RECORD OF PROCEEDINGS

Minutes of PENFIELD TOWNSHIP TRUSTEES Meeting

DAYTON LEGAL BLANK, INC. FORM NO. 10148

Held November 3, 20 20

The regular meeting of the Penfield Township Trustees was called to order at 7:30 PM. All officers were present. Ten guests attended the meeting.

The minutes of the previous meeting were read & approved. A motion was made to approve and pay Voucher #'s 13203-13229, and approve PO #'s 51-55-2020, WH Voucher #;s 36-37-2020, Blanket Certificate 29-20, the October Bank Reconciliation, and monthly reports as well as Resolution 20-009 to enter the ODOT annual salt purchasing program by Trustee Johnson, seconded by Trustee Conrad.

Fiscal Officer Denes read the correspondence which included notice of the NOPEC General Assembly, a trucking rebate from Sugar Ridge in the amount of $125, the LC Sheriff's report, a request from Rebecca Rollin to hold 4-H Club meetings at the hall, notice of an LCTA survey, and a request from Justine Agosto to cancel a community room rental and receive a deposit refund. Denes also presented a thank you note from the Wildcat Wanderers 4-H club for the use of the hall for their meetings. Denes advised that she has not received the 9/30/20 bank statement from the Recreation Board so that she can provide attestation to the State Treasurer's office. Denes reminded all of the 11/25 RC Blood Drive from 2 until 6.

WFD Chief Wetherbee was in attendance to discuss the district's additional financial need as related to COVID. He presented a list of options for sub-granting of funds.

Scott and Shannon Shrader, Jones Rd. residents were in attendance to discuss the BZA's decision regarding the cell tower at their 10/21 hearing. Shannon read a letter drafted by Scott who asked that it be included into the official public record. They requested a reversal of the BZA's decision and a review and update of the current zoning resolution to prevent future problems. The neighboring Reeds were also in attendance to discuss the tower.

Ilona Seaman of Ipanda Designs presented her website mock-up & proposal. Her proposal was accepted with a motion made by Trustee Conrad, seconded by Chairman Flynn.

Zoning Inspector Linden reported on zoning permits, and follow-up on nuisance complaints. He gave a year to date permit review. Permits and their associated improvement values are up considerably. Linden will deliver the completed address signs and requested that consideration be given to issuing address signs to properties that have structures, but no residences. Zoning Chairman Clark Lubaski is review the zoning resolution for possible amendment.

PHS Treasurer Jackie asked if their military display could remain up for another week. Permission was granted and congratulations given on a great Election Day display.

Zoning Secretary Linda Albrecht reported that there will be a November 9th BZA meeting at 7 PM to discuss by-laws & paperwork.

Trustee Johnson reported that good ideas were discussed at the Zoning Commission meeting. He reported that the new mic system worked well at the BZA hearing. Johnson relocated the key box to the Zoning Inspector's office. Discussion was held regarding recruitment of more Zoning Commission members, and alternates. The 1st annual Trunk or Treat was well attended and deemed a success. SLCAD's new ambulance was on display at the event. Johnson reported that the forklift battery needs replaced. Chairman Flynn will pick up same and assess the oil leak.

Trustee Conrad reported that Brett Jones of Tek Seal will be starting the crack sealing later in the week. He requested that Brett break out the cost of Webster Rd. as this cost will be shared with Lagrange Township. Scott Shrader reported that there is an 18 wheeler from Medina County that uses a section of Jones Rd. by the Reed residence regularly. This is causing damage to the edge of the road. He is uncertain if the truck is loaded or unloaded at the time of usage.

Chairman Flynn reported on Trunk or Treat and thanked Recreation Board members Keri Gordon, Dave French, and Dave Conrad for their participation. Flynn reported that Bob Storms had brought the plow truck over for undercoating. He advised that Storms and Bill Albrecht will coordinated the plow truck blade cutting edge repair at the Gordon Farms shop. Flynn reported that the WFD will vote on Sarah Poling as the Fire District's new fiscal officer at their 11/4 meeting. Flynn presented two bids for the Jones Rd. culvert repair project. Brian Hetzler presented an estimate of $29,000 and Denes Concrete one of $25,750. Denes Concreted was awarded the job with a motion made by Trustee Richard Conrad, seconded by Trustee Johnson. FO Denes reported that the appropriation for the MOW program thru the LCOOA had exceeded the allocated annual amount at the end of the 3rd quarter. She recommended and additional appropriation of $750 for the 4th quarter and advised this should be an acceptable Cares Act expenditure. A motion was made by Chairman Flynn, seconded by Trustee Conrad to increase this appropriation.

Trustee Conrad reported that he had called the LC Engineer's office to report the high water barricades needed to be placed on Friday. Conrad had asked to speak to Shaun Duffala regarding this matter. Duffala was unavailable & Conrad asked for a return call to discuss this matter. Conrad called on Monday afternoon for the removal of the barricades. Conrad is concerned that the LC Engineer's office is not monitoring the high water situation on Foster Rd. adequately. Conrad will continue this conversation with the LC Engineer's office. The snowblower, heat houser and salt spreader to maintain the walking trail was discussed. This purchase was approved and a PO signed.

With no additional business to discuss, the meeting was adjourned at 10:19 PM with a motion made by Trustee Conrad, seconded by Trustee Johnson.

4

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3 November 2020

Board of Trustees
Penfield Township
41012 State Route 18
Wellington, OH 44090

Dear Penfield Township Trustees:

As property owners in Penfield Township, we respectfully ask of you, the Board of Trustees (Trustees) of Penfield Township, to take action to make right a defective decision by the township's Board of Zoning Appeals (BZA). On 21 October 2020, the BZA approved an "*area variance*" and issued a "*conditional use permit for construction of a cellular tower...*" to GPD Group for the design and planning for an AT&T Wireless Cellular Tower. The BZA decision conflicts with the township's Zoning Resolution. In addition, their decision did not consider my input as articulated in a 9 April 2020 Letter (with an attached Cell Tower White Paper) in violation of the Federal Communications Commission's (FCC) Telecommunications Act of 1996 requiring public comment.

As you are aware, Penfield's stated purpose is officially codified in Article 2 PURPOSE of the Zoning Resolution of Penfield Township (amended 5 September 2019), which says, "***To conserve and protect property and property values.***"[1] The BZA decision does not conserve and protect our property values (see Annex A for a local analysis). Real Estate professionals refer to this as an "*incurable, external obsolescence.*" In other words, there will be a loss of value on properties located in Penfield Township due to the presence of this nearby proposed cell tower.

At the 21 October BZA public meeting, the BZA solicitor told the BZA they must only rely on Zoning Resolution, Article 7.2 D. "Wireless communications" to determine if the GPD Group's proposed cell tower requirement under Penfield Township Zoning Resolution is met. This action by the BZA solicitor is a damning legal error. Article 7.2 D only speaks to specific setbacks and other such technical standards (the 7.2 D Article is attached in Annex B to this letter).

Your purpose as elected officials is not just proper financial stability of our township but also to serve our citizens' needs by ensuring adequate land use and growth, delivery of essential services, protection against crime, health and safety, <u>and safeguarding our property values</u>. This is a broad, overarching set of written beliefs that bind <u>all</u> decisions as it relates to our citizens. As Trustees, you were elected to be advocates for our citizens, not just administrators of the rules but to make decisions within the guidelines clearly set forth in this Zoning Resolution.

Proper decision-making is central to any level of government. How those decisions are made is essential, significantly, as it affects its citizens' rights and property. We believe it to be the

[1] Penfield Township Zoning Resolution (Revised September 2019)
http://www.penfieldtownship.com/PDFs/article_1_2_3.pdf

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BZA's and Trustees' sworn duty to morally and legally ensure that the township's rules and regulations are executed within the framework of its PURPOSE to "*conserve and protect property and property values,* etc." Furthermore, we believe it important to adopt resolutions articulated in sufficient depth and detail such that they cannot be misinterpreted or misconstrued. Your legal counsel's task is to also assist the township's elected and appointed officials in doing so. Yet, your solicitor failed to provide either the guidance necessary to take into account the whole of the Zoning Resolution, its stated *purpose*, or to ensure the wording therein is up to modern, state-of-the-art standards.

Sadly, this could have been avoided if my 9 April 2020 letter had been used in good faith prior to any decision on this issue. My letter/white paper shows how the proposed Wireless Cellular Tower fails to comply with the township's purpose. Surprising to me was the fact that the BZA did not receive an advance copy of my letter/white paper at all prior to the 21 October meeting. This occurred because the BZA solicitor chose not to present a copy until the very meeting the Wireless Cellular Tower proposal was to be voted on. I am glad that I was able to personally attend that meeting with my wife Shannon and did so only at great personal cost due to my illness. I came to the BZA hearing because if I had not, my letter/white paper would not have been entered into the record at all. Fearing such a problem, I personally emailed it to the Trustees to ensure a copy reached you. However, my letter was after-the-fact entered into the record. My letter/white paper is now technically part of the legal documentation required by law approved by the U.S. Congress under the Federal Communications Commission's (FCC) Telecommunications Act of 1996.[2] However, the tardy circumstances under which it was given to the BZA, is a direct violation of the public comments requirement of this Act.

In my 9 April letter, I stated that:

> For the record, I am opposed to the proposed AT&T Mobility Wireless Cell Tower as currently designed and located because 1) it will negatively impact quality of life of my family and neighbors, 2) reduce our standard of living, 3) decrease the value of my property, 4) it may have negative health impacts, 5) it will degrade community well being, 6) environmental concerns have not been studied, and 7) Cell Tower structural failure concerns and new 5G networks have not been fully explored. There are locations that the proposed tower can be located that would lessen these impacts and I am requesting the Board explore and consider these as better tower locations.

Furthermore, at the 21 October BZA meeting, important questions were not asked. The following items are examples of those which should be answered before a proper and legally correct decision could be given. Such questions go to the heart of this matter, the linkage between Penfield Township's purpose and its BZA decisions. Failure to address them means that any BZA decision did not take into account our residents. Here are examples of questions that should have been asked and answered verbally as well as in writing. Remember, it is not too late to take action to right this wrong:

1. Will this tower have an impact on nearby property values? What specific analysis was used to make this determination, and who wrote the study to make that determination? Did the analysis take into account the Verizon cellular tower 300 yards northeast from

[2] 47 U.S.C. §§ 151, et seq.; Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 et seq.

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the rear of my property? And did the study take into account the proposed new cellular tower in front of my home, about 200 yards south of my property?

2. Does the tower's specific placement have a health and safety impact on township property owners and local citizens living nearby? What analysis was done, who certified it, and was it presented as support as substantiating evidence to the BZA? Were alternate locations of towers considered to reduce a health and safety effect? Was the proposed tower to be located such that it minimizes aesthetic line of site problems? Why was the specific height of the proposed tower chosen, and why was a shorter tower not considered?
3. Was a gap in coverage demonstrated by providing an independent scientifically-based analysis to include coverage maps and other related visual documentation? To achieve the desired wireless coverage, were other non-AT&T company cellular towers' coverage demonstrated? Was a visual map of all cellular towers provided that showed AT&T communications gap coverage? As an alternative, did the analysis include whether placement of AT&T's equipment on other non-AT&T towers be sufficient for adequate coverage?
4. In answering all of these pertinent questions, was the documentation provided to the BZA to attest to this, including useful, visually understandable mapping? Was written, certified-true copies provided to the BZA and township Trustees?

We would also like to address fundamental errors in the 21 October 2020 BZA decision letter itself (see attached as Annex C).

First, at the top of page 2 it states, "*2. It is a conditionally permitted use in the district where the permit is sought and complies with the zoning resolution.*" This is not true. The point I've been making is that the Zoning Resolution articulates its PURPOSE to "*conserve and protect property and property value*" of its citizens and that has not been accomplished. In fact, there has been no analysis whatsoever by either GPD Group, AT&T, or the BZA on the impact of this proposed tower on property values, or health, welfare, and safety of our neighborhoods.

Second, on page 2 it also states, "*4. It will not be hazardous or disturbing to existing or future neighborhood uses.*" This is also not true for the same reason. There has been nothing done to look at "existing or future neighborhood uses." If any study or analysis has been done to address property values, or health, welfare, and safety of our neighborhoods, then where is the product?

Third, on page 2, "*7. The tower should not be detrimental to persons, property or the general welfare by reasons of excessive traffic, noise, smoke, dust, fumes, heat, glare, or odors... No equipment or process should be used which creates a visual or audible interference in any radio, television receivers or computers off the premises or cause fluctuation in line voltage off premises.*" What about the detrimental effects of the radiofrequency (RF) waves transmitted from the tower? Or, what about the aesthetic line-of-sight ugliness of the tower itself? None of these have been addressed.

Fourth, at the bottom of page 2, "*There were other concerns voiced by the opponents but the current zoning law does not allow the board to entertain those concerns. Exhibit A was offered by Scott Shrader at the hearing.*" This statement shows that the Zoning Resolution itself should be modernized. The "zoning law" (our Zoning Resolution) allows for appeals only "*by any person aggrieved or by any officer of the township affected by any decision of the administrative officer,*" per Article 14.5 Appeals. We're not sure even what that means. But we are objecting to the BZA decision in its whole and ask our Trustees to intervene. It also

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notes my input was received but it is a fact that it was not read, discussed, or taken into account in the BZA decision.

To make matters worse, there is already a Verizon cellular tower approximately 300 yards east from the back of my property, located in Medina County. This proposed AT&T cellular tower would be located about 200 yards south of my property. I'm starting to think my property and the property of my neighbors are part of an antenna farm. This is a classic example of two incurable, external obsolescences if this proposed tower were to be approved, impacting my property and all properties in the immediate area.

We propose to you, our Trustees, that the language of this BZA decision letter is typical bureaucratic boilerplate and fails on its face to actually reflect the reality of the situation we have here.

We firmly believe that due diligence by the BZA and its solicitor was not done in this case. It is clear to us that neither GPD Group nor AT&T has met the intent of our officials, as established in the Zoning Resolution's stated purpose. This is most forcefully seen in the failure to address the proposed tower's impact on our citizens' property values and health, welfare, and safety.

There is little doubt, at this tower's current proposed location, my family and others will experience a significant depreciation of property values, likely harmful health effects, and other foreseeable undesirable impacts. Wide-ranging adverse effects are well documented in voluminous research conducted throughout the United States and overseas. For example, there is incredibly overwhelming evidence of the adverse impact on real estate property values.[3]

I am formally requesting the following actions be taken by the Trustees:

1. Reverse the "*area variance*" and "*conditional use permit for construction of a cellular tower*" decision issued by the BZA on 21 October to GPD Group until such time that location-specific alternatives are properly explored (primarily related to the declining property values issue, and health, welfare, and safety).
2. To prevent future problems like this, update the township's zoning resolution to achieve state-of-the-art, modern standards that can better guide elected official decision-making on Wireless Cell Towers. A comprehensive, modern example can be found in the Town of Hempstead, NY.[4]

For the record, my wife Shannon and I are joint property owners within Penfield Township, and we are strongly opposed to the proposed GPD Group / AT&T Mobility Wireless Cell Tower.

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[3] Survey by the National Institute for Science, Law & Public Policy Indicates Cell Towers and Antennas Negatively Impact Interest in Real Estate Properties, July 3, 2014: https://www.businesswire.com/news/home/20140703005726/en/Survey-National-Institute-Science-Law-Public-Policy#.VNRBPp3F_So

[4] Town of Hempstead, NY, Nassau County, Chapter 142 Wireless Telecommunications Facilities: https://www.businesswire.com/news/home/20140703005726/en/Survey-National-Institute-Science-Law-Public-Policy#.VNRBPp3F_So

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I request that this letter be entered into the official public record.

Thank you for your forthright consideration and your dedicated service to our community.

Very Respectfully,

Scott R. Shrader
Colonel, U.S. Army (Retired)
38560 Jones Road
Litchfield, OH 44253
srs.shrader@gmail.com

Encl: Annex A – Incurable, External Obsolescence (Local Property Values Analysis)
Annex B – "Article 7.2 CONDITIONALLY PERMITTED USES"
Annex C – Copy of BZA letter titled, "Penfield Township Board of Zoning Appeals (BZA) decision on a Conditional Use Permit for construction of a cellular tower and an Area Variance for the rear setback on PP# 19 02 059 000 026, Jones Road, Penfield Township, Lorain County, Ohio," dated 21 October 2020.

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ANNEX A: Incurable, External Obsolescence (Local Property Values Analysis)

Surveys conducted by Real Estate organizations, the National Institute for Science, and other universities and interested parties, have overwhelmingly concluded that buyers and renters are less interested in properties located near cell towers and antennas, as well as in properties where a cell tower or group of antennas are placed on top of or attached to a building.

The consistent conclusion is that cell towers and antennas in a neighborhood would impact interest in a property and the price buyers would be willing to pay for it. Most respondents to surveys (generally over 75% of them) say that under no circumstance would they purchase or rent a property within a few blocks of a cell tower or antennas.

These studies have concluded that property values decline when a cell tower or antenna is located nearby. Buyers typically pay as much as 20% less.

Locally, two local properties can be found that fall into this category and are used to illustrate:

1. Property located at 37200 State Route 303, Grafton, OH 44044 would have listed for $250,000 and sold for around $240,000. However, a nearby cell tower reduced the purchase price from an asking of $220,000 to a final selling price of $210,000.[5]
2. Another property located at 40500 Parsons Road, Lagrange, OH 44050 would have listed for $325,000 and sold for $300,000 plus. The property was on the market for over 200 days. It also was located near a cell tower. It finally sold for $282,000.[6]

Real Estate professionals call this problem an "*incurable, external obsolescence.*" In other words, there is a loss of value on a property due to forces outside the boundaries of the property. The diminished utility of a property due to negative influences from outside the site, is incurable (i.e., cannot be fixed). External obsolescence can be caused by a variety of factors such as, neighborhood decline, the property's location in a community, state or region, or market conditions. Appraisers are taught to consider such factors in determining market value for a property.

In these two examples, we see that the value of Property #1 declined from approximately $250,000 to $210,000; a 16% loss of value. Property #2, the decline was from $325,000 to $282,000, a 13% decline.

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[5] https://portal.onehome.com/en-US/property/sold-320591114-YES-MLS?token=eyJPU0lOIlZRVMtUxIlwidHlwZSI6IjA0LCJzZXRpZCI6IjExNTkzMzgyNCIsInNldGdlcSI6IjY2MiIsImVyYWlsIjoiZHNhdHO1OGdOYWsLmNvbSIsInIk291cmNlaWOIOjAsImFnZW50aWQiOjHNTg1MX0%3D&searchId=85fda9c1-0051-35cc-8080-94f309140e34

[6] https://portal.onehome.com/en-US/property/sold-242191922-YES-MLS?token=eyJPU0lOIlZRVMtUxIlwidHlwZSI6IjA0LCJzZXRpZCI6IjExNTkzNDAwNSIsInNldGdlcSI6IjY2OSIsImVyYWlsIjoiZHNhdHO1OGdOYWsLmNvbSIsInIk291cmNlaWOIOjAsImFnZW50aWQiOjHNTg1MX0%3D&searchId=46ae11fc-5328-3238-8d13-d1549d1027c

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ANNEX B:

Article 7.2 CONDITIONALLY PERMITTED USES
GENERAL STANDARDS APPLICABLE TO ALL 7.2 CONDITIONAL USES (Effective 01JAN2016)

D. Wireless communications shall be a conditionally permitted use upon approval of the Penfield Township Board of Zoning Appeals, subject to the following Conditions: (Revised 5/16/06)

1. Minimum lot size frontage shall be 250'
2. Minimum yard requirements for tower:

Front yard setback: The height of the tower plus 300'
Side yard setback: The height of the tower plus 10% or the minimum distance of 200' from any residential district lot line, whichever is greater.
Rear yard setback: The height of the tower plus 10% or the minimum distance of 200' from any residential use or residential lot line, whichever is greater.
Minimum yard requirements: Accessory shelter:
Front yard setback 300'
Side yard setback 100'
Rear yard setback 200'

3. Maximum height:

Tower - 300 feet (includes antenna)
Accessory building - 25 feet

4. Maximum size: Accessory building - Total building space shall not exceed 750 square feet. If there are multiple users then the equipment must be sheltered in a single building unless the applicant can show a technical necessity for a separate building in which case multiple building must be designed to have the appearance of a single building.
5. Access - The service access to the Accessory building shall, wherever feasible, be provided along the circulation driveways of the existing use.
6. Lights: Lights must be on any tower at 100 feet and at 50 feet intervals after that. (Effective 11/16/01)

Last Accessed: 30 October 2020
http://www.penfieldtownship.com/PDFs/CompleteRes.pdf

Penfield Township Board of Zoning Appeals

Jackie Johnson – Chair

Ken Koubek

Dean Bremke

Eric Gnandt

Dave Lenzer

Board of Zoning Appeals Decision

Hearing date: October 21, 2020

Re: Penfield Township Board of Zoning Appeals (BZA) decision on a Conditional Use Permit for construction of a cellular tower and an Area Variance for the rear setback on PP# 19 02 059 000 026, Jones Road, Penfield Township, Lorain County, Ohio.

GPD Group, Paul Johnston, 1801 Watermark Drive, STE210, Columbus, OH 43215 and Richard L. Wolf, 411 East Main Street, Spencer, Ohio 44275 (parties named on application) sought a conditional use permit for the construction of a telecommunications tower and a 45.5 foot variance for the rear set-back.

As the Chairperson of Penfield Township Board of Zoning Appeals, I am writing to notify you of the BZA's decision on the above referenced matter. In accordance with ORC 519.211 and the Penfield Zoning Resolution Articles 7.2, General Standards applicable to all 7.2 Conditional Uses, 7.2 D, Wireless Communications and Article 14.4, part 2, for granting an Area Variance, the BZA's decision is as follows:

On the above date, the Board of Zoning Appeals voted unanimously to grant the conditional use permit and the requested area variance.

In support of the conditional use permit the BZA referred to article 7.2 in the Penfield Township Zoning Resolution for general standards applicable to all 7.2 conditional uses.

1. The permit would be harmonious with the Lorain County Comprehensive Plan, the Penfield Township Comprehensive Plan and the Penfield Township Zoning Resolution.

2. It is a conditionally permitted use in the district where the permit is sought and complies with the zoning resolution.
3. The proposed tower will be designed, constructed and maintained as to be harmonious as possible with the general vicinity.
4. It will not be hazardous or disturbing to existing or future neighborhood uses.
5. The tower will be served adequately by essential public facilities.
6. The tower will not create excessive public cost for facilities and service.
7. The tower should not be detrimental to persons, property or the general welfare by reason of excessive traffic, noise, smoke, dust, fumes, heat, glare, or odors. No equipment or process should be used which creates a visual or audible interference in any radio, television receivers or computers off the premises or cause fluctuation in line voltage off the premises.
8. Vehicular approaches will not interfere with traffic.
9. The tower will not result in destruction, loss, or damage of any natural, scenic or historic feature of major importance.
10. All applicable regulations and statutes to operate the business shall be met and certification of such compliance by the appropriate official shall accompany the application.

In support of the BZA's decision for the area variance the "practical difficulties" test was considered.

1. The property would yield a reasonable return without the variance.
2. The variance was considered substantial to the adjoining property directly west.
3. The essential character of the neighborhood would be altered. Unfortunately there is another smaller (190') tower within a mile of this proposed tower.
4. The variance would not adversely affect the delivery of governmental services.
5. The property owner did not purchase the property with the knowledge of the zoning restriction.
6. The property owner's predicament can be obviated through some other method other than a variance.
7. The spirit and intent behind the zoning requirement would be observed.

The board discussed all of the above items as a guideline to making our final decision. The applicant offered professional, informative facts to support the application. The opponents presented many concerns and some were answered by the applicant. There were other concerns voiced by the opponents but the current zoning law does not allow the board to entertain those concerns. Exhibit A was offered by Scott Shrader at the hearing.

After weighing and balancing the evidence presented during the hearing and applying the necessary codes and articles, the BZA determined that the application for the construction of the tower meets the necessary requirements.

Please be advised that this is a final decision and any appeal must be filed within thirty (30) days of this decision in the Lorain County Court of Common Pleas.

Sincerely,

Jackie Johnson

Jackie Johnson

Board of Zoning Appeals Chair

Vicki Nemes

Eric Flynn

Richard Conrad

Duane Johnson