorney Don Jenkins commented that basically the ordinance on this matter speaks for itself, and reminded the Commission that federal law prohibits them from arbitrarily and capriciously denying this permit. Jenkins commented the Commission is charged with listening to the issues here, and weighing those against the ordinance. He commented he would be glad to answer any questions, but again the ordinance is what it is. Jenkins also said we could go further than this if we wanted to, but it looked to him that they have complied with our ordinance, and that may not be what everyone wants to hear, but we have to consider the subjective factors. Jenkins asked if anyone had any questions, to which Co-chairman Philip Bagby commented the Commission heard several individuals indicate they were afraid their land value would depreciate. Mr. Bagby asked City Attorney Jenkins if he felt, based upon federal regulations that Jenkins just pointed out, that there has been enough proof establishing that there will be depreciation in value around the neighborhood? Jenkins responded by saying he hasn't heard any, and he didn't know what else the Commission had heard, and commented that this is a common issue. Jenkins went on to compare this to litigation in the Lake Fort Smith thing. Jenkins

commented he isn't an appraiser, and he would think that there would need to be some evidence of these depreciations, but he didn't know what the mechanism would be to do this, possibly an appraisal.

At this time Chairman Andrew Dibble commented that whatever way this goes, if the Commission approves or denies, this can be taken or appealed to the City Council. At this time Chairman entertained a motion. Sue Moore commented on the grounds that all requirements had been met on this application that she would make a motion to grant the conditional use permit. Mr. Dibble asked for a second, and Woody Nelson seconded the motion. At this time Philip Bagby commented that his opinion, although he is very sympathetic to the landowners and neighbors, his opinion agrees with the City Attorney, that from a review of our conditional use permit and the cell tower ordinance, and they have complied with the requirements of our ordinance, the Planning Commission would have to come up with a really solid basis for denying this. Mr. Bagby went on to say that especially if this is appealed to the City Council, that evidence would include appraisals showing depreciated values, and since we don't have that actual evidence in front of the Commission tonight, they have met the requirements of our ordinances. At this time Andrew Dibble asked for a vote. Those voting for approval of this conditional use permit were Woody Nelson, Frank Newman, Sue Moore, Philip Bagby and Mark Evans. Those opposed to this conditional use permit were John Symonds and Jay White. The motion carried with a vote of 5 to 2. Chairman Dibble again commented that those opposed have the right to appeal to the City Council in this matter.

At this time Commissioner Sue Moore had to excuse herself for the remainder of the meeting due to another commitment.

BOARD OF ADJUSTMENTS ADJOURNS  
PLANNING COMMISSION RECONVENES:

The next item was Public Hearing on a rezone at 1014 North 12<sup>th</sup> Street that was tabled at the March Planning Commission meeting. It was decided to table this item again, and review at the May meeting, as the developer is working on plans, and would like to bring those plans to the Commission. Woody Nelson made a motion to table this item, Frank Newman gave the motion a second, and the motion carried with a unanimous decision.

The next item for discussion and review was Public Hearing on discussion and review of a proposed R-3B zone to address condominiums in the City of Van Buren. The Planning Commission working group took the original draft of this proposed ordinance and revised that draft. Mr. Rick Mooney was present to discuss a couple of items in this draft. Mr. Mooney complimented the

Commission for the major progress made in a short time on this proposed ordinance. After some discussion and adjustments, Philip Bagby made a motion to recommend this proposed ordinance to the City Council, with the inclusions, deletions and additions discussed and agreed upon. This motion was given a second by Frank Newman, and the motion carried with a unanimous vote.

At this time Kathleen Johnson, a citizen of Van Buren who resides on Maple Street, addressed the Commission on a flooding issue she has at her home. She commented that she has placed French drains in her yard, more than once, dug ditches, and done all she can to prevent her house from flooding in heavy rains. Jack Bernard that works for the City of Van Buren, along with City Engineer Brad Baldwin have been out to look at the property, and determined the issue is on private property, and the City can't do anything for Ms. Johnson. After some discussion, the Commission suggested Ms. Johnson contact an engineer to look at her property and approach the problem with professional help before investing money in anymore drains, as this was not going to fix her flooding problem. Ms. Johnson thanked the Commission for their time.

With no other business, a motion was made by Frank Newman to adjourn, motion was given a second by Philip Bagby, and the motion carried a unanimous vote.

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Andrew Dibble, Chairman

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Cami L. Brown, Rec. Secretary