

PLANNING AND ZONING COMMISSION MEETING

Wanda Polasek Chairman
Wendy Schaefer Vice-Chairman
Charles Chenoweth Secretary
Connor Fillingim Commissioner
Mark Mueller Commissioner



City of Saint Hedwig
13065 FM 1346, St. Hedwig, Texas 78152
210-667-9568

Tuesday, March 14, 2022

Immediately following Public Hearing

Saint Hedwig City Hall

APPROVED MINUTES

1. CALL MEETING TO ORDER

Chairman Polasek called the meeting to order at 8:00 pm.

2. ROLL CALL AND ESTABLISH A QUORUM

Chairman	Wanda Polasek	Present
Vice-Chairman	Wendy Schaefer	Present
Secretary	Charles Chenoweth	Present
Commissioner	Connor Fillingim	Present
Commissioner	Mark Mueller	Present

3. PLEDGE OF ALLEGIANCE

Chairman Polasek led the Pledge of Allegiance.

4. COMMISSION ADJOURNED FOR EXECUTIVE SESSION WITH ATTORNEY

5. CALL MEETING BACK TO ORDER

Chairman Polasek called the meeting back to order

6. PUBLIC COMMENTS

There were no public comments

7. ITEMS FOR INDIVIDUAL CONSIDERATION

- A. **A Special Use Permit for a Communications Tower Site located at 14400 FM 1346 / 14446 St. Hedwig Road, Saint Hedwig, Texas, BCAD Property ID 170382, zoned A-1R (Agricultural/Residential), as requested by St. Hedwig American Legion Post 539,**

Inc., acting by and through its authorized agent, CellTex Site Services, Ltd. Discuss and Provide Recommendation.

Property's legal description: 1.154 acres out of J.M. Springer Survey No. 31, Abstract 668, CB 4020, situated in Bexar County, Texas, being out of a 17.438 acre-tract described as Tract S-5, Julius Strzelczyk Estate Partition Deed, recorded in Volume 5807, Pages 643-662, Deed Records of Bexar County, Texas.

Mr. Greg Huber, with Celltex I manage the tower company, it's a small tower company, we have twelve or thirteen towers mostly in this area. A few over by Buda. And then Ziplink internet, another company I manage, it's got about three thousand subscribers mostly in this area back toward Pleasanton, Atascosa, Wilson, south part of Bexar, over by East Central High School. So, I am not an attorney, I'm not trying to act like that, I know the law or anything, but I've been doing this for a long time in San Antonio. I used to be a site acquisition agent. So, I would go to these things all the time back before they changed their code to say basically well if it's this kind of zoning and you're this far away, you can build a tower by right. I don't want to upset anybody I'm just saying what I think is (unintelligible). Everybody has got family land, everybody has got history there; if we were here then moved over to here, the same group of people will have the same intention, there's not much we can do about that. As far as ascetics, because the people that use these towers, not necessarily Ziplink, but the people like Verizon and ATT and those guys they pay billions of dollars for licenses. There are certain federal regulations that say that a tower permit can't be denied because of ascetics, can't be denied for health issues because people way more than us have debated this all over the country and it's been through all kind of federal courts and that kind of stuff. The buzzards, that's an issue that you don't know what they're going to do, sometimes they'll go to a tower, stay there for two or three months then they go away, and you don't see them again. I own the tower in Floresville on 97 and 539, that tower has been there for sixty years, it has buzzards that come and go, I worked there mowing the grass and doing stuff, there's stuff on the ground but it's not overbearing. I go there all the time, I've owned it for ten years, it doesn't exactly look all that got, I wish they weren't there, but those are federally protected birds, and you can't do anything about them. You can put little plastic owls up and all that stuff, sometimes it works but usually it doesn't. I had a tower down in south Wilson County, when we built it the lady was upset cause some birds showed up, I checked into getting some fake birds, by the time we did they had left so I don't know what to say about the birds. The light standards out there and I'm not there, hardly ever, and I don't know if those birds go on those light standards or not, I would think that if there's a lot of birds there, they would go there, maybe they do maybe they don't, I just don't know. As far as moving the tower, the whole purpose of that spot was number one we had a relationship of some sort with the land owner, most of our customers are within a mile or two of there. Their little antennas were aimed at that spot, it would be, it would cost money and nobody wants to spend money if you don't have to. We would have to go realign all those customers, make an appointment, get them to stay home from work, and we just thought that was the best spot. Someone could say how about four blocks there, well maybe. But then we start all over, maybe those people like it, maybe they don't. I don't know if there's a spot in the city of Saint Hedwig where you can go build a tower by right, meaning all you do is get a building permit. When we started all this as far as we knew there wasn't. So, we've invested time and money in this, we don't want to lose it, but you know, we're here to follow the rules.

Mr. Barrera: For the record, I am Rubin Barrera, with the law firm of Langley and Banack. We represent Celltex which is the agent of the American Legion who is the applicant in this specific special use permit. The American Legion Post 539 is the applicant, they are the ones who submitted the application, we submitted it on their behalf, but they are the applicant and the property owner. They are the ones that own the 1.154 acre tract which we will refer to as the property for the rest of the presentation here, and this property as you mentioned here and everybody has discussed tonight is zoned A-1R which is agricultural, residential. The property owner entered into a lease agreement with Celltex to install a one hundred and ninety foot tall power at the back end of the property, and the property being behind the baseball field. At present time there is an antenna on one of their fifty foot poles, but that's as far as it's gone. The initial application for this special use permit was filed on May 14th of 2021 for a newer and higher communications tower. The property owner then filed, because of negotiations and finagling the agreement between the owner and Celltex; the amended application which you are looking at here tonight was filed in February 2nd in this year, 2023. I'm sure your attorney has already told you this, but I think it's worth repeating that a communications tower basically is a personal wireless service facility under the Communications Act of 1996. The communications tower, as a personal wireless service facility is subject to all of the provision of that act, whether it's the placement, the construction or modification of the tower under the act. I am going to quote from the act, the act states, the regulation of the placement, construction and modification of personal wireless service facilities by any state or local governments such as yourselves, shall not prohibit or have the effect of prohibiting of personal wireless services. The act further states that, and I quote again any decision by a state or local governmental entity to deny a request to place, construct or modify a personal wireless facility shall be in writing and supported by substantial evidence contained in a written record. Whatever decision you come to, it can't be a lite decision, it has to be based on substantial evidence. We know that the city has recently amended the zoning ordinance. When I talk about the special use criteria in the zoning ordinance, I'm going to refer to two different sections. The before section and the after section. The before section is essentially XIII A. 1., the new section is XI A. 1., they both say the exact same thing, they've just been renumbered when you went with the new zoning ordinance. Anyway I am happy to go through the entire criteria and tell you why we met each individual criteria. I will tell you that the application that we filed, it's long, it's thorough, it covers everything. We wanted to make sure we didn't miss anything. For example, under section XIII A. 1. of the old ordinance or section XI A. 1. of the new ordinance, it says that the establishment, maintenance or operation of the use, in this case a tower, be materially detrimental to, or endanger the public health, safety morals or general welfare. I can guarantee you the establishment, maintenance or operation of a communications tower on this property will not be materially detrimental to, or endanger the public health, safety morals or general welfare. In fact installing a communications tower on the property will improve the wireless cellular and internet communications in the surrounding area along with fix wireless and other communications and honestly could prevent future towers being installed anywhere near. The next one is section XIII A. 2. or section XI A. 2., it says that the uses, values and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by the establishment, maintenance or operation of the use. Keep in mind that the surrounding use is comprised is a baseball field, and American Legion Hall to the north, agricultural land to the east, agricultural and residential land on the south and agriculture land on the west. The American Legion Hall to the north and residential units to the south are more than two hundred feet. In fact, Mr. Huber has a map here, I believe that the distance from the tower to the American

Legion is two hundred forty eight feet, I forget what the distance is to the south and homes, but it is certainly well more than the two hundred feet.

Mr. Barrera speaking to the Chairman: I thought we were going to have more than the five minutes for the presentation, that's what I understood you to say.

Chairman: you should have, do you folks want to continue with answers to any of these questions?

Mr. Barrera: Why don't we do that at the end if I may.

Chairman: I know what you are going through Mr. Barrera, and each one of us on the commission have the report as you have been reading through on each one of the six articles from the special use permit process and each of us have read through that thoroughly.

Mr. Barrera: So, really the bottom line is that if you go through all this various criteria, we meet the criteria with the exception of two. One of them is the minimum allotted area which is talking about the five acres. I can guarantee you that the properties to the south don't meet the five acres. I can guarantee you the American Legion to the north has more than five acres but only two of those acres are actually usable the rest of them are in flood plain. So, we really get to the height of the tower.

Chairman: I think we'll go to group conversation now. I have heard a comment made that the neighboring properties don't meet the A-1R size limit. We need to keep in mind that a lot of these properties were established before zoning. If you want an answer to why they are not five acres or greater. We need a motion and a second and an open for discussion.

- **MOTION To recommend to city council to deny this special use permit application.**
- **MOTION - Commissioner Chenoweth Moved**
- **SECOND – Commissioner Mueller Seconded**

Chairman: Now we can open for discussion

Commissioner Chenoweth: You said that other locations were not considered because of the inconvenience to the thirty customers you have in this area?

Mr. Huber: I don't know that I said inconvenience. You have to pick someplace, so we were already there, our customers in the area were already aligned towards that property. The landowner, at least the majority of them were willing to create a lease. That's why we picked there, we could go other places one direction, I don't know exactly but across the highway, that falls off a bit. Another direction was flood zone. If you start losing elevation, then you've got to go taller tower and that's just not good. We could go the other way, but we don't want to be crowding the other tower, a separation of three to four miles is actually pretty good is a Verizon wants to do 5G. People talk about fiber, that's great, basically it's against the law to say "you can only have this", people are supposed to have choices. That's all in code whether we like it or not. So anyway, that's why that tower is there. We could go around, and I could do that I'd be back here ten times, what's the point. Wherever you go someone is not going to like it. You've already got light towers sticking up, to me it's a good spot.

Commissioner Fillingim: Mr. Huber, could you tell me how many customers in the City of Saint Hedwig a rough estimate you have?

Mr. Huber: I think it's about fifty or seventy-five.

Commissioner Fillingim: On that tower or total, I am talking citizens of Saint Hedwig.

Mr. Huber: Well, we've got some that are further out that have to go like eight miles to another tower cause this ones too short. Their service isn't the greatest, I would say that if this tower were constructed, of course I can't make people sign up, but I think our coverage would expand by five to ten times. And that's something that this kind of stuff you can deploy a lot quicker than fiber and some other things. Not everyone gets fiber, fiber is great, but they don't go down every street to every house. It may take three or four years to get it. All I know is the city has apparently – I don't know if the city applied for funds or it came through the state or the county, but this has been designated as an underserved area. We are here to serve the area, if we get told sorry, we don't want you, then why are you asking for tax money to improve your service.

Commissioner Fillingim: So back to my original question how many customers of yours reside in the city today.

Mr. Huber: I'll guess and say one hundred and that may be a little high.

Commissioner Fillingim: And your tower here in Saint Hedwig has the capability of holding 50 to seventy-five.

Mr. Huber: It's more due to line of sight, some of our customers on the other side of the highway go over to a tower on Trainer Hale by I ten. Some go a different direction to a tower in La Vernia, it's not the most optimum setup but they didn't have anything so that's how they get service. If it came here, it would be better service, they live in Saint Hedwig it would be served by a tower in Saint Hedwig, maybe a lot of people don't like the idea, but to me it makes perfect sense.

Commissioner Fillingim: I'm speaking of the benefit you'll provide to the city. Myself, I'm on one of your towers, I believe over in the Kicaster area, because I don't have a good sight to this tower here. So, if you're able to increase your coverage five to ten times on this tower in the city, I'm not saying it's a requirement, but is your company willing to provide priority access to the citizens of Saint Hedwig so that we see a benefit.

Mr. Huber: Well, it's basically all it would serve.

Commissioner Fillingim: Like I said, there's a tower in Kicaster that I'm pointed to way over here.

Mr. Huber: You can find a place somebody's on a hill, absolutely clear line of sight, there's no noise issues, no trees you can maybe, but also our towers will; there's different things in the access points that you said. Normally the connection is out to six miles. After six miles you may get a signal, but it won't connect. Cause you don't want a poor signal customer dragging down everybody else, cause the radio allocates it's resources to the guy with the poorer signal. So, there's a lot to it, but yes in my opinion, of course I'm prejudiced on it, it would help a lot of people in Saint Hedwig if they wanted higher speed internet than they have now, they don't want to wait four or five years, they don't need a gigabit of service, most of our customers like twenty-five to fifty megs cause we can look at the data flow. Ain't nobody that uses a gig unless they're a gamer. And some of our customers will use up to three terabytes of data. People say that's some junky stuff, it's not. We have fiber to some of our cabinets, we use Aviat license links spent a ton of money on all this stuff.

Commissioner Fillingim: To answer some of the concerns I heard from the citizens tonight, has colocation been research at all by your company. Separate from building your own tower.

Mr. Huber: Basically what we're there for. I the last four months, I signed four Verizon leases on towers that I own. I don't normally go advertise I'm trying to build a tower someplace and try to get them on there, because number one they don't really care until it's there.

Commissioner Fillingim: To clarify my question, I'm talking about putting your services on an existing tower in the city.

Mr. Huber: Well there's no tower where I am, I'd have to tell my customers, sorry, you're out of luck. And if that's American Tower, most people don't get along with American Tower because

they are very hard to deal with. But the thing is, yes I could go there and if this tower is full, I may go over there some day, and try to put some antennas on that one. But we'd rather have our own tower and equipment, cause every time you want to deal with American Tower you file an application, then they want you to pay application fees, then you got to ask permission to get on the tower. You've got to do all sorts of things just to change out your equipment. No if you're a Verizon that's not a big deal, but if you're a WIST (wireless internet service provider), it's a costly thing and it delays progress.

Commissioner Fillingim: Not to eat up anymore time, towards the health studies, the health concerns the citizens have. Have there been studies performed, I know they're out there, but you specifically, your tower this location, have there been studies performed to the health ...any health impacts.

Mr. Huber: No, people way bigger than me have already gone through all of this, and that's part of the federal gov. You're not supposed to consider that... I'm just telling you what they say.

Commissioner Fillingim: And just so we're clear on that, I'm considering the concerns of the... I work for the city.

Mr. Huber: Radio waves are everywhere; they're zipping through this room right now. Actually, the closer to the tower the less chance of getting any of those. I'm not an engineer, the gentlemen who spoke earlier was but, the power level declines by half for every two or three feet you go from the source. So these things are operating at teeny power levels, you go look at your cell phone it will work inside the house sending data all over the place. Those things are milliwatts.

Commissioner Fillingim: Not to put words in your mouth, you have not done any studies.

Mr. Huber: No because people have already done that, people get sued all the time over it, its all been resolved. Obviously, you don't want to if this gentlemen was an antenna you don't want to sit in front of him for five or six hours.

Commissioner Mueller: I have a question about the setbacks. Do you have a mini building that services this. I think you call it a cabinet.

Mr. Huber: Well we call it a mini building, you've probably seen some of the shelters they used to use, they're going more towards cabinets on slabs now. We call it a mini building but whatever it is it fits inside that compound.

Commissioner Mueller: Ok, but it appears from your drawing that's within the twenty-five-foot setback.

Mr. Huber: I think the setback was for the tower, not necessarily for the buildings. I think the buildings could be squashed up by the tower if we were told that had to be done. When they come on the tower, they have to get a building permit and sort all that out.

Commissioner Mueller: I think all buildings have to be outside the twenty-five-foot setback.

Mr. Huber: I think they will all fit in. What they are normally doing now is ten by fifteen foot slabs or maybe like a fifteen by twenty depending on what carrier it is. They just have to get them up closer to the tower if that's the case.

All Were in Favor – To recommend to city council to deny this special use permit application.

8. CONSENT AGENDA

A. Reading and Approval of Minutes

Planning and Zoning Meeting Minutes, Tuesday, February 21, 2023

- **MOTION - Commissioner Mueller Moved**

- **SECOND – Commissioner Schaefer Seconded**
- **All Were in Favor - The February 21, 2023 minutes were approved. Commissioner Fillingim abstained due to absence from previous meeting.**

7. RETURNED TO Items for INDIVIDUAL CONSIDERATION

B. Election of Chairman and Vice Chairmen. Discuss and Take Action.

Commissioner Polasek: Back in January we should have reappointed the P&Z Chairman and Vice Chairman. And we're running a little behind on that, so I need a motion and a second to appoint Chairman and Vice Chairman for P&Z commission.

- **MOTION To appoint Wanda Polasek as Chairman and Wendy Schaefer as Vice Chairman.**
- **MOTION - Commissioner Fillingim Moved**
- **SECOND – Commissioner Chenoweth Seconded**
- **All Were in Favor - The appointment of Wanda Polasek and Chairman and Wendy Schaefer as Vice Chairman was approved.**

C. Commissioner reappointment schedule. Discuss and Take Possible Action.

Commissioner Polasek: Stated the next item on the agenda is just a discussion item. Three commissioners were completing vacancy terms and needed to be appointed by city council to a regular four year term. That will be on the city council agenda to reappoint the three commissioners.

D. Planning and Zoning Ordinance. Discuss and Review.

Commissioner Fillingim proposed adding a zoning district of A-1C, an agricultural commercial district which will mirror the existing commercial district with all of the regulations with the exception of the schedule of uses which will focus primarily on agricultural supported uses. The proposal was added to the next meeting after the commissioners had time to review the proposal.

8. REPORTS

A. Report from City Council Meeting

Chairman Polasek – city council hired Bryce's group to review the master plan and the subdivision ordinance.

9. ESTABLISH AN AGENDA FOR NEXT MEETING

REPORTS

A. Report from City Council Meeting

ITEMS FOR INDIVIDUAL CONSIDERATION

Discussion on an A-1C commercial district

Re-appointment of commissioners

9. DETERMINE DATE FOR NEXT MEETING

Next Planning and Zoning Meeting will be April 18, 2023.

10. ADJOURNMENT

Chairman Polasek adjourned the meeting at 8:46 pm



Wanda Polasek, Chairman

ATTEST:



Charles Chenoweth, Secretary