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**NOTICE
OSHTEMO CHARTER TOWNSHIP
PLANNING COMMISSION**

SPECIAL MEETING – VIRTUAL

(Refer to the www.oshtemo.org Home Page for Virtual Meeting Information, or page 3 of the packet)

**Thursday, July 16, 2020
6:00 p.m.**

AGENDA

1. Call to Order
2. Roll Call
3. Pledge of Allegiance
4. Approval of Agenda
5. Approval of Minutes: July 9th, 2020
6. Written Justification for Denial: Special Use, Pathway Solutions Communication Tower
7. Public Comment
8. Other Updates and Business
9. Adjournment

**Policy for Public Comment
Township Board Regular Meetings, Planning Commission & ZBA Meetings**

All public comment shall be received during one of the following portions of the Agenda of an open meeting:

a. Citizen Comment on Non-Agenda Items or Public Comment – while this is not intended to be a forum for dialogue and/or debate, if a citizen inquiry can be answered succinctly and briefly, it will be addressed or it may be delegated to the appropriate Township Official or staff member to respond at a later date. More complicated questions can be answered during Township business hours through web contact, phone calls, email (oshtemo@oshtemo.org), walk-in visits, or by appointment.

b. After an agenda item is presented by staff and/or an applicant, public comment will be invited. At the close of public comment there will be Board discussion prior to call for a motion. While comments that include questions are important, depending on the nature of the question, whether it can be answered without further research, and the relevance to the agenda item at hand, the questions may not be discussed during the Board deliberation which follows.

Anyone wishing to make a comment will be asked to come to the podium to facilitate the audio/visual capabilities of the meeting room. Speakers will be invited to provide their name, but it is not required.

All public comment offered during public hearings shall be directed, and relevant, to the item of business on which the public hearing is being conducted. Comment during the Public Comment Non-Agenda Items may be directed to any issue.

All public comment shall be limited to four (4) minutes in duration unless special permission has been granted in advance by the Supervisor or Chairperson of the meeting.

Public comment shall not be repetitive, slanderous, abusive, threatening, boisterous, or contrary to the orderly conduct of business. The Supervisor or Chairperson of the meeting shall terminate any public comment which does not follow these guidelines.

(adopted 5/9/2000)
(revised 5/14/2013)
(revised 1/8/2018)

Questions and concerns are welcome outside of public meetings during Township Office hours through phone calls, stopping in at the front desk, by email, and by appointment. The customer service counter is open from Monday-Thursday 8:00 am- 5:00 pm, and on Friday 8:00 am-1:00 pm. Additionally, questions and concerns are accepted at all hours through the website contact form found at www.oshtemo.org, email, postal service, and voicemail. Staff and elected official contact information is provided below. If you do not have a specific person to contact, please direct your inquiry to oshtemo@oshtemo.org and it will be directed to the appropriate person.

Oshtemo Township Board of Trustees		
<u>Supervisor</u>		
Libby Heiny-Cogswell	216-5220	libbyhc@oshtemo.org
<u>Clerk</u>		
Dusty Farmer	216-5224	dfarmer@oshtemo.org
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Zak Ford	271-5513	zford@oshtemo.org
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Township Department Information		
<u>Assessor:</u>		
Kristine Biddle	216-5225	assessor@oshtemo.org
<u>Fire Chief:</u>		
Mark Barnes	375-0487	mbarnes@oshtemo.org
<u>Ordinance Enf:</u>		
Rick Suwarsky	216-5227	rsuwarsky@oshtemo.org
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Karen High	216-5233	khigh@oshtemo.org
Rental Info	216-5224	oshtemo@oshtemo.org
<u>Planning Director:</u>		
Iris Lubbert	216-5223	ilubbert@oshtemo.org
<u>Public Works:</u>		
Marc Elliott	216-5236	melliott@oshtemo.org

Zoom Instructions for Participants

Before a videoconference:

1. You will need a computer, tablet, or smartphone with a speaker or headphones. You will have the opportunity to check your audio immediately upon joining a meeting.
2. If you are going to make a public comment, please use a microphone or headphones with a microphone to cut down on feedback, if possible.
3. Details, phone numbers, and links to videoconference or conference call are provided below. The details include a link to “**Join via computer**” as well as phone numbers for a conference call option. It will also include the 11-digit Meeting ID.

To join the videoconference:

1. At the start time of the meeting, click on this link to [join via computer](#). You may be instructed to download the Zoom application.
2. You have an opportunity to test your audio at this point by clicking on “Test Computer Audio.” Once you are satisfied that your audio works, click on “Join audio by computer.”

You may also join a meeting without the link by going to [join.zoom.us](#) on any browser and entering this **Meeting ID: 859 1783 6607**

If you are having trouble hearing the meeting or do not have the ability to join using a computer, tablet or smartphone then you can join via conference call by following instructions below.

To join the conference by phone:

1. On your phone, dial the toll-free teleconferencing number: **1-929-205-6099**
2. When prompted using your touchtone (DTMF) keypad, enter the Meeting ID number: **859 1783 6607#**

Participant controls in the lower-left corner of the Zoom screen:



Using the icons at the bottom of the Zoom screen, you can (some features will be locked to participants during the meeting):

- Participants – opens a pop-out screen that includes a “Raise Hand” icon that you may use to raise a virtual hand. **This will be used to indicate that you want to make a public comment.**
- Chat – opens pop-up screen that allows participants to post comments during the meeting.

If you are attending the meeting by phone, to use the “Raise Hand” feature **press *9 on your touchtone keypad.**

Public comments will be handled by the “Raise Hand” method as instructed above within Participant Controls.

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**OSHTEMO CHARTER TOWNSHIP
PLANNING COMMISSION**

DRAFT MINUTES OF A VIRTUAL MEETING HELD JULY 9, 2020

Agenda

PUBLIC HEARING: SPECIAL USE, PATHWAY SOLUTIONS COMMUNICATION TOWER

Pathway Solutions, on behalf of Kelly Verhage-Mallory and Kevin Verhage, is requesting Special Use and Site Plan approval to erect a 199-foot tall communication tower at 8619 W. ML Avenue.

PUBLIC HEARING: REZONING FROM “AG”, AGRICULTURAL DISTRICT TO “R-R”, RURAL RESIDENCE DISTRICT

James Endres, Trustee of the James and Marilyn Endres Trust, is requesting to rezone approximately 11.6 acres of the property at 9037 West G Avenue from the “AG” Agricultural District to the “R-R” Rural Residence District of the Oshtemo Charter Township Zoning Ordinance.

A virtual meeting of the Oshtemo Charter Township Planning Commission was held Thursday, July 9, 2020, commencing at approximately 6:00 p.m.

ALL MEMBERS

WERE PRESENT: Bruce VanderWeele, Chair
Ron Commissaris
Dusty Farmer
Micki Maxwell, Vice Chair
Mary Smith
Anna Versalle
Chetan Vyas

Also present were Iris Lubbert, Planning Director, James Porter, Township Attorney, Josh Owens, Assistant to the Supervisor, and Martha Coash, Meeting Transcriptionist.

In addition, Robert LaBelle, Attorney for Pathway Solutions, Matthew Kundert, Project Lead for Unwired Consulting, Richard Comi, Consultant from the Center for Municipal Solutions, James Endres, applicant, and Shelby Burton, resident were in attendance.

Call to Order and Pledge of Allegiance

Chairperson VanderWeele called the meeting to order at approximately 6:00 p.m. and invited participants to join in the Pledge of Allegiance.

Approval of Agenda

Hearing no suggestions for change, Chairperson VanderWeele let the agenda stand as presented.

Approval of the Minutes of the Meeting of June 11, 2020

The Chair asked if there were additions, deletions, or corrections to the Minutes of the Meeting of June 11, 2020. Hearing none, he asked for a motion.

Mr. Commissaris made a motion to approve the Minutes of the Meeting of June 11, 2020 as presented. Ms. Smith seconded the motion. The motion was approved unanimously by roll call vote.

Chairperson VanderWeele moved to the next agenda item.

PUBLIC HEARING: SPECIAL USE, PATHWAY SOLUTIONS COMMUNICATION TOWER PATHWAY SOLUTIONS, ON BEHALF OF KELLY VERHAGE-MALLORY AND KEVIN VERHAGE, IS REQUESTING SPECIAL USE AND SITE PLAN APPROVAL TO ERECT A 199-FOOT TALL COMMUNICATION TOWER AT 8619 W. ML AVENUE.

Chairperson VanderWeele asked Ms. Lubbert for her presentation.

Ms. Lubbert noted this was a continued public hearing from the Planning Commission's June 11th meeting for a proposed communication tower, at 8619 W ML Avenue – the property known by many in the community as the VerHage Fruit Farms and Cider Mill – located south east of the South 4th Street and W ML Avenue intersection. Pathway Solutions, with the consent of the owners of the property, have requested these public hearings with the Planning Commission in order to pursue the site plan and special use approvals required to construct a communication tower at this location.

She added that since the June 11th meeting the applicant submitted additional information and modified their proposal in response to both staff and Planning Commission concerns. She said she would provide a quick overview of the proposal and its history, but would mainly focus on the new information provided. A full analysis was included in the staff report provided for this meeting, starting on page 23 of the packet.

Ms. Lubbert explained that when reviewing a submittal for a communication tower there are three sections of the code that the proposal needs to be evaluated against. These sections pertain to site plan review and the special use requirements that have been adopted by the township for communication towers. Although communication towers have special protections from the Federal Government and the

Federal Government dictates some of what can be done, municipalities have been granted a level of control over the placement, construction, and modifications of wireless service facilities within their jurisdictions. She said at the June 11th Planning Commission meeting she walked through each of these three sections and touched on how the application either met or came short of the outlined requirements. For the benefit of the Commission and the public she said she would give a quick summary of each. However, she said despite the new information provided, overall the evaluation for the submittal has remained the same from the last meeting – the application is still incomplete. In essence there are still the same major concerns: 1. no need for this tower or its proposed height has been adequately demonstrated and 2. The applicant has not shown that co-location could not be accommodated on existing towers within the township.

She said the site plan elements of the original proposal presented to the commission in June shows a 254-foot-tall unmanned lattice tower that would be built within a 60' by 100' lease area within 8619 W ML Ave. All general site plan requirements of the code have been met (which include but are not limited to setbacks, landscaping, and parking).

In response to the concerns expressed from staff and the commission, the applicant made some changes to their proposal. The new plan under consideration is for a 199 foot tall unmanned monopole tower. With the proposed tower now under 200', no lighting is required by the FAA and lighting has been removed from the proposal. Aside from the change in height, removal of lighting on the tower, and modification of the type of tower, the proposed site plan remains the same. Although the proposal is an improvement, staff and the Township's consultant still have some major concerns and questions about the proposal which are captured in the Special Use analysis criterion.

Ms. Lubbert said Section 65.30 of the code outlines the general requirements that need to be met for any special use request. She highlighted areas of the criteria this application has not met. She said she wouldn't go through all of those – additional information can be found in the staff report. The first topic that needs to be considered when reviewing a special use request that comes to the Planning Commission is whether the proposal is consistent with the Township's Zoning Ordinance and Master Plan. The Township's Zoning Ordinance allows for the construction of communication towers within the Township as long as a need for the tower is demonstrated and the Code provides legal tools and criteria to review the proposal against. The applicant noted within the application and has stated that they are a wireless internet service provider. They shared at the June 11th meeting that their company is based in Iowa where they currently have one communication tower. The applicant reasons that the proposed tower is needed at the proposed location as Pathway Solutions currently has no existing systems in the area. The applicant went further in their comments at the June 11th meeting noting they have no existing systems or service in Michigan at all. In response to the questions of need and what service this area does or does not have from the June 11th meeting the applicant has provided line of site plots.

In essence, she said these maps show how far someone at the top of the proposed tower would be able to see. However, wireless internet is not a line of sight service, meaning that you do not have to see the properties in order for them to be serviced. The provided line of sight maps do not answer any of the questions posed by staff or the Commission in terms of service or lack thereof and do not show need. She also noted the red areas shown on these maps go well beyond the applicant's noted 3 mile radius service area.

She said since the June 11th meeting staff has done some additional research. In order to get a sense of internet coverage in the area they looked at the government resource broadbandmap.fcc.gov. This source shows in a given area the number of residential broadband/internet providers - which include but are not limited to services technologies including ADSL, Cable, Fiber, Fixed wireless, and Satellite services. According to these maps Oshtemo Township currently has more broadband/internet providers than other neighboring areas in Michigan. When looking at the specific area of the proposed tower, there appears to be access to 3 or more broadband/internet providers.

Ms. Lubbert said staff also worked with the Township's Assessing Department to identify the six existing communication towers within Oshtemo Township. The applicant claims their proposed tower would have a service radius of about three miles. There are three existing towers within the proposed tower's service area. Again, she said, no documentation has been provided as to why the applicant could not co-locate their services onto one of these towers. It is also unclear why the applicant could not start to provide their services and build their network in Oshtemo, and really anywhere else in Michigan, without using any existing infrastructure.

In summary, she said it is still unclear what need is being fulfilled and if this tower is necessary. No need for the proposed tower has been demonstrated.

Looking at impacts, she said the amended proposal decreases the tower's height from 254 feet to 199 feet which is a visual improvement. For reference, the existing METC transmission towers located south of the proposed site are approximately 90 feet tall, now 45% (instead of 35.4%) of the height of this proposed facility, and are not lighted. However, even with the decrease in height the METC transmission towers are still under half of the height of this proposed facility. At the Planning Commission meeting on June 11th the applicant noted that before they approached the township their original plan was for a 300-foot tall tower but that they decreased it to 254 feet when they made application. With this resubmittal, the applicant has again shortened the tower. It raises the question of whether the tower could be made even shorter to better assimilate into the environment. Still no documentation has been provided to show need for the original or the newly proposed tower's height.

Section 49.70 outlines the specific special use requirements of the code for communication towers. There is a lot of overlap in this section with the last and again she said she would just touch on some of these – overall the analysis remains the same

between this and the previous analysis presented to the commission. She noted again that a full analysis could be found in the staff report provided in the packet provided for this meeting.

First criteria – she said justification has still not been properly addressed as elaborated on earlier. No need for this tower has been shown.

She said in looking at design in the applicant's resubmittal, the design of the tower has been changed to a monopole style tower rather than a self-support lattice tower. The tower design remains grey in order to "blend better to the typical Michigan sky". The newly proposed design does visually blend in better than the original design. However, the proposed tower is still more than twice as tall as the existing METC transmission towers to the south of this proposed facility and would visually stand out. If possible, a shorter tower would be preferred. Again despite the decrease in height no engineering documents were provided as to why this height is necessary. This raises the question of whether the tower could be designed even shorter. With the decrease in tower height the applicant has also modified the distance between service providers on the tower from 15 to 10 feet.

In terms of lighting, she said it is true that due to the decrease in height of the proposed tower to under 200 feet, lighting is no longer required by the FAA and has been removed from the proposal. However, if this tower is approved, a co-locator would be allowed to increase the structure's height by 10% or 20 feet, whichever is taller, without proof of need and without application approval. It would be considered an "eligible facility". A co-location of this nature would then trigger lighting to be installed at that time – as the tower would then be above 200 feet. Without written assurance from the applicant, lighting for the proposed tower would still come into play, just at a later date.

She provided the remaining criteria for this section of the code and noted it includes one of the most important criteria for this review which requests specific documentation supporting the rationale of the request. The applicant has been asked on multiple occasions to provide documentation outlining the reasoning for this tower (Why this location? Why this height?). Although the applicant has responded, the information provided is continually inadequate. Several requests to discuss the proposal with Pathway Solutions and/or Unwired Consulting by Oshtemo's consultant were unsuccessful. Subsequent to the June 11th Planning Commission meeting the applicant has been in communication with the Township Attorney. However, there has still been no direct communication with the Township Consultant, Richard Comi.

She concluded, saying it is for these reasons, including those she did not touch on in this presentation but are outlined in the staff report, that staff still recommends denial of the approval of the proposed communication tower. She asked Mr. Richard Comi, Consultant from the Center for Municipal Solutions, to share his additional comments and questions which he would like the Commission to consider with this proposal.

Mr. Comi noted the applicant provided additional information indicating they would lower the proposed tower from 254 to 199 feet and that the tower would be a monopole rather than a lattice tower.

He indicated documentation regarding provision of wireless internet service (WIS) to a 3 mile radius is void in the application. None of the technical issues are present regarding proof of need, wireless customers in the area, percent of customers, communication to the world from the tower equipment, why a three mile radius. There are three existing towers in the area. Pathway Solutions does not have internet service anywhere in the State of Michigan.

Mr. Comi said no one from Pathway Solutions, designer or attorney, tried to contact him to ask what type of additional information he felt would be necessary to provide high speed internet from this site. He said Verizon, for example, could co-locate on this tower without any specifications to provide reliable service. Once this application is approved, in the future the Board would have to approve co-location. No documentation of co-location or how provision of high speed internet has been addressed. He recommended the Planning Commission deny the applicant's request.

Chairperson VanderWeele asked if there were questions from Commissioners.

Mr. Vyas asked for further clarification on future co-location.

Mr. Comi said once the proposed tower from Pathway is permitted, Verizon could co-locate on the tower at that height or at 10% or 20 feet higher, whichever is greater, and the Board will not be able to ask Verizon why they need that height. By law the Board would have to allow them to co-locate.

Mr. Vyas said we do not want to sound like we are hindering development. Could other companies do the same – is Verizon just an example?

Mr. Comi agreed Verizon was used as an example; other companies could do the same.

Chairperson VanderWeele asked if the applicant wished to speak.

Attorney LaBelle said the new proposal addresses several issues raised at the last meeting. Because the tower is reduced to 199 feet, no lights will be needed above the ground level so there will not light issues as raised by community members. He said the shorter concept reducing the tower height will sacrifice coverage area, but was done to provide a better compromise – reliability and reduced service area vs. concerns. Those were reduced because of lighting concerns and the lattice tower (big and wide) was changed to a monopole to provide a limited profile. The monopole will be like a large telephone pole rather than the lattice which would resemble a large oil derrick. It will be more compatible and less obtrusive. However, the height reduction will reduce the service area.

He said neither the Telecommunications Act nor Oshtemo Township ordinance require that “need” be demonstrated. Both address a “gap” in service coverage. The 6th circuit said an applicant needs to show a gap in coverage, not a need. One goal from the Telecommunications Act is to encourage/foster competition between WIS providers.

Attorney LaBelle said the FCC Broad Band Map showed MEI is the only wireless provider in the area but they do not provide service in the area being considered by Pathway, which would provide additional competition. They cannot be prevented from development based on “need.” Regulations do not set in stone a monopoly by the first party in.

He said there are three other towers on the map in the area where they want to provide a tower. The target area for service is a three mile radius. Other points on a map provided by staff show the closest tower is 2.1 miles away, which moves to a different area than what Pathways is targeting. No board gets to make business decisions for a company. This is the area they chose. They may try to provide service to that area later, but the area they chose is their target area.

The Attorney said many people pointed out the lack of cellular phone service in this area. Other towers shown on the map are not accomplishing service now. Case law says all that is required is a gap in coverage. They have provided evidence of that.

He spoke of different analyses for line of sight maps as compared to propagation maps. Cell providers try to measure decibels at ground level. Getting a signal to a user is a matter of line of sight. The FCC website explains the types of broad band connections: DSL cables, modem, cyber and wireless. He said direct line of sight/near line of sight means what you see is what you can serve. Line of sight is a “term of art.” There is no such thing as a propagation map. Such a map could be misinterpreted.

In response to Mr. Comi, he said WIS technical information is proprietary, that the Township’s ordinance does not require that information and so it was not provided. If provided, they would, in effect, be providing their information to competitors. He indicated they wouldn’t spend hundreds of thousands of dollars to put up a tower that does not work.

He cited the 6th circuit court interpretation of “supported by substantial evidence.” Consistent, unobtrusive, clutter means if it’s ugly it cannot go there. More low towers are needed to cover the same service area as higher towers. More substantial evidence is needed than “I don’t want to see it.” The burden of proof is on the party denying application to provide substantial evidence for denial.

Attorney LaBelle said there is a lack of coverage in an area of the township which cellular phone providers and public members have described. He knows of interest in the site by Verizon. He noted that you will see a tower here one day for cell phone providers. He said the opportunity now is to have a hand in the tower design. We are looking at a monopole, 600 feet from the road, in an orchard, so it will be less obtrusive.

If a cell phone company finds you have denied an application they will come with a fight for the biggest tower they can get. If you approve this tower, others will have to go on it by law. The next provider will not have an incentive to work with you. We listened to you and have made changes. Cell phone providers will want to be close to the road and will not want to be hidden in trees. He said if this tower is put in, providers can be compelled to co-locate. He said Pathway was willing to waive permission to increase the size of the tower. They have no interest to make the tower larger or for it to be lighted. He urged Commissioners to approve the tower request that they have helped to design in a less intrusive way.

Chairperson VanderWeele asked if there were questions from Commissioners.

Mr. Vyas commented the Township had hired Mr. Comi as their consultant and asked if it was not appropriate for the applicant to review the project with Mr. Comi.

Attorney LaBelle said they want discussions with Mr. Comi documented in writing rather than communicating by phone. If Mr. Comi put his questions/comments in writing he would be happy to answer. He would also be willing to have phone calls recorded to document what is going on.

Mr. Vyas noted many meetings are now being held on the internet. The Township has paid a consultant. He should have communication with Mr. LaBelle.

Attorney LaBelle said they have provided all the information needed and feel their application is complete. They do not need to demonstrate "need." They believe the time for approval has already expired. He said they opened the door to Mr. Comi three times for communication in writing. He indicated he has heard Mr. Comi's questions at two meetings and did not think he would have provided any other information if he had communicated with him. All the information required by ordinance has been provided.

Mr. Comi responded, saying he was not interested in tit for tat, but had been hired by the Township and wanted to provide the expertise for which he was hired. The comments Attorney LaBelle made said they would spend hundreds of thousands of dollars to build a site in a rural area, with no description of clients for high speed internet in order to provide revenue to Pathway. The only way for revenue to pay for it is to have cellular service on the tower which would provide monthly income. There is nothing that shows why they require a 199 foot tower. What does that do for their WIS? How is WIS justified at this site? Pathway's "gap" is the entire state of Michigan. They do not provide any service in the State. There is no documentation that the three existing Township tower sites cannot provide wanted service.

He said the "proprietary" technical information Attorney LaBelle referred to not wanting to share was no problem. Mr. Comi would be happy to sign a non-disclosure agreement. He said he would not say that a tower may not be needed in a reasonable time frame in the future in this area, but right now, in his opinion, a WIS 199 foot tower is not needed. Though there are two line of sight maps, they do not show the number of

residents to be served. The WIS tower request in front of the Planning Commission is not justified.

Mr. Commissaris noted the 245 foot tower was listed as covering a radius of 300 feet; he wondered what the coverage was for the 195 foot tower.

Attorney LaBelle said the coverage shrinks. The three mile range is a “rule of thumb.” WIS is different than cellular phone service. WIS depends on the breadth of service as well as the number of users, which is not true of cell phones. They are not the same.

Mr. Commissaris asked Attorney LaBelle how many households could be served. The only area per the maps is in the extreme southwest part of the area of the circle he says will be provided, part of which may not even be in the Township. There is no map of the other towers.

Mr. Kundert said it also matters where the target area is. Sectorization means 3-4 sites can all carry traffic. With three sectors you lose 66% capacity; with four you lose 75%. They are trying to cover the rural access.

Ms. Farmer said there was a lot of conflicting information here. Line of sight has been used which is not the same as the number of users. Surrounding tower comments were about cellular service, not WIS.

Mr. Kundert said coverage is spotty, with calls being dropped. There would be better luck covering at a lower height.

Ms. Farmer said that did not make sense to her.

Attorney LaBelle said the only reason they are referring to cellular service at all is because at some point cell phone providers will want to come in and you have to plan for it. The likelihood is that cell phone providers will want to locate there in the future. Take into consideration the whole, now and later.

Mr. Comi said the facility cost of a few hundred thousand dollars will require a high number of WIS users. He has not seen a certain number of customers identified, but Attorney LaBelle has talked about cell carriers on a tower – they pay \$2,000 - \$4,000 a month. The only way to pay for this project is with future carriers. What is in front of the Commission is not a request for a cellular phone tower, it is for wireless internet service and to justify why they need this height at this location.

Attorney LaBelle said it is not against the ordinance to have co-location opportunities and profits. The service gap has been justified under the ordinance. It has to be shown the proposed tower cannot be accommodated on existing towers to cover the area they are proposing according to the Township’s ordinance.

Chairperson VanderWeele moved to a public hearing.

Ms. Shelby Burton, 4040 N. 3rd Street, said she found the discussion interesting. As an Oshtemo Township resident she does not want to see the Township go to multiple towers all over the place. She does not like towers, but she likes being in the countryside, and would like to limit towers.

Attorney Porter said that Attorney LaBelle has stated his case quite well. He reviewed the 6th Circuit Court decisions with regard to this issue and 37.USCA section 332 which addresses any personal wireless service, and said the Planning Commission decisions cannot have the effect of prohibiting personal wireless internet services. The Commission's decision has to be supported by substantial evidence. Substantial evidence is what most people would understand as something that has weight to it.

He added that looking at the word "gap," that word is not used in the ordinance, different words are used, but he agreed with Attorney LaBelle that a significant gap in service has to be shown and you have to show a reasonable inquiry into the feasibility of the facilities and site location.

The Planning Commission must take all the information provided and make a determination whether or not it thinks Pathways made their case or whether it is felt there is substantial evidence that they didn't provide sufficient information for their locations or that there wasn't evidence of a significant gap.

It is an easy task to identify a gap in cellular phone coverage. It is sort of like looking at a donut with a hole in the middle. If the hole was the place you couldn't cover with cellular service in the donut, it would be simple to say there's the hole in the donut.

He could not find a case that said you could choose to go wherever you need to go to provide internet service or any other service. Commissioners will have to weigh the facts presented to determine whether they believe there is a gap in service here and that's the job as a Planning Commission, to determine whether the proposal meets the other provisions of the ordinance.

Hearing no further comments, Chairperson VanderWeele closed the public hearing and moved to Board Deliberations.

Ms. Farmer said this is really different for her. The only time she can think of other uses being considered when making a decision is when zoning requests are sought; comparable areas are taken into consideration. Other uses are in consideration now. She said her head says only the proposed should be looked at and even the applicant cannot tell us if there is a gap in service for the use they are proposing.

Ms. Smith said Commissioners should not consider what might come along in the future, only what is in front of them at this moment.

Chairperson VanderWeele said he thinks he would approve the request, is not comfortable with the staff recommendation to deny. The fact that Pathway's costs cannot be justified is not the Commission's problem.

Mr. Vyas expressed concern that the applicant has not worked with Mr. Comi, the Township's consultant. He wants a recommendation from Mr. Comi before he makes a decision. He is comfortable with other providers coming into the area to provide better service, but feels the consultant's opinion is needed. If there is no discussion between Mr. Comi and the applicant, what good is done and why are we spending funds on a consultant if there is no discussion with the applicant?

Ms. Maxwell reminded the group she is recused from this request and could not speak.

Mr. Commissaris said Pathway says WIS is needed in the area yet he sees we already have very good coverage with the existing providers already there, so he did not see where the need is.

Ms. Farmer said at a first reading she thought because the area was rural there was no service, but her mind was changed after feedback from residents about service and coverage; that's what she would base her decision on, including the evidence on the map that there is coverage there from competing entities.

Ms. Versalle said she was not convinced the existing towers could not co-locate and was not sold on why a tower has to be in this particular location. The concept from Attorney LaBelle that future towers will be built, so let us do it now, felt like bullying and that does not set well with her. Just because it's something that might happen in the future doesn't mean that we have to go ahead and do it now.

Hearing no further comments, Chairperson VanderWeele asked for a motion.

Attorney Porter said he was reading the tea leaves and if the request is denied, the motion needs to make clear that the Commission will reconvene in one week to compile the reasons behind the denial and provide written denial which the applicant is entitled to by FCC requirements. If there is a motion to accept the tower, he would say to move ahead stating your reasons, if not, he would recommend that a motion is passed indicating the reasons for denial of the recommendation for acceptance are based on the recommendations of Mr. Comi, Ms. Lubbert, the Planning Director and the statements set forth in the record of this meeting. Findings and a recommendation must be prepared and a meeting held within a week to adopt a formal denial and to approve minutes from this meeting at that time.

Ms. Versalle made a motion to deny the request from Pathway Solutions for Special Use and Site Plan approval to erect a 199-foot tall communication tower at 8619 W. ML Avenue, based on the recommendations of Mr. Comi, Consultant, and Ms. Lubbert, Township Planning Director, whose reports and recommendations were

provided to the Planning Commission at their meetings on June 11 and July 9, 2020 and on the statements set forth in the record of this meeting. Further moved was that a special Planning Commission meeting be set for Thursday, July 16 at 6:00 p.m. to adopt a formal written denial to Pathway Solutions to include the recommendations of Mr. Comi and Ms. Lubbert and the statements set forth in this record, and to approve the minutes from this meeting. Mr. Vyas seconded the motion. The motion passed 6 - 0 by roll call vote, with Ms. Maxwell abstaining.

Chairperson VanderWeele moved to the next agenda item and asked Ms. Lubbert for her presentation.

PUBLIC HEARING: REZONING FROM “AG”, AGRICULTURAL DISTRICT TO “R-R”, RURAL RESIDENCE DISTRICT
JAMES ENDRES, TRUSTEE OF THE JAMES AND MARILYN ENDRES TRUST, IS REQUESTING TO REZONE APPROXIMATELY 11.6 ACRES OF THE PROPERTY AT 9037 WEST G AVENUE FROM THE “AG” AGRICULTURAL DISTRICT TO THE “R-R” RURAL RESIDENCE DISTRICT OF THE OSHTEMO CHARTER TOWNSHIP ZONING ORDINANCE.

Ms. Lubbert said this public hearing was for a rezoning request. James Endres, on behalf of the James and Marilyn Endres Trust, was requesting to rezone 11.6 acres of their 123 acre property located at 9037 W G Avenue from Agricultural to Rural residential. The applicant was pursuing this rezoning request in order to create two new parcels: one approximately 7.7-acre parcel 558 feet east of N 3rd Street and another 3.9 acre parcel at the northeast corner of the property. Both proposed divisions would have frontage on W G Avenue. The Agricultural zoning district requires that the minimum size for a new parcel in this district is 40 acres—which is far more than the applicant would like to split off. So for this reason to facilitate the desired land divisions, the two aforementioned portions of the subject property must be rezoned to Rural Residential *before* the land division can be approved by Township staff. If rezoned and eventually divided from the existing parcel, the two new properties will meet the necessary land division requirements for RR which include - minimum road frontage value of 200 feet, the minimum parcel area of 1.5 acres, and will not violate the Township’s 4:1 depth to width ratio. Of the two areas subject to this request, the larger section is currently vacant, while the second, smaller piece of land accommodates a single-family home.

When reviewing a rezoning, she said there are six criteria that need to be considered. The first is the master plan designation – in other words does the proposal follow the adopted vision for this area. The subject property is within an area that is intended to transition to Rural Residential. As described in the Master Plan, Rural Residential includes developments such as low-density housing on scattered sites. The proposed rezoning is in accordance with the Township’s Future Land Use Plan.

Ms. Lubbert explained the next two criteria look at whether the proposal is compatible and consistent with the area. Once a predominately agricultural part of the

Township, Oshtemo has for a number of years been encouraging property owners in the western two thirds of the Township to rezone farmland to the Rural Residential zoning classification to facilitate the construction of single-family homes on parcels larger than what is typically found in other residential zoning districts to the east – reflected in the future land use map. In this quadrant of the Township, the Future Land Use Plan has largely been fulfilled, and most parcels here are zoned Rural Residential. Of the nearly 1,000 properties in this area, only 14 remain zoned for agricultural use. The site under consideration is completely surrounded by medium-sized Rural Residential zoned parcels accommodating single family homes. Recommending approval of the requested rezoning would be consistent with prevailing zoning of the general area and the land use pattern of single family homes.

Regarding infrastructure, she said neither public water nor sewer are present along N. 3rd Street or W. G Avenue in this part of the Township, the closet connection appears to be at the W. H Ave and N 6th Street intersection, and the extension of these services to the area in question is not planned at any point in the foreseeable future. Given the anticipated residential use for the two areas subject to this rezoning request, with one presumably already served by a well and septic system, the absence of utilities here should not in any way impede reasonable land use. Similarly, although the nearby transit network is made up of country roads and un-signalized intersections, the requested rezoning and expected subsequent land divisions will not add undue burden to the existing infrastructure. Existing infrastructure and utilities can accommodate the expected future residential land use.

She explained that zoned for agricultural use, the existing subject parcel is actively farmed and can continue to be used for such. The 7.7-acre portion subject to the rezoning request would be surrounded on three sides by the parent parcel; essentially no impact to neighboring properties is anticipated. Likewise, the 3.9- acre area in the northeast corner already accommodates a single-family home. No change in land use is being proposed there at this time—the neighboring residential properties to the east will likely experience no effects as a result of this rezoning request.

Ms. Lubbert said overall, the rezoning request of these 11.6 acres meets the six criteria when considering a rezoning. It is for this reason that staff recommended that the Planning Commission forward this rezoning request with a recommendation of approval to the Township Board.

Chairperson VanderWeele asked whether there were any questions for Ms. Lubbert.

Mr. Commissaris asked if approval of this request could be considered spot zoning.

Attorney Porter said spot zoning comes into play only if the approval were inconsistent with the surrounding property, which is not the case in this instance.

Chairperson VanderWeele asked if the applicant wished to speak.

Mr. James Endres said he was available to answer questions.

Hearing none, the Chairperson moved to public hearing.

Ms. Shelby Burton, 4040 N. 3rd Street said she was sorry to see this property move from AG to RR, that it was one of her favorite spots on the block.

Mr. Endres said he would keep as much farmland as possible.

Hearing no further comments, Chairperson VanderWeele closed the hearing and moved to Board Deliberations. Hearing no comments from Commissioners, he asked for a motion.

Ms. Farmer made a motion to forward a recommendation of approval to the Township Board for the rezoning of the two areas of 9037 West G Avenue from the AG: Agricultural District to the RR: Rural Residential District for the following reasons:

1. The proposed rezoning is in accordance with the Township's Future Land Use Plan.
2. The requested rezoning is compatible with the surrounding land uses and adjacent zoning classifications.
3. Existing infrastructure and utilities can accommodate the expected future residential land use.

Ms. Smith seconded the motion. The motion was approved unanimously by roll call vote.

PUBLIC COMMENT

There were no public comments. The Chair moved to the next item.

OTHER UPDATES AND BUSINESS

Ms. Lubbert reported the Planning Commission will return to in person meetings, likely with a joint virtual component, in August. She confirmed the 6:00 p.m. July 16 meeting will be conducted virtually and that a packet for that meeting will be ready early next week.

ADJOURNMENT

With there being no further business to consider, Chairperson VanderWeele adjourned the meeting at approximately 7:45 p.m.

Minutes prepared:
July 10, 2020

Minutes approved:
_____, 2020

DRAFT

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July ____, 2020

*Re: Pathway Solutions' Special Use Request
for a Wireless Communication Tower at 8619 West ML Avenue
Parcel No. 3905-05-28-330-010 – Kelly Verhage-Mallory and Kevin Verhage*

This document has been prepared as a substantial written justification for the denial of Pathway Solutions' request to construct a 199-foot wireless communications tower at 8619 West ML Avenue in Oshtemo Charter Township on property owned by Kelly Verhage-Mallory and Kevin Verhage.

The proposal was reviewed by Iris Lubbert, Planning Director of Oshtemo Charter Township, and Richard Comi of The Center for Municipal Solutions, 70 Cambridge Drive, Glenmont, NY 12077. The request for a special use permit was considered by the Oshtemo Charter Township Planning Commission on June 11, 2020, and adjourned for further consideration on July 9, 2020. On July 9, 2020, the Planning Commission passed the following motion:

“To accept the findings and recommendations of the Township Planning Director, Iris Lubbert, as set forth in her report of June 25, 2020, and report of July 2, 2020, to the Planning Commission concerning the Pathway Solutions’ special use application, and to accept the findings and recommendations of Richard Comi of The Center for Municipal Solutions, and

To accept the findings and recommendations to the Planning Commission, and moved to deny the special use request of Pathway Solutions for a communications tower at 8619 West ML Avenue for the reasons set forth in the public record, and

It is further moved that a written statement of denial, incorporating the findings and recommendations of Iris Lubbert, Richard Comi and the findings and determinations of the Planning Commission be prepared for consideration at the Planning Commission’s next meeting for approval and submission by Pathway Solutions.”

On July 16, 2020, the Planning Commission met and approved the minutes of July 9, 2020, and this letter setting forth the basis for denial of the request for a special use permit, which are contained in the written record and set forth herein as more specifically as the basis for this written letter of denial.

Pathway Solutions' application in this case was and remains incomplete. However, at the insistence of the applicant's representative, the Planning Commission agreed to hold a public hearing as set forth above, and in doing so, found substantial evidence that the applicant had not met its burden to justify the requested special use permit. In its determination, the Planning Commission found the following:

Location

- No explanation of location chosen;
- No justification of need; and
- No service is currently provided by the applicant, either within Oshtemo Charter Township or the State of Michigan.

Height

- No explanation why the tower was first conceptualized at 300 feet and then reduced to 254 feet.
- No explanation for the need of a 254-foot tower;
- No justification regarding height to meet need; and
- No explanation as to why 199 feet was proposed as of July 9, 2020.

Limiting Negative Impact

- The 199-foot tower would have a negative visual impact on the rural community;
- At the June 11th meeting, the attorney for Pathway Solutions asked the Planning Commission to keep the hearing open so that Pathway could provide additional material.

- Pathway Solutions' additional material was to reduce the tower to 199 feet, and it provided line of site maps at 254 feet and 199 feet. No justification for the change was provided.

Co-location

- No evidence that the Internet equipment could not be accommodated on existing towers in the Township.

Technical Issues - Service

- No structural analysis regarding TIA/EIA 222 provided;
- No certification that RF emissions would meet FCC Guidelines;
- No evidence of any wireless Internet equipment being provided; and
- No evidence showing that the proposed communication tower would be connected to the Internet to provide wireless Internet service in the area.

Speculation

- No evidence as to the homes or businesses which would be provided wireless Internet service within the service area;
- Applicant acknowledged that AT&T had explored a cell tower at the same location;
- Applicant indicated that Verizon was interested in co-locating at the present site.

The applicant sought to build the largest tower permissible to serve a proposed 3-mile radius with high speed Internet service. The applicant did not provide a clear analysis as to why it chose the tower location and continued to arbitrarily adjust its tower height. In addition, the applicant presented no evidence as to its ability to service this area for its proposed purposes, or the lack of its ability to provide the service on another tower within the community.

Based on the evidence in the record and lack of provided information from the applicant, Pathway Solutions has not justified the requested tower at the requested location, at the requested height to provide wireless Internet service.

The approved decision was unanimously approved on _____, 2020, by the Oshtemo Charter Township Planning Commission.