

CITY of NOVI CITY COUNCIL

Agenda Item F
June 9, 2008

SUBJECT: Consideration of Zoning Ordinance Text Amendment 18.225, to amend Ordinance No. 97-18 as amended, the City of Novi Zoning Ordinance at Article 25, Subsection 2508.1, "Uses Not Otherwise Included Within a Specific Use District" to modify the standards for "Commercial Television and Radio Towers, Communication Antennas, Public Utility Microwave Towers and Public Utilities and T.V. Transmitting Towers". **Second Reading**

SUBMITTING DEPARTMENT: Community Development Department - Planning 

CITY MANAGER APPROVAL: 

BACKGROUND INFORMATION:

The attached language is proposed to modify Zoning Ordinance Section 2508.1, with changes to the ordinance provisions relating to cell towers. Staff is suggesting modifications due to several recent requests from applicants seeking relief from ordinance standards in order to place cell tower equipment cabinets outside of an equipment shelter building. Instead, applicants are requesting to place metal equipment cabinets within a small fenced-in compound at the base of the cell tower. Staff's interpretation of the ordinance is that equipment is to be placed within an equipment shelter building, and that outside cabinets are generally not permitted by ordinance. The ordinance notes that equipment shelter buildings shall be constructed of brick on all sides with a gable roof. Attached at the back of this packet, you will find an example of the brick shelter that is presently required along with a picture of a metal equipment cabinet that is not screened. These are just general example photographs. Not every brick shelter or metal equipment cabinet proposed is identical to the photographs, but all are relatively similar.

A couple of requests for a waiver of the equipment building have been sent to the Zoning Board of Appeals for consideration in recent months. Two instances were identified, and the relevant Zoning Board of Appeals minutes are attached. Both instances involved an existing cell tower, and the request by the applicant was to install only metal equipment cabinets in the nearby equipment compound.

A question regarding why some equipment cabinets could not be placed in shelters was raised at the previous City Council meeting on May 19th, 2008. At the March 7, 2006 ZBA meeting, the applicant stated that the equipment was designed and intended to be installed outdoors and would not function properly in an enclosed environment, such as a shelter building. Heating and cooling problems were cited by the applicant. The applicant pointed out that the equipment is minimal (one radio equipment cabinet with one battery cabinet), and that the cabinets would take up less space and would have less visual impact than a shelter building.

A similar situation was presented at the September 12, 2006 ZBA meeting. The applicant stated that the equipment is not designed to be placed indoors, with heat dissipation being cited as the problem with putting the equipment indoors. Space issues within the identified compound were also cited as a difficulty. The intent of the Zoning Ordinance was also discussed by the ZBA, and it was the board's suggestion that the ordinance language be further discussed for clarification or amendment.

The proposed ordinance language would allow the installation of outdoor cabinets, provided that the equipment is contained within a screened equipment compound. The applicants must demonstrate

that there are site conditions or constraints of the equipment itself that would make the placement of the equipment in a building impractical. The language states that a masonry screen wall or landscaping must be provided to screen the compound from view.

Additional language is provided to address the possibility that wireless communication facilities may be placed on the roof of a building, or on other structures. Additional standards are applied if the cell tower is permitted in a residential district.

A public hearing was held by the Planning Commission on April 30th, 2008. At this meeting, the Planning Commission sent a recommendation of approval of the proposed text amendment to City Council. An excerpt of the Planning Commission meeting minutes is attached.

The City Council approved a first reading of the amendment on May 19th, 2008. An excerpt of the meeting minutes is attached.

The language presented at the public hearing, and as recommended by the Planning Commission, will allow an option to place the equipment within a brick shelter or to place the equipment outside, with the appropriate landscape screening of the compound.

RECOMMENDED ACTION: Approval of Zoning Ordinance Text Amendment 18.225, to amend Ordinance No. 97-18 as amended, the City of Novi Zoning Ordinance at Article 25, Subsection 2508.1, "Uses Not Otherwise Included Within a Specific Use District" to modify the standards for "Commercial Television and Radio Towers, Communication Antennas, Public Utility Microwave Towers and Public Utilities and T.V. Transmitting Towers". **Second Reading**

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Capello				
Council Member Crawford				
Council Member Gatt				

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Staudt				

**CITY COUNCIL DRAFT MINUTES
FIRST READING
MAY 19, 2008**

DRAFT EXCERPT

**REGULAR MEETING OF THE COUNCIL OF THE CITY OF NOVI
MONDAY, MAY 19, 2008
COUNCIL CHAMBERS – NOVI CIVIC CENTER – 45175 W. TEN MILE RD.**

Mayor Landry called the meeting to order at 6:58 P.M.

PLEDGE OF ALLEGIANCE

ROLL CALL: Mayor Landry, Mayor Pro Tem Capello, Council Members Crawford, Gatt, Margolis, Mutch, Staudt-absent/excused

- 3. Consideration of Zoning Ordinance Text Amendment 18.222, to amend Ordinance No. 97-18 as amended, the City of Novi Zoning Ordinance at Article 25, Subsection 2508.1, “Uses Not Otherwise Included Within a Specific Use District” to modify the standards for “Commercial Television and Radio Towers, Communication Antennas, Public Utility Microwave Towers and Public Utilities and T.V. Transmitting Towers”. First Reading**

Mr. Pearson said this had a positive recommendation from the Planning Commission and the Public Hearing had been held.

CM-08-05-081 Moved by Gatt, seconded by Margolis; CARRIED UNANIMOUSLY: To approve Zoning Ordinance Text Amendment 18.222, to amend Ordinance No. 97-18 as amended, the City of Novi Zoning Ordinance at Article 25, Subsection 2508.1, “Uses Not Otherwise Included Within a Specific Use District” to modify the standards for “Commercial Television and Radio Towers, Communication Antennas, Public Utility Microwave Towers and Public Utilities and T.V. Transmitting Towers”. First Reading

DISCUSSION

Member Mutch said from Administration he would look for an example of a situation where an applicant wasn't able to construct to the standard the City required in terms of a brick enclosure and had requested a metal cabinet. He stated that had happened a couple of times and he was looking for an example of why that was a hardship for the applicants. Mr. Pearson said they could provide that at Second Reading. He said he didn't have an issue with the clarification of the language for the Stealth Tower but thought the enclosure was one of the things Council had done to avoid an industrial look. He said they didn't always have control over where the towers were sited and they didn't always end up in industrial areas. He commented he would have a concern

about letting them move away from the brick enclosures unless Administration could show some examples that would justify it as a hardship. Otherwise, he saw it as a cost savings measure for the cell tower companies at the expense of the visual impact of those facilities. He said he would not support that part of the amendment unless he could see some good clarification for that.

Roll call vote on CM-08-05-081

**Yeas: Gatt, Margolis, Mutch, Landry,
Capello, Crawford**

Nays: None

Absent: Staudt

**ZONING BOARD OF APPEALS
MINUTES
MARCH 7, 2006**

REGULAR MEETING -- ZONING BOARD OF APPEALS
CITY OF NOVI
TUESDAY, MARCH 7, 2006 -- 7:30 P.M.

Proceedings had and testimony taken in the matters of
ZONING BOARD OF APPEALS at City of Novi, 45175 West Ten
Mile Road, Novi, Michigan, on Tuesday, March 7, 2006.

BOARD MEMBERS

Justin Fischer, Chairman
Jerald Bauer
Cynthia Gronachan
Linda Krieger
Mav Sanghvi
Tim Shroyer

ALSO PRESENT:

Alan Amolsch, Ordinance Enforcement
Don Saven, Building Department
Sarah Marchioni, Building Department
Thomas Schultz, City Attorney

REPORTED BY:

Cheryl L. James, Certified Shorthand Reporter

Tuesday, March 7, 2006 7:30 p.m.

CASE NUMBER 06-014

MEMBER FISCHER: At this time I would like to call case
number 06-014 filed by Metro PCS Michigan, Incorporated,
for 42380 Arena Drive. The petitioner is requesting a
variance to the requirement of a face brick exterior
equipment shelter building on all four sides located at
said address. The applicant wishes to install a metal
equipment cabinet that is not an approved material.

If you could raise your hand and be sworn in by our
secretary.

MEMBER GRONACHAN: Do you swear or affirm that the
information that you're about to give in the matter before
you is the truth?

MR. JERSON: Yes.

MEMBER FISCHER: If you could state your name and address and proceed.

MR. JERSON: Thank you, sir. My name is Matthew Jerson. I'm with Richard, Conner, Riley and Associates, and I represent Metro PCS. My address is 30150 Telegraph Road, suite 420, Bingham Farms, Michigan 48025. Metro PCS currently in its initial infrastructure build plan phase here in the state.

They are the latest wireless carrier to enter this market in Michigan, and they plan to launch service here in this first quarter of 2006. I'm happy to report all of the sites that we have identified during this initial phase for the city of Novi have been co location sites. We've worked very hard to make sure that that's been the case. We are simply asking the board tonight to be fair and equitable in treating the equipment cabinets that we are proposing.

Like many of the other carriers in Novi and throughout southeastern Michigan, in fact, throughout the country, we utilize, as part of our network infrastructure, outdoor equipment cabinets. Some carriers use shelters. Some carriers use buildings.



This particular equipment is designed to be placed outdoors, and that is the that equipment we're proposing tonight. I would indicate this equipment is more streamline, takes up less space. And, again, it's designed to be placed outdoors, not within another enclosure.




I have -- this evening I brought some additional pictures of an actual installation. This picture is of a site in the city of Farmington that's actually been recently installed. It will give you an idea of the real life proportions and look of the equipment. I would note for the board that this is a minimal installation. We are proposing one radio equipment cabinet with one battery cabinet. The battery cabinet is the smaller shorter cabinet adjacent to it.



On the submitted drawings we're also proposing expansion of one additional radio cabinet and one additional battery cabinet. I would note at this site I was involved in the initial (inaudible) for Sprint at the ice arena for the location. This is really, in many respects, an ideal location to minimize the visual impact of these sites.

The road is not thru road. The only cars that are really traveling down to the site are representatives of the tower companies to service and maintain it. There's existing pine trees, evergreen trees, that are planted around the entire compound. There's also a large -- relatively large berm that's along the north and west sides, which further blocks the view.

As a practical matter, you can't see this site when you're at the ice arena. You have to actually travel down the road to be there. I would also note that there are a few carriers there with outdoor equipment currently. We're proposing to place this between Sprint and T-Mobile. And from the front of the entrance, as a practical matter, you wouldn't even see our equipment. T-Mobile's equipment which may, in fact, be bigger, it's probably comparable, but I know that there's more pieces, cabinets there than we're proposing is actually screening the view from the front.

And I would note two other additional comments. The brick building, I am certainly -- I'm certain that a brick building is going to have more of a visual impact as far as the size and the look and appearance than the outdoor equipment cabinets. Most Communities, in fact, prefer outdoor equipment cabinets as opposed to a shelter or a building. 

Lastly, I would note, too, the ordinance specifically requests face brick only with respect to shelter buildings. And we're, in fact, proposing a cabinet. We're not proposing a building. So, with that, I would ask for the board's support. I would be happy to answer any questions that you might have.

MEMBER FISCHER: Thank you very much. In this case there were fourteen notices mailed with zero approvals and zero objections. s there anyone in the audience that wishes to comment on this case?

(No response.)

MEMBER FISCHER: Seeing none, I'll ask the building department if they have any comments. MR. SAVEN: I think this is a very tough issue because, number one, I think from a standpoint of view this is one of the waves of the future, all of these cabinets and equipments and things of this nature that's associated. But I think where the most

impact is going to be is the visual impact, where this is relative to the site, and it's probably more of the things that the board should take into consideration in this matter.

MEMBER FISCHER: Anything else? I'll open it up for board discussion.

Member Krieger?

MEMBER KRIEGER: I have a question. Is the surrounding developed?

MR. SAVEN: I think for where the arena drive is, I think you have the industrial application which is directly south, and this is where the Novi Ace Arena is at. It's located on the properties of the Novi Ice Arena, I believe, and the tower location is there, which sits to the rear of the property.

MEMBER KRIEGER: So it would not have a visual impact except for the ice arena?

MR. SAVEN: It's located in the rear of the ice arena.

MEMBER KRIEGER: Thank you, Mr. Chair.

MEMBER FISCHER: Thank you, Member Krieger. Member Gronachan.

MEMBER GRONACHAN: Forget my name for a minute?

MEMBER FISCHER: Wanted to.

MEMBER GRONACHAN: Mr. Saven, the petitioner indicated that there's other cell companies at this same location. And did I understand that correct?

MR. JERSON: Yes.

MEMBER GRONACHAN: Do you know what the material is of these other-

MR. SAVEN: (Interposing) No, I do not.

MEMBER SHROYER: I do.

MEMBER GRONACHAN: Member Shroyer, through the chair.

MEMBER SHROYER: Right now, Sprint on the northwest corner is on a platform; Cingular, northeast corner, is on a pad; and T-Mobile is on a pad on the southwest corner. They're all exposed to the elements. There is one brick-faced shelter with gabled roof, and that's Nextel, currently sits on the southeast corner at this location.

MEMBER FISCHER: Must be why I get crummy service through Nextel.

MEMBER GRONACHAN: So -- you're saying platform. You're saying that they're in cabinets like this then?

MEMBER SHROYER: Right.

MEMBER GRONACHAN: Okay. So there's two that have these cabinets?

MEMBER SHROYER: Three.

MEMBER GRONACHAN: And one with a brick face besides the -- this petitioner. Sir, I have a question.

MR. JERSON: Sure.

MEMBER GRONACHAN: Why not build with brick? You indicated everything else, but you never answered the question as to why you wouldn't use the brick.

MR. JERSON: Well, the equipment is out - it's designed and manufactured to be outdoors. You can't actually enclose it. There's air conditioning units, there's heat problems that would result if you did that. I think that probably the reason Nextel is a brick face is because they probably proposed a shelter. I know that Sprint originally had proposed an outdoor equipment cabinet. I'm not sure about the other companies. But certainly there's three companies that are using cabinets. I think the ordinance requirement specifically states it's only brick face with respect to shelter buildings. And I think when you look around, typically Nextel does use shelters usually.



MEMBER GRONACHAN: I have nothing further. Thank you.

MEMBER FISCHER: Thank you, Member Gronachan. Member Shroyer.

MEMBER SHROYER: I did want to ask the City if they know the sequence of applications as they came in on the cell applications. Was Sprint the first one that came in, or Cingular or-

MR. JERSON: (Interposing) Sprint is the first one. Sprint was the company that actually built the site.

MEMBER SHROYER: Was Nextel the last one?

MR. JERSON: I don't know.

MEMBER SHROYER: What I'm trying to get at is I know the City has had a lot of discussions around this through, and through the planning commission especially, and if they're saying, you know, from here on out we want to make sure that every single application coming into the City is going to be brick shelter with gabled roofs, I sure would like to know that before we act on this tonight. If they haven't addressed it, that's fine, too. And I know we're within our rights by following the ordinances and acting on it as we may, but I was -- I really wanted to know the sequence that that fell into and where we're headed, because in visiting other sites in the city -- and I can think of one right off the bat -- is Harold on Grand River. There's also a brick face building with Gabled roof storing cellular equipment. So where are we going with this? If the City doesn't know, maybe we need to table it and come back to it at a later time. I'll yield to Mr. Schultz.

MR. SCHULTZ: If I may, through the Chair. I can't speak to the sequence of when the -- which cabinets came. But I did speak to Tim Schmidt today about this just briefly, and I can't say that his position represented -- represents the planning department's or commission's views, but it did not appear to me that this is the subject of an ongoing discussion or anything like that at planning commission or planning department level.

I think there was a recognition in the conversation we had that this ordinance is kind of written with the assumption that a provider's going to come in with an actual building, so if they do that and they come in proposing a shelter building, here's what we want it to look like. The

ordinance is not particularly set up to deal with somebody who comes in with an open outdoor cabinet that's designed to be an outdoor cabinet.

But has the City gotten to the point of trying to resolve this with an ordinance amendment, I don't think there's any work with that that's ongoing with that. This is kind of squarely in your lap, interpreting the ordinance and then giving a variance if you find that that's appropriate.

MEMBER SHROYER: Thank you. I appreciate that. I was concerned about that. I know at least probably two years ago the request came in from a gas company concerning the same thing at the dead end of Clark Street and Grand River. They were told you build a brick building with gabled roofs, things like that, As well to store equipment. I don't know if it was equipment designed to be outdoors, et cetera. One of the questions I would ask the petitioner, I'm sure that this meets all safety and OSHA and MIOSHA standards-

MR. JERSON: (Interposing) absolutely.

MEMBER SHROYER: -et cetera? Is there a reason for it being -- the one you provided in Farmington Hills -- being on a platform as opposed to being on a pad?

MR. JERSON: Typically our sites are built on elevated platforms. There are certain cases, usually smaller installation, where they are put on concrete pads. I'm not sure if this one could be placed on a pad or not. I think somebody had mentioned, too -- I think one of the carriers, I believe it's T-Mobile directly to the south of this, is also on a elevated platform, so I think we have both situations there.

MEMBER SHROYER: Sprint.

MR. JERSON: We typically do it on a -- Sprint usually Does it on a elevated platform, too.

MEMBER SHROYER: Sprint's on a platform. T-Mobile's on a pad. They will be blocking your view -- or the view of your equipment from the entry-

MR. JERSON: (Interposing) Yes.

MEMBER SHROYER: -but they are shorter pieces of equipment, so yours will show above it. I don't see any disconcerting viewings of your equipment that would prevent me from being okay with this request.

MR. JERSON: I'm not actually sure if they're -- I think they're comparable in height. I have been at the site recently, and I can tell you -- oh. The fact that it's on the -- that may have impact as to the total height. I'm sure the equipment is very comparable. And the number -- the number of boxes that we're proposing, again, with the possible expansion is still less than at least T-Mobile, and I think both Cingular and Sprint, too.

MEMBER SHROYER: The property is surrounded, as he mentioned, by I believe white pines, they go all way around it. It doesn't totally block out the view, but it is in the back of the ice arena area going down Cingular Drive a ways. I don't anticipate any additional building going on in the immediate area. Basically I don't see a problem with this request, and I'll be in favor of a motion for this. Thank you.

MEMBER FISCHER: Any other discussion?

(No further discussion.)

MEMBER FISCHER: You were on a roll. Do you care to make a motion for our consideration?

MEMBER SHROYER: I planned not to talk a lot tonight because I'm getting over a flu.

MEMBER GRONACHAN: I'll do it.

MEMBER FISCHER: Member Gronachan.

MEMBER GRONACHAN: In case number 06-014 filed by Metro PCS Michigan, Inc., I move that we approve the variance as requested for the applicant to install metal equipment as opposed to the face brick and gabled roof based on the petitioner's testimony, and that this is outdoor equipment placed on the outdoors, it's been indicated that this is a minimized -- that the -- sorry -- that the site of this project is minimal, that there's minimal exposure. And that also I recommend that the -- this ordinance be sent to

ordinance review for further clarification for anything else that comes before us in the future on this matter.

MEMBER BAUER: Second.

MEMBER FISCHER: There's a motion and the second on the table. Any further discussion?

MEMBER SHROYER: Can we add -- I'd like to see the verbiage in there that the petitioner has stated that it will meet all MIOSHA standards for safety purposes.

MEMBER GRONACHAN: I accept that amendment.

MEMBER SHROYER: Thank you.

MEMBER FISCHER: Any other discussion?

(No further discussion.)

MEMBER FISCHER: Seeing none, Miss Marchioni, will you please call the roll.

MS. MARCHIONI: Member Gronachan?

MEMBER GRONACHAN: Yes.

MS. MARCHIONI: Member Bauer?

MEMBER BAUER: Yes.

MS. MARCHIONI: Member Fischer?

MEMBER FISCHER: Aye.

MS. MARCHIONI: Member Krieger?

MEMBER KRIEGER: Yes.

MS. MARCHIONI: Member Sanghvi?

MEMBER SANGHVI: Aye.

MS. MARCHIONI: Member Shroyer?

MEMBER SHROYER: Yes.

MS. MARCHIONI: Motion passes six to zero.

MEMBER FISCHER: Your variance has been granted.

MR. JERSON: Thank you.

**ZONING BOARD OF APPEALS
MINUTES
SEPTEMBER 12, 2006**

REGULAR MEETING - ZONING BOARD OF APPEALS
CITY OF NOVI
TUESDAY, SEPTEMBER 12, 2006

Proceedings had and testimony taken in the matters of the
ZONING BOARD OF APPEALS, at City of Novi, 45175 West Ten
Mile Road, Novi, Michigan, Tuesday, September 12, 2006.

BOARD MEMBERS

Tim Shroyer
Brent Canup
Gerald Bauer
Robert Gatt
Linda Krieger

ALSO PRESENT:

John Hines, Building Department
Thomas Schultz, City Attorney
Timothy Schmitt, Planner
Alan Amolsch, Ordinance Enforcement
Robin Working, ZBA Recording Secretary

REPORTED BY:

Machelle Billingslea-Moore, Certified Shorthand Reporter.

Novi, Michigan

Tuesday, September 12, 2006

7:30 p.m.

Moving on, Case Number:06-063, filed by Richard Connor
Riley and Associates for Metro PCS Michigan, Inc., located
at 44170 Grand River.

(Unintelligible) will you please identify yourself and --
name and address, and be sworn in by our secretary, please.

MR. JURSON: Yes, sir. It's Matthew Jurson, J-u-r-s-o-n. I'm
with Richard Connor Riley and Associates. Our address is
30150 Telegraph Road. We're in Suite 420; that's in Bingham
Farms, Michigan, 48025.

MEMBER BAUER: Do you swear or affirm to tell the truth
regarding, Case 06-063?

MR. JURSON: I do.

MEMBER BAUER: Thank you.

MR. JURSON: Thank you. Metro PCS is asking for permission to install outdoor equipment cabinets. This is an existing wireless facility on Grand River. We had -- we were before this Board back in March for two similar sites, co-locations at existing sites. We were granted the same variance.

This sight has an additional variance of a setback. We are proposing the equipment at a location where the Planning -- in fact, we've been working with the Planning Department for the past six or seven months on this particular location. They have asked us to place this equipment behind the Verizon shelter to the north for screening purposes. Thereby, we have a setback variance to contend with here, too.

I have brought with me -- if I could show you a few pictures to give you idea of what this site is. It's a site that's not visible practically from Grand River. That's the actual -- this here is the existing equipment shelter. This is the north of the site. Grand River would be to the south.

This is the space where we'd be proposing the equipment platform. The platform, itself, would be six feet by ten feet. You can see the edge of Cingular's platform. Cingular has existing outdoor equipment cabinets already installed at this location on this platform here.

This is a picture of the Metro PCS outdoor cabinets. They're the exact same cabinets that we had proposed back in March at the two sites. It's the same cabinets that we use at virtually all of our sites throughout the Southeastern Michigan market. The equipment will probably not exceed the height of the fence. It's about five to six feet tall. And its dimensions are given on the site plan. It's less than or near three feet wide.

This is a picture that I took. The site is actually right there where I'm pointing. The property line is a half foot from the existing fenced area; and then this is to the north. This is the only land that's there, and then, of course, we have the railroads. So as a practical matter, the site is really not visible.

I would also note that the ZBA had originally granted a variance for the location when it was originally installed.

So the compound -- we're not proposing any expansion of -- the cabinets would be within the existing fenced area.

This is a picture just taken from Grand River, which, if you can see it -- the cabinet would be -- or the existing shelter would be right there. We'd actually be behind that shelter. From the public road, it's not practically visible.

A couple of other things that I was going to mention. Most important of which is -- when we were back in March here in front of the Board, we had discussed the actual Ordinance, itself. And I know that the City Attorney and some other people were proposing or talking about some changes to the Ordinance. The way the regulation reads right now, it wouldn't specifically prohibit the cabinets. It simply states that if you have a shelter, it has to be face brick. I had mentioned at that time and I'll mention again, it's the same equipment.

This equipment is not designed to be placed indoors. It's for outdoor use only. It's the same equipment that we use at all our sites. So we'd be asking the Board, permission to place outdoor cabinets, as Cingular has, at this site. And to place them within the existing compound with no expansion of that. I'd be happy to answer any more questions the Board might have.




MEMBER SANGHVI: Thank you, sir. Does anybody in the audience wish to address the Board regarding this case? Seeing none, I'll inform the Board that there were -- 18 notices were mailed, zero approvals, zero objections. Building Department, any comments?

MR. HINES: Thank you, Mr. Chairman, I do have a couple comments. I realize the zoning definitions sometimes differ from the Building Code. But I if were to look at this in the Building Code, it would probably not be considered a structure. We look at structure a little differently, i.e., a foundation.

A cabinet -- and I believe -- The applicant, if you can clarify that these cabinets are designed to be outside.



MR. JURSON: That's correct.

MR. HINES: And part of that reason is because of heat dissipation that you need? 

MR. JURSON: Yes.

MR. HINES: So to put those in a brick cabinet, first of all, would hinder the use of the equipment; and second -- And maybe Mr. Schultz can elaborate on this a little bit more -- I think it was brought up as the gentleman said earlier that it may not have been the intent to the Ordinance to enclose a cabinet like this; as opposed to an accessory structure.

The other question -- or I should say more of a comment, is that this is basically on a railroad easement. So, really it's in my opinion from the Building Department it's a low impact from the neighborhood communities.

MEMBER SANGHVI: Thank you. Mr. Schultz?

MR. SCHULTZ: Thank you, Mr. Chair. I guess in response to Mr. Hines' comment, you know the last time we suggested that -- when they came forward on the ice arena property with kind of the same set up, that the Board really had two choices. The first -- in response to this first variance, which is enclose it in a brick building -- or that all shelter buildings have to have a brick facade and a gable roof.

Our first option to the Board was, you know, the definition of the Zoning Ordinance of a building is something that has a roof, to start with, is enclosed. And, you know, as the gentleman pointed out, this is really designed -- and as Mr. Hines said -- not to have any kind of roof at all.

So the Board could certainly say, no variance needed. We interpret the Ordinance to mean they don't have a roof. They're not a building, so, you know, that one isn't required. And we pointed out that the City is in the process of trying to sort of tweak it's Ordinance. I don't think that's come forward yet, but that's the Board's first option. I think the option we took that night was to grant the variance and just say, okay. You need the variance, but it's appropriate. So you're still in that same situation. You have either way to go. But -- and with regard to the

setback issue, maybe Mr. Schmitt has a comment on that. I think that's actually something the Planning Staff suggested to the applicant.

MEMBER SANGHVI: Yes, Mr. Schmitt?

MR. SCHMITT: A couple things to sort of wrap up the idea that the shelter - the Ordinance is currently set-up so that this type of equipment is required to be within a shelter. And it's clear that the intent was originally to screen this equipment from surrounding views. As Mr. Schultz mentioned, the ZBA's previously granted a variance for this. Should the ZBA be so inclined, we would, again, recommend you to grant the variance, as opposed to making an interpretation, because, to be perfectly frank, we've ran into some resistance at the Planning Commission in modifying this section of the Ordinance.

It's really been -- it's been brought up as to whether or not it really is -- it really should be modified. So again, we would recommend that should the Board be so inclined to grant the variance so, again, we can take that Planning

Commission Committees and discuss the fact that, you know, we have one body that's seen a couple of these now; and sees no real need for these, as long as they're well screened from the public right of way. With regard to the second item, we probably -- we have suggested both to the Cingular pads that were there before and the ZBA did see previously -- and quite interesting meeting, actually, it was one of my first meetings -- to put these behind the existing brick building. The brick building provides a great screening from all the public; and obviously the CSX Railroad Track Property to the north is screened by the existing vegetation.

The only condition that we would ask is that should the Board be so inclined to grant that variance, same condition applies, as did the Cingular that none of the existing vegetation is disturbed during the installation. That's the only comments we have, thank you.

MEMBER SANGHVI: Thank you. I'll open it to the Board for discussion. Yes, Mr. Canup?

MEMBER CANUP: I guess my question would be, has there been any consideration to giving a -- or writing it or changing

the Ordinance? I guess there was consideration of that, changing it to where you could use a block on a -- brick on a block fence around it to esthetically hide it and esthetically make it appealing. If -- you know, all case aren't going to be like this. Where you have it back where you have an industrial area, which is not really going to offend anybody.

MR. SCHMITT: That is one of the options that we're considering. We've bounced around a couple of drafts. We took it to the implementation committee. I believe the approach we took originally with the implementation committee was to strike it completely, because that's sort of what we heard from the ZBA's previous Minutes.

There really wasn't support for that. I mean, I don't that would have gotten approved. So what we're looking at -- and it's in with a jumble of other Ordinances is we're probably going to bring them all forward at the same time, as sort of another clean up. To do a waiver provision or some sort of administrative waiver, when it is screened and allowing for brick on brick screen wall, allowing for existing vegetation, things of that nature, to do more naturalized -- really, the majority of the cell tower locations in the City aren't as well screened as this one is.

Most of them are adjacent to residential, out in a field, visible from the highway, somewhere a long that line. So this one is really unique in that we kind of support where it's going, because it really is screened from every direction. But we are going to address this, we just are trying to structure how we're going to address it. And certainly, Mr. Canup, that is going to be one of the options we take into account.

MEMBER CANUP: I can understand the need for air, probably part of keeping these instruments cool and venting them. And if you build a building and you've bring up another whole set of issues about cooling. So, I would -- you know, I'm in favor of not having to build a building; however, maybe we need to have a brick on brick fence, six feet high. What is the height of your equipment?

MR. JURSON: It would be no more than six feet.

MEMBER CANUP: Yeah, I would be in favor of that, and that would give them the clearance they need on the top for the

air movement to keep the equipment cool, and give -- maybe it would set a precedent as to what can be done in the future. I don't think we're going to see, you know, hundreds of these towers go up; so, it's just a very limited problem.

MEMBER SANGHVI: Thank you, Mr. Canup. Yes, Mr. Bauer?

MEMBER BAUER: I agree with Mr. Canup. (Unintelligible) few years.

MEMBER SANGHVI: Yes, indeed.

MR. JURSON: If I could just make a comment, if it's appropriate at this time. At this time particular location, because of the amount of space we have there, we wouldn't actually physically be able to have a brick wall built. We're actually -- you know, and that's one of the reasons I showed you the first picture.

When we first put in the application, we had actually proposed a location on the south side towards the front of the building, because that's where there was sufficient space.

MEMBER CANUP: What if this Board turned you down on your request, what would you do then?

MR. JURSON: We'd be in a real predicament, because what we're trying to do is build these facilities on existing locations. That would force us to actually find --

MEMBER CANUP: I don't think it's my intent -- at least it's not my intent --


MR. JURSON: Oh, no.

MEMBER CANUP: -- to run you off, let's put it this way, but we do want to have something that when it's done -- even though this is back somewhere hidden, it may not be hidden in five years or ten years from now. And it's -- and, at least, I think the cell phone business is not going to go away. So I'm sure this equipment will still be there.

MR. JURSON: Right. No, these comments are very well taken. I think Mr. Schmitt said, himself, too, this -- actually, the ice arena and the location that was approved on Grand

River a little bit to the west of this, is actually -- if anything, those were well-screened locations to begin with, but certainly not as well screened as this one.

And I just couldn't see -- I think it's more appropriate, as was suggested, to deal with that issue with the Ordinance, with the changes that are apparently being worked on.

In this case, again, there would not be any space to put a brick wall to that back. This Cingular shelter is really butt up -- we only have a half feet -- there's a half a foot between the edge of the equipment platform; and the property line simply isn't -- this is a tight spot. 

MEMBER SANGHVI: Thank you. Thank you. Anybody else? Yes, Mr. Shroyer?

MEMBER SHROYER: Thank you. I have to assume, Mr. Schmitt, that all the other equipment that is housed there had to have some type of setback variance approved, as well.

MR. SCHMITT: The Cingular equipment that you see just on the bottom of this picture, did. The brick building, which is actually home to Sprint-Nextel, I believe.

MR. JURSON: Verizon.

MR. SCHMITT: Verizon, it's Verizon, okay, was built several years ago with the construction of the tower; and it was setback according to the accessory structure provisions at that time.

MEMBER SHROYER: The structure was, but the fence around it --

MR. SCHMITT: Fences are not regulated in terms of setback in Novi. We tend to turn a deaf ear to fences, as long as they're in the rear yard of the main structure. So the fence is fine. The structure's set back under the previous Ordinances, so -- yes and no.

Anything after the original approval has needed a variance; but the original approval did not need a variance for the housing.

They did need a variance, obviously, for the tower being that close to the property line, though.

MEMBER SHROYER: And the concreted gabled roof sufficed in that instance with that brick building, as opposed to --

MR. SCHMITT: That building was approved originally.

MEMBER SHROYER: Okay. Are we in a position where we could require a applicant to build a wall, a brick-faced wall, when that's not what our charge is this evening, in the advertisement, etc.?

MR. SCHMITT: From Staff's perspective -- and perhaps Mr. Schultz'll have more input into this -- the purpose of that section is the screening from public view. Our intension in suggesting that this go beyond the building was to screen from public view. And that's really the spirit in which this was brought forward; is that it is better screened this way.

However, it's really -- and Mr. Schultz can further discuss what the relevant condition would be in this case, but that was the purpose of the request.

MEMBER SHROYER: Mr. Schultz, do we have a --

MEMBER SANGHVI: Yes, Mr. Schultz?

MR. SCHULTZ: Through the Chair. The Board always has the authority to put a reasonable condition on the grant of a variance. So they're here in front of you -- let's start with the setback variance. They're here in front of you for a setback variance. You're permitted to put reasonable conditions on that. I presume the proponent would say, well, requiring me to put a brick wall in the area where the variance is required is really screening it from the railroad right-of-way, number one; in fact, I'm here asking for a variance only because the City wanted me to be here for screening purposes on the other side of my structure.

So the question for the Board is going to be if we say build a wall around this portion where the variance is being granted, is that a reasonable condition under the factual circumstances. That's a policy question for the Board. So, you can do conditions, but you got to make sure

you related them to what the variance is that you're granting.


MEMBER SHROYER: Thank you, Mr. Schultz. Well, my opinion is that a brick wall would be excellent to be around the entire facility, not just one set of equipment that's brought in. And I would hope that the City while they're reviewing various Ordinances, etc., would look at that as a possible for future sites. And if there's any renovations to the existing sites, that that may be a new requirement.

I don't think it's practical at this point to require that in this case -- just one person's opinion. I don't like the term good screening. To me piled up wood in the back and a vegetation to the railroad is -- that's okay. But the front side, the major screening is the brick building; that's all right, too. But the amount of trash around there -- there's a dog pen right adjacent to it -- no dog, but a dog pen.

The best screening is the large semi-truck that's parked in front of it, so you can't see any of it from the street. If we could require that to stay there, maybe, that would be great. At any rate, I will go ahead and make a Motion.

MEMBER SANGHVI: Go ahead.

MEMBER SHROYER: In Case Number: 06-063, filed by Richard Connor Riley and Associates for Metro PCS Michigan, Incorporated, located at 44170 Grand River Avenue. I move to approve the requested variances, setback variance for another equipment at this site was previously approved by the ZBA. This variance will not negatively impact owners of this or surrounding properties. Novi encourages co-locations to minimize the number of towers in the city.

Other equipment is currently located at this site, and is intended for outdoor use, as is this proposed equipment; thus, not needing an enclosed building. Thank you. 

MEMBER SANGHVI: Okay. The Motion has been made.

MEMBER GATT: Second.

MEMBER SANGHVI: Seconded by Mr. Gatt. Any further discussion? Seeing none, Ms. Working, will you please call the roll.

ROBIN WORKING: Member Shroyer?

MEMBER SHROYER: Yes.

ROBIN WORKING: Member Sanghvi?

MEMBER SANGHVI: Yes.

ROBIN WORKING: Member Bauer.

MEMBER BAUER: Yes.

ROBIN WORKING: Member Canup?

MEMBER CANUP: Yes.

ROBIN WORKING: Member Gatt?

MEMBER GATT: Yes.

ROBIN WORKING: Member Krieger?

MEMBER KRIEGER: Yes.

ROBIN WORKING: Motion passes six to zero.

MR. JURSON: Thank you.

MEMBER SANGHVI: Congratulations. You can get your building permit and --

MR. JURSON: I appreciate it.

MEMBER SANGHVI: -- good luck. Thank you.

MR. JURSON: Thank you.

PROPOSED ORDINANCE AMENDMENTS – STRIKE VERSION

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. 08- 18 -225

AN ORDINANCE TO AMEND APPENDIX A OF THE CITY OF NOVI CODE OF ORDINANCES, ORDINANCE 97-18, AS AMENDED, KNOWN AS THE CITY OF NOVI ZONING ORDINANCE, ARTICLE 25, SUBSECTIONS 2508, IN ORDER TO MODIFY THE STANDARDS FOR COMMERCIAL TELEVISION AND RADIO TOWERS, COMMUNICATION ANTENNAS, PUBLIC UTILITY MICROWAVE TOWERS, PUBLIC UTILITIES T.V. TRANSMITTING TOWERS.

THE CITY OF NOVI ORDAINS:

PART I.

ARTICLE 25. GENERAL PROVISIONS.

Section 2500 – Section 2507. [Unchanged.]

Section 2508. Uses Not Otherwise Included Within a Specific Use District

[Unchanged.]

1. *Commercial Television and Radio Towers, Communication Antennas, Public Utility Microwave Towers, Public Utilities T.V. Transmitting Towers.* Radio and television towers, communication antennas, public utility microwave towers, public utility television transmitting towers, their attendant facilities shall be permitted subject to the following criteria and standards being met:
 - a. Communication antenna towers and poles shall be permitted in I-1 and I-2 Districts, provided the antenna or pole is located at least 300 feet from any residentially-zoned districts. The City Council may permit a communication antenna or pole in other zoning districts not listed above or within 300 feet of a residentially-zoned district, or may otherwise vary the standards contained herein, when it finds that such restrictions would prohibit or have the effect of prohibiting the provision of personal wireless services, so as to contravene the provisions of 47 U.S.C. § 332(c)(7)(B)(i). The relief granted shall be the minimum necessary to eliminate such an effect.
 - b. The following criteria shall be considered in the recommendation of the Planning Commission, and decision of the City Council:

- (1) Whether the requested use is essential or desirable to the public convenience or welfare;
 - (2) Whether the proposed antenna tower or pole is of such location, size and character as to be compatible with the orderly development of the zoning district in which it is situated, and shall not be detrimental to the orderly development, environment or use of adjacent properties and/or zoning districts. Consideration will be given to applications which present a creative solution to proliferation of antennas.
 - (3) Whether denial of the request will prohibit or have the effect of prohibiting the provision of personal wireless services.
- c. In order to maximize the efficiency of the provision of telecommunication services, while also minimizing the impact of such facilities on the City, co-location, or the provision of more than one facility at a single location, shall be required in accordance with the following. An applicant seeking to establish a new antenna or pole for the providing of wireless services shall be required to provide information regarding the feasibility of co-location at existing sites. Before approval is granted for a new facility, the applicant shall demonstrate that it is not possible to co-locate at an existing site. Further, the applicant shall be required to provide a letter of intent to lease excess space on a facility and commit itself to:
- (1) Respond to any requests for information from another potential shared use applicant;
 - (2) Negotiate in good faith and allow for leased shared use if an applicant demonstrates that it is technically feasible, and
 - (3) Make no more than a reasonable charge for a shared use lease.
- The requirement to permit co-location in accordance with such letter of intent shall be deemed a condition of approval of an application. If a party that owns or otherwise controls a facility fails or refuses a proposed and feasible co-location, that party shall be deemed in violation of this section. In addition to those remedies provided in Article 38, the party shall be precluded from receiving approval for a new wireless communication facility until such violation is corrected.

To further minimize the impact of such facilities on the City, if facilities cease to be used for transmission purposes, the facilities, including all buildings and structures, shall be removed in their entirety within 90 days of the ceasing of such use and a note evidencing this requirement shall be placed on the site plan.

- d. The use may be located on the same property with a second principal use. When a tower or pole is located on the same property as another principal use it shall be separated from all structures, driveways and parking areas associated with the other principal use by a distance no less than forty (40) percent of the height of the pole or tower. Separation shall not be required for an antenna attached to an existing building, tower, pole or other structure. For purposes of access to public streets and dimensional requirements, the property shall be treated as a single site. If a tower

ceases to be utilized it shall be removed within 90 days, along with any building, fencing or other structural improvements.

- e. A setback consisting of forty (40) percent of the height of an antenna tower and antenna (forty (40) percent fall zone) shall be required for any antenna tower or pole. Fall zone percentage means the distance relative to the height of the tower or pole, as measured from surrounding grade to the uppermost element of the antenna, which the tower or pole must set back from all adjacent property lines. If the setback is less than one hundred (100) percent of height of tower or pole, the applicant must provide data showing that the facility is designed to keep any falling tower, pole or other infrastructure within the fall zone. Notwithstanding the above, where a site is adjacent to residentially-zoned property, the minimum setback shall be not less than 100 percent of the height of the antenna tower and antenna.
- f. All transmission lines related to and serving any antenna tower or pole shall be placed underground.
- g. Antenna towers, poles and related equipment shelter buildings shall be subject to site plan review as provided in Section 2516. All equipment not mounted on the antenna tower or antenna pole must be installed in an equipment shelter building, unless otherwise permitted in this Section. Equipment shelter buildings shall be constructed of face brick on all sides with a gable roof in addition to compliance with the facade standards ~~of~~ of Section 2520.
- h. The approving body may permit the installation of outdoor cabinets or other equipment outside of an equipment shelter building, provided that the equipment is located within a screened equipment compound. The applicant shall demonstrate to the approving body that the placement of equipment within an equipment shelter building is not practical, due to existing site conditions or due to the constraints of the equipment itself. The equipment compound shall be adequately screened from view from any public road and all neighboring properties. Any equipment permitted outside of a building, including cabinets, may not exceed the height of the screening. Screening may consist of a masonry screen wall that complies with Section 2520, or with landscaping that provides for adequate screening of the equipment compound, as approved by the city's landscape architect. The equipment compound entrance shall be screened with an opaque gate.
- hi. Equipment shelter buildings and equipment compounds shall comply with the building setback and height standards for the District in which they are located.
- i-j. Antenna towers shall not exceed one hundred and fifty (150) feet in height as measured from surrounding grade.
- jk. Where a wireless communication facility is proposed on the roof of a building, and the equipment enclosure is proposed as a roof appliance or penthouse on the building, it shall be designed, constructed, and

maintained to be architecturally compatible with the building on which it is to be located, and shall be subject to the standards of Section 2520.

~~kl~~ Antenna shall be permitted to be mounted on an existing structure, such as a building, water tower or utility tower, provided that all other provisions of this ordinance are met.

~~lm~~ If permitted in a residential district, antenna towers or poles shall be of a “stealth design” that conceals the antenna and associated mounting structure, or other design that is deemed harmonious with the property and surrounding residential districts.

~~jn~~ As a condition to every approval, the applicant shall provide to the City of Novi Building Department on an annual basis, beginning the first July 1st after erection of the tower, an inspection report from a licensed engineer confirming: (1) the continued structural integrity of the facility in accordance with applicable standards; and (2) that the facility meets those standards imposed by the Federal Communications Commission for radio frequency emissions. A notice of these conditions shall be placed on the site plan.

~~ko~~ When an applicant ~~purposes-proposes~~ solely to construct an antenna upon an existing structure, install additional equipment or construct an additional equipment building, without the construction of any additional tower or pole, the application and plan may be reviewed administratively without the necessity of special land use approval, provided that the criteria of this subsection are met. Under such administrative review, determinations that would otherwise be made by the Planning Commission or City Council shall be made by the Planning ~~Department~~ Division of the Community Development Department.

2. – 7. [Unchanged]

Section 2509 – Section 2524 [Unchanged]

PART II.

Savings Clause. The amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

PART III.

Severability. Should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

PART IV.

Effective Date: Publication. The provisions of this Ordinance shall become effective fifteen (15) days after its adoption and shall be published within 15 days of its adoption by publication of a brief notice in a newspaper circulated in the City, stating the date of enactment and the effective date of the ordinance, a brief statement as to the subject matter of this Ordinance and such other facts as the Clerk shall deem pertinent, and that a copy of the Ordinance is available for public use and inspection at the office of the City Clerk.

MADE, PASSED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF
NOVI, OAKLAND COUNTY, MICHIGAN, ON THE ___ DAY OF _____, 2008.

DAVID LANDRY, MAYOR

MARYANNE CORNELIUS, CITY CLERK

PROPOSED ORDINANCE AMENDMENTS – CLEAN VERSION

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. 08- 18 -225

AN ORDINANCE TO AMEND APPENDIX A OF THE CITY OF NOVI CODE OF ORDINANCES, ORDINANCE 97-18, AS AMENDED, KNOWN AS THE CITY OF NOVI ZONING ORDINANCE, ARTICLE 25, SUBSECTIONS 2508, IN ORDER TO MODIFY THE STANDARDS FOR COMMERCIAL TELEVISION AND RADIO TOWERS, COMMUNICATION ANTENNAS, PUBLIC UTILITY MICROWAVE TOWERS, PUBLIC UTILITIES T.V. TRANSMITTING TOWERS.

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- removed within 90 days, along with any building, fencing or other structural improvements.
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- m. If permitted in a residential district, antenna towers or poles shall be of a “stealth design” that conceals the antenna and associated mounting structure, or other design that is deemed harmonious with the property and surrounding residential districts.
- n. As a condition to every approval, the applicant shall provide to the City of Novi Building Department on an annual basis, beginning the first July 1st after erection of the tower, an inspection report from a licensed engineer confirming: (1) the continued structural integrity of the facility in accordance with applicable standards; and (2) that the facility meets those standards imposed by the Federal Communications Commission for radio frequency emissions. A notice of these conditions shall be placed on the site plan.
- o. When an applicant proposes solely to construct an antenna upon an existing structure, install additional equipment or construct an additional equipment building, without the construction of any additional tower or pole, the application and plan may be reviewed administratively without the necessity of special land use approval, provided that the criteria of this subsection are met. Under such administrative review, determinations that would otherwise be made by the Planning Commission or City Council shall be made by the Planning Division of the Community Development Department.

2. – 7. [Unchanged]

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PART III.

Severability. Should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

PART IV.

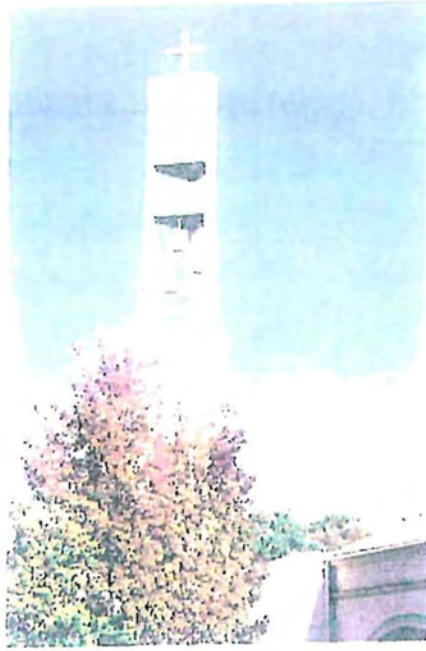
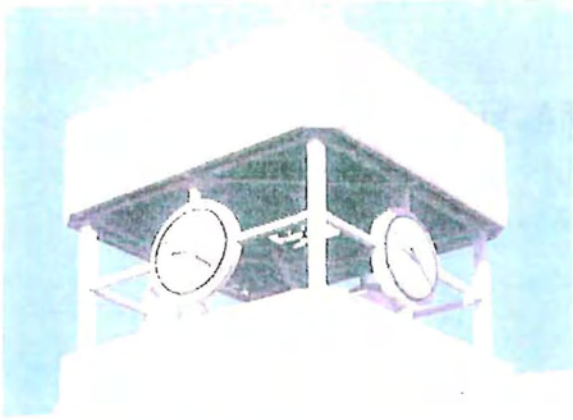
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MADE, PASSED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF
NOVI, OAKLAND COUNTY, MICHIGAN, ON THE ___ DAY OF _____, 2008.

DAVID LANDRY, MAYOR

MARYANNE CORNELIUS, CITY CLERK

EXISTING CELL ANTENNAS OF A "STEALTH" DESIGN



**PICTURES – EQUIPMENT CABINET
AND EQUIPMENT SHELTER BUILDING**

