AGENDA

1. CALL TO ORDER

2. ROLL CALL

3. APPROVAL OF JULY 13, 2017 MINUTES

4. REGULAR BUSINESS
   Deliberations will be held at the end of each case after public comment has been closed. No public comment is allowed during deliberations.

   CASE NO. ZBA 3036  
   Petitioner Ari Rosenthal of Ginsberg Jacobs, LLC, on behalf of Cellco Partnership d/b/a Verizon Wireless, is requesting a reconsideration of ZBA Case 3021, appealing the Site Plan Review Board's decision regarding the denial of a consolidated application for a zoning certificate and building permit, for the collocation of wireless communication antennas, for the property located at 2112 N Linn Street (Parcel Identification Nos. 14-33-378-019 & 14-33-378-020), Peoria, Illinois (Council District 2).

5. CITIZENS' OPPORTUNITY TO ADDRESS THE COMMISSION

6. ADJOURNMENT
If you plan on speaking, please complete a Blue Speaker Form

For each case the following sequence will apply:

1. Chairperson proceeds with swearing in procedures
2. Chairperson announces the case
3. Staff enters case into the record
   a. Staff presents the case
   b. Staff answers questions from the Commission
4. Petitioner presents case and answers questions from the Commission
5. Chairperson opens the meeting to the public
6. Public comments – Chairperson may ask for response/input from staff and petitioner
7. Petitioner presents closing statements
8. Public testimony is closed (No further public comment)
9. Commission deliberates and may consult staff
10. Commission prepares findings, if applicable
11. Commission votes

All comments and questions must be directed to the Commission
A regularly scheduled Zoning Board of Appeals Meeting was held on Thursday, July 13, 2017 at 1:00 p.m., City Hall, 419 Fulton Street, Room 400, with Chairperson Richard Russo presiding.

**ROLL CALL**

The following Zoning Board of Appeals Commissioners were present: Laith Al-Khafaji, Dorian LaSaine, Lon Lyons, Jerry Jackson, Scott Kelsey, Richard Russo, and Nathan Wagner – 7. Absent: None.

**MINUTES**

Commissioner LaSaine moved to approve the minutes for the Zoning Board of Appeals meeting held on June 8, 2017; seconded, by Commissioner Jackson.

The motion was approved viva voce vote 7 to 0.

**REGULAR BUSINESS**

**CASE NO. ZBA 3033**

Hold a Public Hearing on the request of Robert Hall of Miller, Hall & Triggs, LLC for Pamela Mabee, to obtain a variance from the City of Peoria Unified Development Code Section 4.2.4., Building Envelope Standards, to reduce the front yard setback, of a principal structure along Tanglewood Lane, below the required 25 feet (or average of the adjacent) in a Class R-4 (Single-Family Residential) District, for the property located at 4117 N Grand View Drive (Parcel Identification Nos. 14-26-129-006), Peoria, Illinois (Council District 3).

Chairperson Russo noted the petitioner withdrew the request based on the findings of ZBA Case No. 751 from 1958, in which a setback variance was approved.

**CASE NO. ZBA 3034**

Hold a Public Hearing on the request of Lea Anne Schmidgall, of Habitat for Humanity, to obtain a Variance from the City of Peoria Unified Development Code Section 4.2.4. Building Envelope Standards, to reduce the required front yard setback of a principal structure below the required 30 feet a Class R-6 (Multi-Family Residential) District, for the properties located at 1000 NE Monroe, 1002 NE Monroe, and 508 Evans (Parcel Identification Nos. 18-03-309-001, 18-03-309-002, and 18-03-309-017), Peoria, Illinois (Council District 1).

Senior Urban Planner, Kimberly Smith, Community Development Department, read Case No. ZBA 3034 into the record and presented the request. Ms. Smith provided the Property Characteristics, Requested Variance, and the Development Review Board Recommendation as outlined in the memo.

The Development Review Board recommended APPROVAL of the variance based on the following criteria:

1. Reasonable Return: The house is proposed to be constructed on three combined lots, and has been adapted to the confines of the combined lots as much as possible to meet building codes related to room size requirements, and enable reasonable future use by a family. If a variance cannot be justified in this case; then it may also be difficult for any other type of construction at this lot.
2. Unique Circumstances: In the center of the block, along the side street named Evans, two lots existing and are surrounded by two alleys. This is somewhat unusual, and significantly decreases the ability to construct homes consistent with the neighborhood character in terms of bulk, massing and street orientation.
3. Character: The granting of the proposed variance will allow a new single family home to be constructed in a manner consistent with the character of the surrounding neighborhood, particularly as related to setback.

LeaAnne Schmidgall, representing Habitat for Humanity, asked for approval for the requested variance as the organization was working to revitalize the area with new construction and home renovations that will match
the character of the street. In response to Commissioner Kelsey’s inquiry, Ms. Schmidgall said construction will begin in 2018.

Gene Lear, representing the petitioner, thanked staff and respectfully requested the commission grant the variance. Mr. Lear referred to and presented a PowerPoint presentation to the commission. Mr. Lear said the hardship was the R-6 District zoning. Surrounding properties were single-family homes and better represent an R-4 District which required a front yard setback of 15 feet versus the front yard setback of 30 feet in an R-6 District. Mr. Lear clarified the alley access to the attached garage was a 14.4 feet front yard setback.

Chairperson Russo opened the Public Hearing at 1:21 p.m.

Rodger Sparks, advocate for disabled rights, expressed concern for wheelchair accessibility into the residence.

Ms. Smith responded the property must adhere to building code requirements.

Chairperson Russo closed the Public Hearing at 1:22 p.m.

**Motion:**
Commissioner LaSaine made a motion to approve the request as presented; seconded, by Commissioner Jackson.

Chairperson Russo read the Findings of Fact for a Variance. It was determined by the commission all three criteria were found to be met.

The motion was APPROVED by roll call vote:
Nays: None.

**CASE NO. ZBA 3031**
Hold a Public Hearing on the request of petitioner Mathew Nelson of Benckendorf & Benckendorf, P.C. (for Floyd and Nellie March of 621 E Embert Place) who is appealing the Zoning Administrator's decision regarding the status of a variance granted in 1986 through ZBA Case 2166 regarding a front yard fence, in a Class R-4 (Single-Family Residential) District for the property located at 3517 N Wisconsin Avenue (Parcel Identification No. 14-28-428-051), Peoria, Illinois (Council District 3).

Senior Urban Planner, Shannon Techie, Community Development Department, read Case No. ZBA 3031 into the record and presented the request. Ms. Techie provided the Property Characteristics, Summary of Appeal, and the Development Review Board Recommendation as outlined in the memo.

The Development Review Board recommended AFFIRMATION of the Zoning Administrator’s decision regarding the status of the variance granted through Case No. 2166.

In response to Chairperson Russo’s inquiry, Ms. Techie noted there have been complaints in regard to the fence which have all been closed due to the variance granted through Case No. 2166. Ms. Techie said March 27, 2017 was the first time the Zoning Administrator made an official determination on the granted variance and that determination was appealed through the current case (Case No. ZBA 3031).

Matthew Nelson, attorney representing the petitioners, requested the board declare the variance granted through Case No. 2166 be null and void. Mr. Nelson said the conditions indicate the variance does not run with the land. Mr. Nelson argued the conditions are independent. Mr. Nelson stated it was the subsequent owner's responsibility to learn if the fence was in compliance and if a variance for the height and setback of the fence had been previously granted. Mr. Nelson noted the safety concerns of the current state of the fence as nearby traffic has increased and the current condition of the fence allowed zero visibility for vehicles and pedestrians at the corner of the property.
In response to Commissioner LaSaine’s inquiries, Mr. Nelson did not have statistics of the increased traffic or police reports of traffic accidents in the subject area.

Floyd March, petitioner, referred to the image of the current condition of the fence and provided the following examples of the increased traffic; Peoria Christian School enrollment has increased and Wisconsin Avenue was now a three lane road with the addition of a stop light at War Memorial Drive and Wisconsin Avenue. Mr. March’s primary concern was safety.

In response to Commissioner LaSaine’s inquiry, Mr. March said he did not have record as to the reason for the variance request for Case No. ZBA 2166.

Jessie Ann March, an interested citizen and relative to the petitioner, expressed safety concerns regarding the current condition of the fence as it reduced vehicle and pedestrian visibility.

Chairperson Russo opened the Public Hearing at 1:49p.m.

Roger Sparks, co-owner of 3517 N Wisconsin Avenue, said he thought the fence in the existing state was grandfathered in. Mr. Sparks said he had his property surveyed and the fence was not on the property line. Mr. Sparks distributed Exhibit A to the commission, which was included in the record.

Monica Jones, a concerned citizen, expressed safety concerns regarding the placement and openness of the fence. Ms. Jones noted the increase in vehicle traffic in the subject area.

Ms. Techie said staff does not feel as though the second condition was separate from the first condition. Ms. Techie said since the variance was not recorded with the subsequent deed, it would not have been known to subsequent property owners that it was their responsibility to remove the fence.

Commissioner Al-khafaji inquired if the granted variance was recorded with the original deed.

Ms. Techie said the property was transferred in 2005 and the variance was not recorded; therefore, the deeds that followed in 2010 and 2015 did not record the granted variance.

Chairperson Russo inquired about the authority of the Zoning Board of Appeals to impose conditions on the variance as a variance runs with the land.

Ms. Techie noted the legal department provided legal consultation and agreed with the Zoning Administrator’s decision when making the official determination that was outlined in the letter presented before the commission (Page #35 of the July 2017 ZBA Agenda Packet).

Commissioner Kelsey said he considered the variance to be null and void, as the variance was not recorded on the deed, which was a condition of the granting of the variance.

Senior Attorney, Chrissie Peterson, Legal Department, said the courts may interpret the fence as a legal non-conforming use, as the fence was installed prior to the requested variance.

Commissioner Lyons expressed concern of the current visibility of the fence compared to the openness at the time of the granted variance.

Ms. Techie referred to how the variance was worded in regards to openness; the primary front yard fence must be less than 70% open in design and to permit a secondary front yard fence greater than 4 feet in height and located on the property line. There was not an openness requirement noted as part of the variance granted for the secondary front yard fence.
In response to Commissioner Al-khafaji’s request for confirmation, Ms. Techie confirmed the commission was responsible for determining if the Zoning Administrator made an accurate determination regarding the status of the variance granted in 1986 regarding the front yard fence.

Commissioner Kelsey said the conditions were independent; if Condition No. 1 was not met, the variance would become null and void.

Chairperson Russo referred to the language of the condition in the minutes from the 10/23/1986 ZBA meeting that stated, “Condition: Variance to remain in effect only as long as present owner resides in this house and will be null and void if he moves. Also, this condition must be recorded and made a part of the deed.”

Ms. Techie referred to the resolution in the approval letter sent to petitioner (Page #29 of the July 2017 ZBA Agenda Packet).

Chairperson Russo inquired which document the commission was to interpret to govern the decision.

In response to Commissioner Kelsey’s inquiry regarding a timeline, Ms. Techie said a timeline was not mentioned in the record for the case, but Condition No. 2 would have had to occur at the time the property was transferred.

In response to Commissioner Wagner’s inquiry regarding the language on a deed, Ms. Techie said the deed should reflect the variance that was granted.

Chairperson Russo summarized staff’s stance which included the intent of the original variance would go along with particular owner and it was the owner’s obligation to tell the buyer that the variance would cease.

Ms. Techie agreed with Chairperson Russo’s comment and noted the owner did not tell the buyer the variance would cease.

Matthew Nelson, in summation, said it would be the buyer’s responsibility to determine if the fence was in violation of city code. Mr. Nelson said the conditions are independent and if one was not met, the variance should become null and void.

Chairperson Russo requested confirmation which document controlled the variance; the signed document to the petitioner dated October 28, 1986 or the letter from the Zoning Administrator dated March 27, 2017.

Ms. Peterson said the controlling document was the resolution that was adopted in the letter dated October 28, 1986, signed by Chairman Thomas Flanagan.

With no further interest from the public to provide public testimony, Chairperson Russo closed the Public Hearing at 2:15p.m.

**Discussion:**
Commissioner Kelsey said he found Condition Nos. 1 and 2 to be separate.

Commissioner Al-khafaji said he found the variance was granted if both conditions were satisfied; the second condition was not satisfied, therefore, there was no variance.

Commissioner Lyons expressed concern regarding the safety of the fence with the lack of visibility for pedestrians and vehicles.

Chairperson Russo read the Findings of Fact for an Appeal, Appendix A, Section 2.7.5.

It was determined by a 2 to 5 vote that Finding A was FALSE.

It was determined by a 7 to 0 vote that Finding B was TRUE.
False: None.

Motion:
Commissioner Kelsey motion to reverse the zoning administrator’s decision regarding the 1986 variation; seconded by Commissioner Lyons.

The motion to reverse the Zoning Administrator's decision was APPROVED by roll call vote.
Nays: None.

CITIZENS’ OPPORTUNITY TO ADDRESS THE COMMISSION
There was no interest from the public to provide public testimony at 2:21 p.m.

ADJOURNMENT
Commissioner LaSaine moved to adjourn the Zoning Board of Appeals Meeting; seconded by Commissioner Al-khafaji.
The motion was approved unanimously viva voce vote 7 to 0.
The Zoning Board of Appeals meeting adjourned at approximately 2:21 p.m.

____________________
Shannon Techie, Senior Urban Planner

Madeline Wolf, Development Technician
EXHIBIT A

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
PEORIA COUNTY, ILLINOIS

ROGER SPARKS,
Plaintiff,
v.
FLOYD MARCH and NELLIE MARCH,
Defendants.

No. 17-MR-00398

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff, Roger Sparks, by and through his attorneys Miller, Hall & Triggs, LLC, complains of Defendants Floyd March and Nellie March, stating as follows:

COUNT I: DECLARATORY JUDGMENT

1. Plaintiff is an owner of record of the real property located at 3517 North Wisconsin Avenue, Peoria, Illinois (the "Property").

2. Defendants reside at and are the record owners of the property located at 621 East Embert Place, Peoria, Illinois (the "Adjacent Property").

3. The Adjacent Property is adjacent to and to the west of the Property.

4. There is a fence on the Property that runs parallel to the boundary between the Property and the Adjacent Property (the "Fence").

5. Upon information and belief, the Fence has been in its present location since approximately 1972.

6. Defendant Floyd March has repeatedly stated to Plaintiff that the Fence encroaches on the Adjacent Property and has demanded that Plaintiff remove the Fence.
7. On or about August 11, 2016, Plaintiff obtained a plat of survey of the Property, prepared by Austin Engineering Co., Inc. (the “Survey”). A true and correct copy of the Survey is attached hereto as Exhibit A.

8. The Survey depicts the Fence as being located to the east of the boundary line between the Property and the Adjacent Property, and entirely on Plaintiff’s Property.

WHEREFORE, Plaintiff ROGER SPARKS prays that this Court enter a declaratory judgment that the Fence is entirely on Plaintiff’s Property, and does not encroach upon the Adjacent Property owned by Defendants, and for any further relief this Court deems just and equitable.

COUNT II: TRESPASS

9. Plaintiff restates and incorporates by reference the allegations in Paragraphs 1 – 8 of Count I of this Complaint as if fully stated in this Count II.

10. Portions of Defendants’ driveway, fence, and flower beds encroach onto the Property.

11. Upon information and belief, the encroachment of the driveway onto the Property is the result of a widening or relocation of the driveway when the driveway was replaced by Defendants in 2014.

12. The portion of the Defendants’ driveway that encroaches onto the Property abuts the concrete footings securing the Fence posts, causing the footings and posts to shift and rendering repairs to the Fence posts difficult or impossible without disturbing the driveway encroachment.

13. Defendants failed to take reasonable precautions to properly ascertain the boundary line between the Property and Adjacent Property before replacing and widening or relocating the driveway in 2014, or to otherwise prevent interference with the Fence.
14. Defendants have intentionally interfered with Plaintiff’s exclusive possession and use of the Fence in the following ways:

a. Defendant Floyd March has repeatedly leaned, kicked, and pushed against the Fence panels and Fence posts, with the intent to move or lean the Fence away from his driveway.

b. In March of 2016, a car backing out of Defendants’ driveway struck the Fence.

c. Upon information and belief, on or about July 5, 2016, a white car entering or exiting Defendants’ driveway struck the Fence, causing damage to the Fence post at the southwest corner of the Fence.

d. Defendants have repeatedly struck the Fence with their car doors while entering and exiting cars on their driveway.

e. Defendant Floyd March has propped or leaned wooden boards along the bottom of the Fence along his driveway, in such a manner as to put pressure against the Fence posts and panels.

15. Defendants’ acts have caused damage to the Fence posts, panels, and aluminum slats, and have interfered with Plaintiff’s ability to maintain and repair his fence.

16. Defendants’ actions were intentional, and accompanied by aggravating circumstances including willfulness, wantonness, and malice, which warrants punitive damages.

WHEREFORE, Plaintiff ROGER SPARKS respectfully prays that this Court enter judgment in his favor and against Defendants FLOYD MARCH and NELLIE MARCH awarding money damages in an amount to be ascertained and proved at trial, plus monetary damages continuing and accumulating after the filing of this Complaint and prior to entry of Judgment,
together with punitive damages and his costs of suit, and for any other relief as this Court deems just and equitable.

COUNT III: INJUNCTIVE RELIEF

17. Plaintiff restates and incorporates by reference the allegations of Paragraphs 1 – 16 of this Complaint as though fully stated in this Count III.

18. Defendants’ trespasses onto the Property have been repeated in nature and are likely to continue, and any amounts recoverable for such repeated trespasses would be disproportionate to the expense of continuing to litigate each instance of the continuing trespass.

WHEREFORE, Plaintiff ROGER SPARKS respectfully prays that this Court enter permanent injunctive relief as follows:

A. Requiring that Defendants remove all encroachments onto Plaintiff’s Property;

B. Enjoining Defendants from trespassing onto Plaintiff’s Property, or interfering or intermeddling with Plaintiff’s Fence or Plaintiff’s efforts to maintain and repair the Fence; and

C. Any further relief the Court deems just and equitable.

Respectfully submitted,

ROGER SPARKS, Plaintiff

By: [Signature]
For Miller, Hall & Triggs, LLC, its attorneys

Katherine L. Swise, ARDC #6304116
Miller, Hall & Triggs, LLC
416 Main Street, Suite 1125
Peoria, IL 61602
(309) 671-9600
katherine.swise@mhtlaw.com
RULE 222 AFFIDAVIT

Pursuant to Supreme Court Rule 222(b) and under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that she is an attorney and authorized agent for the Plaintiff and, as such, is authorized to execute this Affidavit. She further certifies that the total money damages sought by Plaintiffs in the foregoing Complaint, exclusive of interest and costs, do not exceed $50,000.00.

[Signature]
Katherine L. Swise
LEGAL DESCRIPTION (Doc. No. C6016660961)

The east 9 feet of lot 38, all of lot 39 and lot 40 in block 4 of Fulton Place, a subdivision in the Northeast Quarter of the Southwest Quarter of Section 28, Township 9 North, Range 8 East of the Fourth Principal Meridian, according to the plat thereof recorded April 26, 1967 in plat book "F", page 1, located in Peoria County, Illinois.

Excluding, however, here particularly bounded and described herein, beginning whence west along the north line of the west line of block 4, a distance of 11.4 feet, thence south along the west line of block 4, a distance of 9 feet to the place of beginning, lying and being in the City of Peoria, County of Peoria and State of Illinois.

SURVEYOR'S CERTIFICATE

STATE OF ILLINOIS
COUNTY OF PEORIA

WE, THE AUSTIN ENGINEERING CO., INC., CIVIL ENGINEERS AND LAND SURVEYORS, DO HEREBY CERTIFY THAT WE HAVE SURVEYED THE EAST NINE FEET OF LOT 38, ALL OF LOT 39 AND LOT 40 IN BLOCK 4 OF FULTON PLACE, A SUBDIVISION IN THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 9 NORTH, RANGE 8 EAST OF THE FOURTH PRINCIPAL MERIDIAN, LOCATED IN THE CITY OF PEORIA, COUNTY OF PEORIA, AND STATE OF ILLINOIS, AND THAT THE ABOVE PLAT IS A TRUE AND ACCURATE REPRESENTATION OF SAID SURVEY AS DOWN TO A SCALE OF ONE (1) INCH EQUALS TEN (10) FEET.

WE FURTHER CERTIFY THAT THIS PROFESSIONAL SURVEY CONFORMS TO THE CURRENT ILLINOIS SURVEYING STANDARDS FOR A SURVEY OR PLAT.

DATED AT PEORIA, ILLINOIS THE 17TH DAY OF AUGUST, 2016.

AUSTIN ENGINEERING CO., INC.

MICHAEL J. CONANC
ILLINOIS PROFESSIONAL LAND SURVEYOR No. 3879
AUSTIN ENGINEERING COMPANY, INC. (101811-00221)
311 SW WATERS STREET, SUITE 215, PEORIA, IL 61602
mconanc@austinengineers.com

PLAT OF SURVEY

THE EAST 9 FEET OF LOT 38, A PART OF LOT 40 AND ALL OF LOT 39 IN BLOCK 4 OF FULTON PLACE

FOR: ROGER SPARKS

JAC/ADV
JAG/SLD
MPC

Drawn: 08/11/2016
Scale: 1" = 10'

ACI

40-16-10/9

MICHAEL J. CONANC
AUSTIN ENGINEERING CO., INC.
I responded to 621 E Embert and spoke with Floyd March about an ongoing problem with his neighbor Roger Sparks. March stated that Sparks mows his lawn with a riding mower and blows the grass clippings onto his driveway. March stated that he wanted to sign a complaint against Sparks for littering. I had March sign a move that I completed for Sparks for littering.

I observed grass clippings on March's driveway. I observed that March's driveway borders Sparks' yard and that there is a fence that runs the length of Sparks' backyard between Sparks' yard and March's driveway. There is a gap between the bottom of the fence and the grass. There is no yard on March's side of the fence. March stated that he wanted to sign a complaint against Sparks for littering.

While speaking with March, I observed Sparks going back and forth on the sidewalk in front of his house. Sparks would also stop on the corner of Wisconsin and Embert and look at me. When I approached Sparks, I asked him if he knew why I was there and he stated that he did not. Sparks appeared to be agitated and immediately started to yell and complain about March and how March's son had run over his fence previously and how March is harassing him.

I explained March's complaint about the grass clippings to Sparks. Sparks spontaneously stated that he did not blow the grass clippings onto March's driveway. He stated that he blows the clippings the opposite direction of the driveway and into his own yard. He stated that the wind blew the grass clippings onto March's driveway. I observed that there was a very light wind blowing at the time and recalled that there had not been much of a breeze all day.

I asked Sparks if he cut the grass today. He stated that he used his riding mower to cut the grass today. I issued Sparks move #140998 for littering at 1346 hrs. I checked the WeatherBug app which showed the current wind was WNW at 4 MPH. It also showed gusts of WNW 8 MPH and average at NW 2 MPH. It indicated that this was considered "calm."

Case closed.
CASE SUMMARY:
DAMAGED FENCE FOUND BY OWNER.

DISPATCHED TO THE LISTED ADDRESS IN REGARDS TO DAMAGED PROPERTY.

UPON ARRIVAL ROGER SPARKS SAID HE FOUND HIS FENCE POST BENT. THE FENCE IS ON THE LINE OF HIS NEIGHBORS DRIVEWAY AND THE STREET. SPARKS BELIEVED IT WAS HIT BY A VEHICLE BUT DID NOT KNOW WHEN.

THERE IS NO SUSPECT INFORMATION AT THIS TIME.

CASE SUSPENDED.
IN THE LISTED DATE AND TIME I WAS DISPATCHED TO 3517 N WISCONSIN ON TROUBLE WITH A NEIGHBOR.

SPOKE WITH SPARKS WHO STATED THE FOLLOWING IN SUMMARY.

SPARKS STATED THAT HE HAS HAD TROUBLE WITH MARCH WHO LIVES DIRECTLY BEHIND HIM IN THE PAST. SPARKS STATED THAT THERE IS A FENCE THAT DIVIDES THE TWO PROPERTIES AND HIS OWN PROPERTY ACTUALLY EXTENDS PAST THE FENCE ON MARCH'S SIDE. SPARKS STATED THAT HE PUT UP A TARP OVER HIS FENCE TO STOP GRASS FROM GOING ONTO MARCH'S PROPERTY WHEN HE MOWS IT. SPARKS STATED THAT THIS WAS ONE OF THE PAST ISSUES THAT THEY HAVE GONE TO COURT FOR.

SPARKS STATED THAT THERE ARE BOARDS AT THE BOTTOM OF THE FENCE TO STOP DEBRIS FROM GOING ON HIS PROPERTY. HE STATED THAT THE FENCE BLEW OVER THE BOARDS AND HE BELIEVES THAT MARCH WAS TRYING TO MOVE THE BOARDS BACK OVER TO THE OTHER SIDE OF THE ENCE TODAY.

IT SHOULD BE NOTED THAT IT HAS BEEN RAINING ALL DAY TODAY WITH HEAVY FLOODING AND STRONG WINDS.

SPARKS STATED THAT HE WOULD MOVE THE BOTTOM OF THE FENCE BACK OVER TO THE OTHER SIDE OF THE BOARDS WHEN THE WEATHER CLEARED UP. I TOLD HIM THAT I WOULD GO AND TELL MARCH THAT I WOULDN'T EXPECT ANYBODY TO BE OUT IN THIS WEATHER TODAY AND THAT HE COULD WAIT UNTIL IT CLEARED UP.

THEN WENT NEXT DOOR AND SPOKE WITH FLOYD'S SON. HE STATED THAT HIS FATHER WAS NOT HERE. I EXPLAINED TO HIM THAT SPARKS STATED THAT HE WOULD FIX THE BOARDS AND THE ENCE WHEN THE WEATHER CLEARED UP. HE STATED THAT HE WOULD PASS THAT ALONG TO HIS FATHER.

SPARKS REQUESTED A POLICE REPORT AS THEY ARE STILL GOING TO COURT WITH MARCH OVER THE PROPERTY LINE.

CONFIDENTIAL TO ADDRESSEE ONLY
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<tr>
<th>Ticket No.</th>
<th>MUNICIPAL ORDINANCE VIOLATION NOTICE</th>
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<td>A140998</td>
<td>SHORT FORM COMPLAINT</td>
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**Defendant Copy**

**City of Peoria, a Municipal Corporation**

**V.S.**

**COURT CASE NO.**

**NAME**

**LAST**

**FIRST**

**MIDDLE (hereafter called the defendant)**

**ADDRESS**

**CITY**

**STATE**

**ZIP**

**PHONE**

**SEX**

**RACE**

**BIRTHDATE**

**HEIGHT**

**WEIGHT**

**EYES**

**HAIR**

**DR. LIC. NO.**

**VEHICLE MAKE**

**MODEL**

**YEAR**

**PLATE**

**THE UNDERSIGNED OFFICER CHARGES THAT ON**

**DATE OF WEEK**

**MONTH**

**DAY**

**YEAR**

**THE DEFENDANT DID IN THE CITY OF PEORIA, COUNTY OF PEORIA, STATE OF ILLINOIS, ON OR ABOUT**

**LOCATION (STREET ADDRESS)**

**LICENSE #**

**COMMITS THE FOLLOWING CITY OF PEORIA ORDINANCE VIOLATION,**

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**OTHER VIOLATION (DESCRIBE)**

**SEC. #**

**PRE-COURT AMOUNT**

**DEFENDANT**

**COURT APPEARANCE DATE**

**THURSDAY**

**9/15/16**

**AT 1:30 P.M.**

**Courtroom 210**

**CALL CITY LEGAL AT (309) 494-8590 IF YOU HAVE ANY QUESTIONS.**

**REV. 4/2013**
TO: City of Peoria Zoning Board of Appeals  
THRU: Development Review Board  
FROM: Shannon Techie, Senior Urban Planner  
DATE: October 12, 2017  
CASE NO: ZBA 3036  
SUBJECT: Petitioner Ari Rosenthal of Ginsberg Jacobs, LLC, on behalf of Cellco Partnership d/b/a Verizon Wireless, is requesting a reconsideration of ZBA Case 3021, appealing the Site Plan Review Board’s decision regarding the denial of a consolidated application for a zoning certificate and building permit, for the collocation of wireless communication antennas, for the property located at 2112 N Linn Street (Parcel Identification No. 14-33-378-019 & 14-33-378-020), Peoria, Illinois (Council District 2).

PROPERTY CHARACTERISTICS
The subject property contains .52 acres of land and is currently developed with a 32 unit apartment building. The property is zoned Class R-6 Multi-Family residential and surrounded by R-4 (Single-Family Residential) zoning to the north, west and south, and C-G (General Commercial) zoning to the east.

Per assessment records, the building was built as a 32 unit apartment building in 1925. The property has historically been zoned as follows:

<table>
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<th>Date</th>
<th>Zoning</th>
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<tbody>
<tr>
<td>1931-1958</td>
<td>C (Apartment)</td>
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<tr>
<td>1958-1963</td>
<td>C (Apartment)</td>
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<tr>
<td>1963 - 1990</td>
<td>R-2 (Medium Density Residential)</td>
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<tr>
<td>1990 - Present</td>
<td>R-6 (Multi-Family)</td>
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</table>

Summary of the Appeal Reconsideration:
On August 11, 2016, the Zoning Board of Appeals upheld the Site Plan Review Board’s (now Development Review Board) decision, which deferred to the action of the City Council and denied the consolidated application for a zoning certificate and building permit (administrative request through the Development Review Board) on June 8, 2016, based on Appendix B, Article 3.3.d.(1).(b), ‘notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the City may disapprove an application that is in conflict with the historic nature or character of a neighborhood or historical district’.

Per an order from the United States District Court, Central Illinois District, this matter was remanded back to the City of Peoria Zoning Board of Appeals for further consideration. Since the ZBA application for reconsideration of the appeal was submitted, the City has received revised plans regarding the placement of antennas on the building.

DEVELOPMENT REVIEW BOARD RECOMMENDATION
Since revised plans have been received since this request, staff recommends that the Zoning Board of Appeals send the amended application and plans back to the Development Review Board for consideration.
ZONING BOARD OF APPEALS
APPEAL APPLICATION

1. APPEAL REQUEST

1. Cellco Partnership d/b/a Verizon Wireless, do hereby appeal the decision made for the property located at 2112-2118 N. Linn Street by the Site Plan Review Board for the City of Peoria, on behalf of the Zoning Administrator of the City of Peoria, on 6/8/16 regarding the following (Summary of Decision):
Denial of Verizon Wireless' Consolidated Application for Zoning Certificate and Building Permit

to the Zoning Board of Appeals (ZBA) pursuant to Article 2.7 of the Unified Development Code of the City of Peoria. *pursuant to remand by order of the U.S. District Court for the Central District of Illinois entered August 3, 2017

2. OWNER INFORMATION – REQUIRED

David Patch
351 Catherine Street, Pekin, Illinois 61554
(309) 696-8302
patch349@aol.com

3. APPLICANT INFORMATION – engineer, architect, attorney or other, if applicable

Ari J. Rosenthal
300 S. Wacker Drive, Suite 2750, Chicago, Illinois 60606
(312) 660-9625
arosenthal@ginsbergjacobs.com

Applicant's Interest in Property:
☑ Contractor
☑ Contract Purchaser
☐ Other

Send Correspondence To: Select one entity to receive all correspondence. E-mail will be used for all correspondence unless otherwise requested.

☐ Owner
☐ Applicant
☐ Representative of Applicant

City of Peoria Development Center
419 Fulton St., Room 300
Peoria, IL 61602-1217
PH: (309) 494-8600 FX: (309) 494-8680
www.peoria.gov

Zoning Board of Appeals Appeal Application - Page 1 of 2
Rev. 10/19/2016
UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF ILLINOIS  

CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS,  
Plaintiff,  
v.  
CITY OF PEORIA, CITY OF PEORIA ZONING BOARD OF APPEALS, and CITY OF PEORIA SITE PLAN REVIEW BOARD,  
Defendants.  

Case No. 16-1337  

ORDER  

This matter is now before the Court on Plaintiff Cellco Partnership d/b/a Verizon Wireless’s ("Verizon" or "Plaintiff") Motion for Summary Judgment on Count I of the Amended Complaint. (ECF No. 38). For reasons stated herein, the Motion is GRANTED insofar as this matter is REMANDED to the Defendants City of Peoria, the City of Peoria Zoning Board of Appeals ("ZBA"), and the City of Peoria Site Plan Review Board ("SPRB") for further consideration as more fully described herein. The Parties are DIRECTED to provide a joint status report on their proposed disposition of the remaining counts on or before August 11, 2017.  

PROCEDURAL BACKGROUND  

On September 9, 2016, Plaintiff filed its four-count Complaint against the Defendants. (ECF No. 1). On December 8, 2016, Verizon moved to file the administrative record, stay discovery, and request an expedited hearing on Count I, which sought review under 47 U.S.C. § 332 of the City’s decision to deny Verizon’s request to place wireless services facilities at a property located at 2112 North Linn Street, Peoria, Illinois. (ECF No. 9; see also ECF No. 16). A supplement to the administrative record has been filed. (ECF No. 24).
On March 2, 2017, Plaintiff filed its Amended Complaint. (ECF No. 12). Count I of the Amended Complaint again alleges a violation of the Federal Telecommunications Act of 1996. Id. Plaintiff specifically alleges the Defendants failed to support the denial of its application with a written decision based on substantial evidence.

As it relates to this matter, the Federal Telecommunications Act of 1996 provides:

Any decision by a State or local government or instrumentality thereof to deny a request to place, construct or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

47 USC §332(c)(7)(B)(iii).

The Act further provides:

Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis.

47 USC §332(c)(7)(B)(v) (Emphasis added).

Pursuant to the schedule previously entered by Chief Judge Shadid, and subsequently modified by this Court on July 14, 2017, Plaintiff filed its Motion for Summary Judgment on Count I. (See ORDER dated 5/17/2017; see also TEXT ONLY ORDER dated 5/24/2017 and ECF No. 36). Defendants’ filed their Response on July 21, 2017, and this Court held a hearing on the Motion on July 27, 2017. (See ECF No. 39 and Minute Entry dated 7/27/2017). This Order follows.

**FACTUAL BACKGROUND**

The property at 2112 North Linn Street, Peoria, Illinois is described as a:

.52 acres of land and is currently developed with a 32 unit apartment building. The property is zoned Class R-6 Multi-Family residential and surrounded by R-4 (Single-Family) Residential zoning to the north, west and south, and C-G (General Commercial) zoning to the east.
(ECF No. 24-1 at 1; see also AR 0054). Plaintiff explains, and the record indicates, there were 
gaps in coverage (or, perhaps more accurately stated, signal strength concerns) in the areas 
surrounding the 2112 North Linn Street property. (ECF No. 24-3 at 23-24). Initially, Verizon 
sought to place the antennas above the existing penthouse, which would have increased the 
building’s height from 60 feet to 70 feet. Id. This plan required Plaintiff to obtain a Special Use 
Permit from the City of Peoria. Id. On January 27, 2016, through its agent, Plaintiff submitted a 
Special Use Application to the SPRB for the proposed wireless communications facility at the 
Linn Street property. Id. The initial plans were eventually changed because the SPRB was going 
to recommend the Peoria Zoning Commission deny the permit. Id.

There were apparently on-going discussions between the Plaintiff and Defendants 
regarding the site after the initial review. Plaintiff submitted revised site plans with the changes 
discussed, and on February 23, 2016, the SPRB recommended approval of the Special Use Permit, 
with certain conditions. (ECF No. 24-1 at 14; see also ECF No. 24-1 at 21, Plaintiff 
decreased the 
proposed antenna height from 60 feet to 65 feet. This still required a Special Use Permit because 
the overall height was over the maximum height allowed in the R-6 zone). In its recommendation, 
the SPRB explained in its findings that there would be:

- No detriment to public health, safety, or general welfare;
- No injury to other property or diminish property values;
- No impediment to orderly development;
- Provides adequate facilities;
- Ingress/egress measures designed to minimize traffic congestion;
- Adherence to the comprehensive plan;
- If a public use/service, then a public benefit;
[Adherence to the] Comprehensive Plan Critical Success factors (Grow employers and jobs); [and]

[Adherence to the] City Council Strategic Plan Goals (Grow Peoria business, jobs and population).

(ECF No. 24-1 at 18). On April 7, 2016, the Peoria Zoning Commission voted to approve the Plaintiff’s request. (ECF No. 44-1 at 22). On April 26, 2016, the permit was considered by the City Council at its meeting, and the permit was denied. The minutes of the meeting are contained in the record, and reveal the following:

Mr. Thomas Wester, President of the Heart of Peoria Neighborhood Association, said he and his neighbors worked hard to restore the quality of life within that neighborhood and he voiced his concern regarding the installation of the facility. He said there were no issues of lack of cell service in the area and the neighbors did not want to see a wireless facility in the neighborhood. He asked the Council to deny the request for the Special Use.

Council Member Grayeb said he was certain Verizon would find another location, which would not be damaging to a fragile neighborhood, and he moved to deny the request to adopt Ordinance A or the Recommendation of Staff to Adopt Ordinance B, approving a Special Use for a wireless communication facility for the property located at 2112 N. Linn Street, Peoria, IL; seconded by Council Member Jensen.

Discussions were held regarding the impact this facility would have on the neighborhood, and Mr. Wester remarked that the neighborhood was not a commercial neighborhood stating it would take away from the neighborhood's vibrancy.

Council Member Grayeb said the height of the facility would exceed what could be approved administratively. He said the facility would be visible and did not belong in a residential neighborhood. He voiced his disapproval of this item, and he asked Council to deny the item as outlined.

In response to Council Member Akeson's question on what would happen should this item be denied, Ms. Groark said Verizon would come back to look for a new location.

Council Member Montelongo inquired whether the City had a policy for cell towers or facilities in commercial and residential areas.

Community Development Director Black said the City Code had a list of priorities from high to low in terms of location for cell towers and cell service. He said the
Code did not necessarily break down the location in terms of residential or commercial. He said the intent of the Code was to put an antennae on top of an existing structure. He said if that was not available, then a new tower would be erected.

Council Member Montelongo inquired whether a policy and a process could be established in order to eliminate City Council input and to let policy drive the decision.

Mayor Ardis said Verizon would come back in a week with another location. He said he would defer to the District Council Member in support of his neighborhood association.

In response to the issues identified by Council Member Akeson, Council Member Grayeb remarked that the property owners recently met with Director Black to address those issues.

Motion to DENY the request to adopt Ordinance A or the Recommendation of Staff to Adopt Ordinance B, approving a Special Use for a wireless communication facility for the property located at 2112 N. Linn Street, Peoria, IL was approved by roll call vote.

Yeas: Akeson, Grayeb, Jensen, Johnson, Montelongo, Moore, Riggenbach, Ruckriegel, Spain, Turner, Mayor Ardis - 11;

Nays: None.

(ECF No. 24-3 at 34-35).

Following the denial of the Special Use Permit, Plaintiff revised its site plans by lowering the antennas’ proposed installation height from 65 feet to 60 feet. (ECF No. 19 at 1-5). Under Plaintiff’s revised site plan the antennas would not exceed the building’s height. Id. On May 24, 2016, Plaintiff submitted its Building Permit Application (“BPA”) to the SPRB. Id. The SPRB rejected Verizon’s BPA on June 8, 2016. The entirety of the SPRB’s denial states:

Appendix B, Article 3.3.d.(1).(b), states that the City may disapprove an application that is in ‘conflict with the historic nature or character of a neighborhood or historical district’. The Site Plan Review Board therefore defers to the action taken by the City Council that the proposed wireless communication facility is not compatible with the residential character of the neighborhood and disapproves this request.

Per Section 2.7 of the Land Development Code, this decision can be appealed to the Zoning Board of Appeals within thirty (30) days of the date of determination.
On July 7, 2016, Plaintiff filed its appeal to the ZBA. (ECF No. 16-8). On August 11, 2016, the regularly scheduled Zoning Board of Appeals Meeting was held wherein the ZBA denied Plaintiff’s appeal. (ECF No. 16-11). The “draft” minutes of the meeting reveal, among other things, ZBA’s finding that the “[SPRB’s] previous findings prior to June 8, 2016, was not binding to the Site Plan Review Board’s decision on June 8, 2016 because two different applications were reviewed.” (ECF No. 16-11 at 1). The minutes also reflect that “[a] concerned citizen, was not in support of businesses near the subject property.” (ECF No. 16-11 at 2). Plaintiff then brought this action.

**DISCUSSION**

As noted above, the Federal Telecommunications Act of 1996 requires “[a]ny decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.” 47 U.S.C. § 332(c)(7)(B)(iii). Although there is discretion for the local government in how the writing requirement is satisfied, the writing must be such that the “locality's reasons are stated clearly enough to enable judicial review.” *T-Mobile S., LLC v. City of Roswell, Ga.*, 135 S. Ct. 808, 190 L. Ed. 2d 679 (2015). In this case, Plaintiff argues the record is void of any written notice of the ZBC’s decision to deny Plaintiff’s appeal. Defendants counter that:

Plaintiff was not deprived of a meaningful opportunity to obtain judicial relief. When the ZBA denied its application, the ZBA referenced the minutes of the City Council Proceedings of April 26, 2016. These [minutes] were not only publically available, but were also in the possession of the Plaintiff. Therefore, since the reasoning within the minutes of the City Council Proceeding was the same as the ZBA’s reasoning for denial, Plaintiff was not hindered or required to wait of the ZBA’s written decision to seek judicial review.
Defendants concede that the draft minutes of the ZBA’s proceeding were never formally adopted. Yet, still stand by their position that these minutes satisfy the writing requirement. Because the Court finds that the decision was not supported by substantial evidence, for purposes of this Motion, the Court makes no determination of whether the minutes are sufficient under the Federal Telecommunications Act of 1996. Importantly, however, the record demonstrates that the Plaintiff was able to timely file this appeal and obtain judicial review.

As for the requirement that the decision be supported by substantial evidence contained in a written record, the Supreme Court in \textit{T-Mobile S., LLC v. City of Roswell, Ga.} provides significant guidance. In Supreme Court explained:

Our conclusion follows from the provisions of the Telecommunications Act. The Act generally preserves “the traditional authority of state and local governments to regulate the location, construction, and modification” of wireless communications facilities like cell phone towers, but imposes “specific limitations” on that authority. \textit{Rancho Palos Verdes v. Abrams}, 544 U.S. 113, 115, 125 S.Ct. 1453, 161 L.Ed.2d 316 (2005); see § 332(c)(7)(B). One of those limitations is that any decision to deny a request to build a tower “shall be in writing and supported by substantial evidence contained in a written record.” § 332(c)(7)(B)(iii). Another is that parties adversely affected by a locality's decision may seek judicial review. § 332(c)(7)(B)(v). In order to determine whether a locality's denial was supported by substantial evidence, as Congress directed, courts must be able to identify the reason or reasons why the locality denied the application. See \textit{Rancho Palos Verdes}, 544 U.S., at 128, 125 S.Ct. 1453 (BREYER, J., joined by O'Connor, Souter, and GINSBURG, JJ., concurring) (observing that the Act “requires local zoning boards ... [to] give reasons for [their] denials ‘in writing’ ”).

The requirement that localities must provide reasons when they deny applications is further underscored by two of the other limitations on local authority set out in the Act. The Act provides that localities “shall not unreasonably discriminate among providers of functionally equivalent services,” and may not regulate the construction of personal wireless service facilities “on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the [Federal Communications Commission's] regulations concerning such emissions.” §§ 332(c)(7)(B)(i), (iv). Again, it would be considerably more
difficult for a reviewing court to determine whether a locality had violated these substantive provisions if the locality were not obligated to state its reasons. 

*Id.* at 814. Undoubtedly, the substantial evidence standard is highly deferential to the local government making the decision. *VoiceStream Minneapolis, Inc. v. St. Croix County*, 342 F.3d 818, 830 (7th Cir.2003). And, the Plaintiff has an additional burden as this case is at the summary judgment stage, and the corresponding standard of review applies. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). But, the Parties have submitted the administrative record, and this Court’s review finds the decision to deny the application is not supported by substantial evidence.

The first problem with the denial is that the reasoning adopted the determination related to the Special Use Permit, not the application. Ironically, the ZBA recognized the distinction as it held the “[SPRB’s] previous findings prior to June 8, 2016, was not binding to the Site Plan Review Board’s decision on June 8, 2016 because two different applications were reviewed.” Of course, the previous findings were related to a tower 5 feet higher, and it is curious that its subsequent findings were inapposite of its initial findings. The reality, of course, is the SPRB was deferring to the City Council’s decision.

The difficulty with City Council’s decision is that it lacked any evidentiary support. Without any supporting documentation, the City Council apparently adopted the Neighborhood Association’s President’s conclusion that “there were no issues of lack of cell service in the area and the neighbors did not want to see a wireless facility in the neighborhood.” The Court finds it problematic that the City Council would give weight to these statements without any supporting evidence. Additionally, the City Council apparently gave weight to Councilman Grayeb’s statement that “the facility would be visible and did not belong in a residential neighborhood.” The problem is that there were modifications to the proposed facilities (e.g. height) – and the visibility or lack of visibility – changed with the subsequent applications. The Plaintiff were
entitled to have a review on the new application. Nothing in the record suggest any consideration was given by the ZBA to the changes presented in the subsequent application. In fact, the record contains photos of the proposed facilities that do not appear to be unsightly – but again, that is an issue not for this Court to decide. The Court’s decision is not meant to be overly critical of the local government. Local governments are much more familiar with the intimate details of matters such as these. That being said, a reviewing body – and the public - should be able to discern from the paper trail the reasons for the decision. In this case, such reasons are simply not present on the written record.

Accordingly, this Court finds this matter should be REMANDED back to the City of Peoria Zoning Board of Appeals for further consideration on the application consistent with this decision.

CONCLUSION

For reasons stated herein, Plaintiff Cellco Partnership d/b/a/ Verizon Wireless’s Motion for Summary Judgment on Count I of the Amended Complaint is GRANTED insofar as this matter is REMANDED to the City of Peoria Zoning Board of Appeals for further consideration as more fully described herein. The Parties are DIRECTED to provide a joint status report on their proposed disposition of the remaining counts on or before August 11, 2017.

ENTERED this 3rd day of August, 2017.

s/: Michael M. Mihm
Michael M. Mihm
U.S. District Court Judge
Appendix A, Section 2.7.5. Appeals – Zoning Board of Appeals Decisions

Following a hearing by the Zoning Board of Appeals on any appeal from a Development Review Board decision, an administrative order, requirement, decision or determination relating to this development code, the Zoning Board of Appeals shall make findings and affirm, reverse or modify the Development Review Board or administrative decision. A decision by the Zoning Board of Appeals shall be final administrative determination.

The Zoning Board of Appeals shall not, by its decision on appeal, permit a variation in the application of the regulations of this chapter. In order to reverse or modify an action, any one or combination of following findings must be satisfied:

A. The provision in question is unclear and an interpretation is necessary to determine the intent and application of the provision.

   True    False

B. The Zoning Administrator or DRB misinterpreted the provisions of this chapter.

   True    False

FIRST MOTION: ____________________________________________

________________________________________________________________

INITIATED BY: ____________________________________________

SECOND: ____________________________________________

SECOND MOTION: ____________________________________________

________________________________________________________________

INITIATED BY: ____________________________________________

SECOND: ____________________________________________

SIGNATURES                        VOTE

Chairperson Richard Russo          Yea     Nay
Vice Chairperson Scott Kelsey      Yea     Nay
Commissioner Laith Al-Khafaji     Yea     Nay
Commissioner Jerry Jackson         Yea     Nay
Commissioner Dorian LaSaine       Yea     Nay
Commissioner Lon Lyons             Yea     Nay
Commissioner Nathan Wagner        Yea     Nay

VOTE:   Approved ___________   Denied ___________     _____ to _____