

## PLANNING COMMISSION MEETING

*August 11, 2016*

The Planning Commission convened in Courtroom No. 1 at City Hall for their regular meeting. Vice Chairperson Fleck called the meeting to order at 7:30 PM. She asked the secretary to call the roll. Members in attendance were Mr. Wainwright, Ms. Hada, and Ms. Kuhlmann and Vice Chairperson Fleck. Chairman Komjati was absent. Also present were Interim City Manager/Community Development Director Douglas Lewis, City Planner Lynn White, Assistant Law Director James Lyons, and Secretary Tina B. Pomfrey.

**MINUTES:** Vice Chairperson Fleck asked for additions or corrections for the Planning Commission Meeting of July 14, 2016. There being none, she asked for a motion. Motion by Ms. Kuhlmann seconded by Ms. Hada to accept the Planning Commission Meeting Minutes from July 14, 2016 as written. Vice Chairperson Fleck asked the Secretary to call the roll. On roll call, Ms. Hada, Ms. Kuhlmann, Mr. Wainwright and Vice Chairperson Fleck answered "yes". Motion carried, 4-0.

Mr. Lyons asked those who would speak either on behalf or against the variance requests this evening be sworn in so that a proper legal record is established. The secretary administered the oath to those individuals that planned to speak.

Ms. Fleck asked the secretary to read the Notice of Public Hearing for Refusal No. 2285.

### **NEW BUSINESS:** (Public Hearing Items)

#### **REFUSAL NO. 2285                      CONDITIONAL USE PERMIT REQUEST**

**Applicant:** Robert Knopf  
**Owner:** Mobilitie  
**Location:** Right of Way near 607 Williams Street (Parcel Number 15-A-003-0-00-009-0)  
**District:** R-1 Single Family Residential District  
**Section:** 1127.05

The City of Painesville has received an application from Robert Knopf of Mobilitie for a Conditional Use Permit. The applicant is proposing to install a 75-foot public utility pole for broadband infrastructure purposes within the right-of-way at 607 Williams Street (Permanent Parcel Number 15-A-003-0-00-009-0). The property is located in the R-1 Single Family Residential District. Section 1143.06 (b) requires a conditional use permit for the installation of commercial transmissions of radio, television or communication systems in all districts.

#### **REFUSAL NO. 2286                      CONDITIONAL USE PERMIT REQUEST**

**Applicant:** Robert Knopf  
**Owner:** Mobilitie  
**Location:** Right-of-Way near 225 E. Prospect Street (Parcel Number 15-D-010-0-00-025-0)  
**District:** R-1 Single Family Residential District  
**Section:** 1127.05

The City of Painesville has received an application from Robert Knopf of Mobilitie for a Conditional Use Permit. The applicant is proposing to install a 75-foot public utility pole for broadband infrastructure purposes within the right-of-way at 225 East Prospect Street (Permanent Parcel Number 15-D-010-0-00-025-0). The property is located in the R-1 Single Family Residential District. Section 1143.06 (b) requires a conditional use permit for the installation of commercial transmissions of radio, television or communication systems in all districts.

#### **REFUSAL NO. 2287                      CONDITIONAL USE PERMIT REQUEST**

**Applicant:** Robert Knopf  
**Owner:** Mobilitie  
**Location:** Right-of-Way near 701 East Erie Street (Parcel Number 15-A-008-B-00-008-0)  
**District:** R-1 Single Family Residential District  
**Section:** 1127.05

The City of Painesville has received an application from Robert Knopf of Mobilitie for a Conditional Use Permit. The applicant is proposing to install a 75-foot public utility pole for broadband infrastructure purposes within the right-of-way at 701 East Erie Street (Permanent Parcel Number 15-A-008-B-00-008-0). The property is located in the R-1 Single Family Residential District. Section 1143.06 (b) requires a conditional

use permit for the installation of commercial transmissions of radio, television or communication systems in all districts.

Mr. Robert Knopf of Mobilitie said he is a professional engineer who has worked in or with public government for about 17 years, so he is familiar with the process. He said Mobilitie is the largest public utility in America, located in all 50 states and 3 other jurisdictions. Mobilitie has installed more broadband than all other public utility companies combined. The government requires state specific companies, so in Ohio the name of the company is Ohio Facilities Exchange Networks LLC.

Mr. Knopf elucidated the history of the broadband industry for the Board. He explained that in the 1990's, the technology traversed from pagers to cell phones. This technology allowed talk and texting; access to the internet was limited. At that time, the telecom companies installed large cell phone towers, usually 180 to 200 feet, and most cities created telecom ordinances to regulate where the towers were placed. After that, phones like blackberries were introduced, which allowed for calendars, notes and such. When iPhones were developed, it changed the industry because it allowed access to social media, games, movies, and TV. In the early 2000's, data usage increased exponentially. The cell companies persuaded the Federal Government to create a broadband public utility because the cell companies did not have the capital to expand the networks and keep up with public demand. These markets first emerged in locations like New York, Los Angeles, Chicago and Houston, however in the last two or three years, the utility has expanded into smaller markets. The data usage of phones today doubles every 12 to 18 months. It is predicted that over 51 million poles will be installed nationwide over the next few years. Data consumption is huge and it is driven by public demand. Mobilitie is not a cell provider; they provide the network infrastructures so that the telecom providers (like Verizon, Sprint, AT&T and T-Mobile) can expand their data networks. Two different types of poles are installed; distribution poles, that are 85 to 90 feet tall, and transport poles, that are about 120 feet tall. Mobilitie uses microwave technology first developed in Asia and Europe. It is a fast technology but problematic because signals are easily blocked. Larger poles are needed so that signals are relayed reliably from transport poles to distribution poles to cell towers.

Ms. Kuhlmann asked if his company has studied the microwave technology regarding possible adverse effects. Mr. Knopf responded that he has not been made aware of any adverse effects of the technology. Ms. Fleck asked if there health concerns or interruptions in typical households due to the microwave technology. Mr. Knopf said he is not has not been informed of interference, however, he has been told that some people have local radio issues; it is something he would have to look into.

Vice Chairperson Fleck asked if length of the pole includes the portions of the pole that is installed below ground. Mr. Knopf replied no, soil conditions dictate the depth of the poles. In most cases, distribution poles might be installed eight to ten feet deep, depending on the circumference of the pole itself. Transport poles tend to be deeper.

Vice Chairperson Fleck asked if there are statistics regarding pole failure due to wind or age or things of that nature. Mr. Knopf stated he is not aware of any failure at this time. He indicated that they abide by State of Ohio codes for this type of structure. The broadband networks do not have the same safety issues that the high-tension lines that CEI and electric companies install.

Ms. Hada asked the logic in the location of the poles. Mr. Knopf replied that an electrical engineering team does an analysis based on the location of the demand. Specific areas are targeted based on the propagation study. He said he understands all the proposed locations are in the middle of residential areas and Mobilitie can try to place them in locations that area mutually acceptable to the City and Mobilitie. Ms. Hada said the first pole specifically is next to a large elementary school and it seems to make more sense to place it on the school property. She wondered if Mobilitie leases poles. Mr. Knopf stated no, they never lease. He stated there are fewer obstructions in the right-of-way. Ms. Hada said, in her opinion, the school property is a better location than the right-of-way. Mr. Knopf responded that he attended a meeting in Willoughby this week. The Law Director, who is well versed in the telecommunications arena, conveyed to Willoughby City Council that the pole installations in the right-of-way cannot be prevented but the City can try to work with them to find the least obstructive locations without losing service.

The Assistant Law Director, Mr. Lyons, asked how many poles have been installed in Lake County, other than the one intended for install in front of Lake West Hospital in Willoughby. Mr. Knopf responded there are none constructed yet because Mobilitie has only just started applying for them in May. The focus for installation has been other areas and counties, like Summit and Huron, and all have been installed in the right-of-way.

Mr. Lyons asked if any of the poles were installed in residential districts. Mr. Knopf replied that he could not say because he only just started in May and his territory is vast. He added he could try to get the information, although Mobilitie might not know the zoning of the locations. Ms. Hada commented that Mobilitie would know if a pole was located in a residential district based on the address. Vice Chairperson Fleck said Mobilitie would have had to appear before the Planning Commission in those

communities. Mr. Knopf replied no, most other communities do not require approval of the Planning Commission; applications are reviewed administratively. Mr. Lyons asked what communities do not require an appearance before the Planning Commission. Mr. Knopf replied Ravenna, Huron, Norwalk, and Summit County. Mr. Lyons asked if Fairfield in Summit County is an administrative review. Mr. Knopf said he is not certain, as there is a different person from Mobilitie that deals with Summit County. Mr. Lyons stated he has never seen one of these tall poles. He said he believes that the City has 150 days review under Federal Law for a new pole installation. Mr. Knopf replied that State Code Section 4939 states 60 days. Section 4939.04 also states that public utilities do not have to abide by discretionary codes or Boards.

Discussion ensued regarding working with other communities to find mutually satisfactory locations for these pole locations; however, Mr. Knopf stated that when push comes to shove, if a good location cannot be agreed on, they would be placed where the service is needed. Mr. Lyons stated the Conditional Use Application is dated July 14, 2016, so the Planning Commission has at least until September 12, 2016 in order to act on this. The next Planning Commission meeting is September 8, which leaves enough time to work with the City to find locations that are more suitable. Mr. Lyons stated he has reached out to other law directors and understands that there are right-of-way ordinances that telecommunication companies must abide by. Mr. Lyons stated that he believes that Mobilitie meets the definition of radio transmission which requires a Conditional Use permit. Mr. Lyons said zoning requirements might apply, even in the right-of-way. Mr. Knopf replied that anything under the zoning code is discretionary. Mr. Lyons replied that Conditional Uses are not discretionary and his company must comply with the zoning code. That is why he is appearing before the Planning Commission. Mr. Lyons acknowledged that his company has the right to locate in the public right-of-way, however, the City believes Mobilitie still must comply with the zoning code. It appears that an industrial or commercial area might be a more advantageous area for the location of the poles. Mr. Lyons asked if Mobilitie is looking for the best technical spot for these three poles, or do they take into consideration the zoning of the area as well. Mr. Knopf replied that a proprietary software is used to find locations, the best spot that will not have any interference. Mr. Lyons said he understands that Mobilitie is willing to look for suitable placement of the poles within 1,000 feet of the chosen location. Mr. Knopf said that is for transport poles. For distribution poles, it is reduced to a quarter of a mile, but this depends on the topography of the land.

Mr. Lyons asked the job of the distribution poles. Mr. Knopf said they densify the signal that goes to the transport poles, so a better faster signal is conveyed to the transport poles or some other type of relay device that then transfers the signals to the cell towers. Mr. Lyons asked why the cell towers do not have distribution poles. Mr. Knopf said the cell companies do not have the capital. Mr. Lyons asked if the cell networks have the right to be in the right-of-way. Mr. Knopf replied no, because they are a service provider and not a public utility. Mr. Lyons asked the reason Mobilitie is considered a public utility. Mr. Knopf explained that Mobilitie is third party that transports service from one place to another, much like Dominion gas, that allows a third party to provide natural gas service by utilizing Dominion's network. Mr. Lyons asked if Mobilitie had equipment on the poles to densify cell phone signals for voice, would Mobilitie be allowed to do that as part of their network or part of their transmission. Mr. Knopf stated the voice information travels farther so it does not need to be densified.

Mr. Lyons said according to the Conditional Use Permit application, the applicant is Mobilitie but the public utility is the Ohio Exchange Facilities Network LLC. Mobilitie itself is not a public utility. Mr. Lyons said at one time Mobilitie was the public utility and transferred its certification this June to Ohio Exchange Facilities Network LLC. On the application to the Planning Commission, the owner of the poles is listed as Mobilitie rather than Ohio Exchange Network. Mr. Lyons asked if that is incorrect. Mr. Knopf said he was not sure. Mr. Knopf said he is not sure how the contract reads between Ohio Exchange Facilities Network and Mobilitie. Mr. Lyons questioned why a contract is required if Mobilitie is the owner of Ohio Exchange Network. Mr. Lyons stated that this a detail that needs to be clarified.

Ms. Hada asked about the "fall area" of the pole and wondered if there was some type of requirement under the building code. Mr. Lyons suggested Mr. Knopf provide the City Planner, Ms. White, with some of the information about the Ohio and Federal law regarding fall zone requirements for these properties. Vice Chairperson Fleck asked if Mobilitie was a for-profit company. Mr. Lyons indicated that for the City's purposes, it does not really make a difference because the standards are the same. Mr. Knopf said the company still must abide by all PUCO rules. Ms. Hada declared that the school property should be considered for placement of the pole. Mr. Knopf said access could be an issue. Ms. Hada remarked that there must be a right-of-way area there as well.

Discussion ensued regarding placement of the pole in the right-of-way. Ms. White asked the diameter of the poles that are proposed to be installed. Mr. Knopf replied 62 inches. Mr. Lyons stated as far as poles go, these poles are not bad looking. Mr. Knopf stated that most people do not even notice them. Most end up looking like telephone poles. Mr. Knopf stated that infrastructure is installed for a reason

and there is a demand for this.

Mr. Lewis asked if Mobilitie could co-locate. Mr. Knopf stated no, there would be interference with the antennas. They could co-locate with some utility poses, sometimes swapping out poles.

Mr. Lyons asked if the need to densify is at the request of one of the big four cell companies. Mr. Knopf said he does not know, he does not speak with the telecom providers.

Mr. Lyons asked if more poles would be coming into the Painesville area to densify. Mr. Knopf stated that his company is late coming to Cleveland. Since any other company has not approached Painesville prior to this application, he believes it is likely that they will not because other companies are already moving south and west by now. Every 12-18 months, Mobilitie reevaluates their poles to see if further expansion or densification is necessary. Painesville, being only 7 square miles, probably does not have the need, so these poles may be the only ones installed. He said he could not guarantee as such, but in his experience, that is usually the case.

Mr. Lewis asked how many companies are able to co-locate on a pole; he asked if all could use a single pole. Mr. Knopf said he believes so but is not sure. Mr. Lewis asked if it could be placed on a water tower, where there is 360-degree coverage. Mr. Knopf replied no, water interferes with the signal, and he knows that because he has already been asked the question. Mr. Lewis stated the City of Painesville Electric Plant houses a 150 ft. pole that was originally installed to house fiber. He asked if it is possible to locate the equipment on the tower. Mr. Knopf stated if the tower is utilized for communication, there is a strong possibility that the signalization will encounter interference. Mr. Knopf said he is not sure but he could check. Mr. Lewis said the location of the tower is pretty close to the proposed locations of the poles.

Vice Chairperson Fleck asked if there were comments from the audience. Mr. Ron Colvin, 619 Williams Street, stated that the size and height of the proposed pole would impact his neighborhood negatively. Additionally, he was alarmed by the many questions Mr. Knopf could not answer or was unsure of. Mr. Colvin wondered if any independent environmental studies had been done regarding the impact of this technology on the community. Mr. Knopf replied that he could research if any information is available. He stated that Mobilitie has to abide by PUCO regulations and they do not approve anything that is dangerous to the public. Vice Chairperson Fleck specifically mentioned the effects of microwave technology on the public. Mr. Colvin said there are too many unanswered questions to be in favor of the pole going in. Additionally, he believes the residential charm of the street will be compromised should the pole be installed. He believes there is a more appropriate location for this technology.

Mrs. Wilson, 612 Williams Street, stated that her house is directly across from 607 Williams Street, that is the proposed location of the pole. She said she is not in favor of the pole installation at that location. Mrs. Wilson explained that Storrs Street is behind her property that abuts railroad property. Additionally, there is already a pole that houses the siren that triggers every Wednesday; there is so much activity in her neighborhood. Mrs. Wilson believes there is a more appropriate location for the pole.

Mr. Alan Watson commented on Mobilitie Refusal 2287, located near 701 East Erie Street. Mr. Watson said he lives at 34 Parkview Drive; however, he owns the property at 708 East Erie Street, directly across the street from the proposed pole location. Mr. Watson stated that he is a "tech guy", he loves data but he does not care for poles. He believes all utilities should be located underground but understands that it cannot always be done like that. He has some concerns. Mr. Knopf mentioned that some people have radio signals being transmitted to their homes. Mr. Watson said he has accessed the local radio station through his speaker system without it even being plugged in. In addition, with the property right across the street, he is concerned that the pole could fall. Mr. Watson asked if the City could stop the installations from happening. Mr. Lyons said by Ohio Law, public utilities have the right to be in the right of way. The City can certainly regulate them, but cannot stop it. Mobilitie has had a license since 2010 but has not done anything with it in Painesville until now. Vice Chairman Fleck replied that she hopes Mobilitie would cooperate with respect to the parameters of what is sanctioned within a community. Mr. Lyons stated that he agreed and hopes that Mobilitie will be cooperative regarding alternate locations, since, according to Mr. Knopf, there can be up to a quarter mile latitude when locating poles. Mr. Watson asked what role the pole plays if it does not service the user directly and why does it need to be located in front of his house. Mr. Knopf replied that although they do not deal directly with the consumer, they deal directly with the cell company that services the consumer. Mr. Watson asked why the poles are not spread throughout the City to cover all of Painesville. Mr. Knopf replied that the team located the area where there is a need, a transmission weak spot, compared to the other areas of the City. Mr. Watson said he would be more in favor of swapping out a utility pole than adding another pole to the right-of-way. Ms. White replied that she has spoken to the City of Painesville Electric Distribution Department, who prefers the Mobilitie poles to be located on the opposite side of the street so should anything fail, the electric lines are not taken down as well. Additionally, they do not have the equipment to service the pole should anything adverse

happen to it. Ms. White stated that she has requested additional information regarding contact and maintenance information.

There being no further questions, Vice Chairperson Fleck asked Mr. Lyons if this should be tabled so that Mobilitie and the Administration could work on acquiring the information that the City and the residents have requested. Mr. Lyons stated that the Planning Commission has the grounds to request a tabling.

Vice Chairperson Fleck asked for a motion. Ms. Hada moved, seconded by Mr. Wainwright, to table Conditional Use Permit 2285, 2286 and 2287, until the next regularly scheduled meeting of September 8, 2016. More information has been requested from the applicant in order to locate within the right-of way.

On Roll Call Ms. Kuhlmann, Mr. Wainwright, Ms. Hada and Chairperson Fleck answered "yes". Motion carried, 4-0.

Mr. Lyons informed the audience that there will not be another legal notice sent to the community, but the next Planning Commission meeting is September 8, 2016.

Ms. White stated she would contact Mr. Knopf with some dates to meet to discuss the concerns.

Vice Chairman Fleck moved onto the next item on the Agenda. She asked the secretary to read the Public Notice for Refusal No. 2289.

### **REFUSAL NO. 2289                      CONDITIONAL USE PERMIT REQUEST**

**Applicant:** Judd T. Shiffler  
**Owner:** Richard Scott Walsh and Rosemarie Walsh Trust  
**Location:** 130 Liberty Street (Parcel Number 15-C-005-0-00-042-0)  
**District:** B-3 Central Business District  
**Section:** 1143.06 (a)

The City of Painesville has received an application from Mr. Judd T. Shiffler of Mentor, Ohio, for a Conditional Use Permit. The applicant is proposing a residential unit on the upper floor of the structure at 130 Liberty Street (Parcel Number 15-C-005-0-00-042-0). The property is located in the B-3 Central Business District. Section 1143.06 (a) requires a conditional use permit for residential uses when accessory to a permitted commercial use to be approved by the Planning Commission.

The applicant, Judd Shiffler, was present for the meeting. He indicated the sale of the property would close on August 18, 2016. He said he is a licensed social worker for Beacon Health, and works as mental and behavioral health case manager to about client. His a caseworker for 40 clients. He indicated that he is part of the crisis response team for Lake County, speaking to people regarding suicide. Mr. Shiffler stated that he has always had a dream to live in a work-type space and have a pottery and a small voice over studio. He commented that God bestowed a voice upon him that he could record and make money from. Mr. Shiffler's intent is to make his residence upstairs from the studios. As the property has been vacant since January 2015, he believes his presence would be an asset to the community, increasing the neighborhood watch.

Vice Chairperson Fleck asked for the comments of the City. Ms. White stated according to the County records, the property was originally owned by the Church of the Nazarene. In October 1986, a Conditional Use Permit was granted to the owner, Painesville Insulation. The church was converted into a business and residential units were placed in the structure. Apparently, there was security issues and Ms. White believes that might be why the windows were altered from the original rounded shape to a rectangular, partially boarded up style. The owners secured the building and lived in a two-bedroom apartment within the structure and the utility records indicated that they occupied it from 1985 until 1988. From 1989 until January 2015, Automation Meteorology occupied the structure. Ms. White asked Mr. Shiffler if he knew if they occupied the residential unit when they were in there or was it strictly a business. Mr. Shiffler said he believes it was strictly a business. Mr. Lewis said the property has not been fully vacant; the owner has been working out of the property a couple of days a week and has paid income tax to the City. Ms. White said section 1143.06 (a) states that a Conditional Use Permit must be issued for any residential use when accessory to a permitted commercial use in a B-3 District. This area is close to downtown. There are medical offices located next door at 124 Liberty Street, and the vacant land across the street is High Pointe Center, which used to house the hospital. Homestead Nursing Home, a residential care facility, is on the south side of High Street and there is multi-family residential to the west, which includes Lake Erie College dorm units. It is residential and commercial in nature and Mr. Shiffler's proposed use fits the area and the City of Painesville's Comprehensive Plan. One of the goals of the Downtown Master Plan is to provide more opportunities for downtown living and this request fits nicely into that. The City has not received phone calls from the public with concerns. Ms. White reached out to the Economic Development

Director and asked that she contact Mr. Shiffler with help from the City, possible with tax abatement on the structure.

Mr. Shiffler presentation to the Planning Commission illustrated his property in relation to various locations within the City. He pointed out that his property is within a quarter of a mile of circumference of all these locations. The building sits on the corner of the High Street gateway, which he said is exciting. He also presented his plan for improvements to the property, including restoring the rounded top windows that were original to the structure. Mr. Shiffler added that would like to work to restore the historical aspect of the building and compliment the historic character of the City. He also presented photos of his pottery, which were very well received by the members of the Planning Commission.

Mr. Lewis asked if the plan is to use the location for personal use or would classes be conducted at the location. Mr. Shiffler responded that eventually he would like it to be a teaching studio, and/or he would like to rent space to other ceramic artists so that they may work on their own projects. Eventually, as a third phase of the plan, he would like to open a small retail consignment shop, Eclectic Collectables. Regarding the voice over studio, Mr. Shiffler indicated that it would be located in a small space in the southwestern corner of the building, because it is the most subterranean soundproof area. Voice or light instrumental, acoustic music, rather than loud rock-n-roll, would be recorded there.

There being no further comments, Vice Chairperson Fleck asked for a motion. Motion by Ms. Kuhlmann, seconded by Ms. Hada, to recommended approval of Conditional Use Permit 2289, as requested, for residential use at 130 Liberty Street.

On Roll Call, Mr. Wainwright, Ms. Hada, Ms. Kuhlmann and Chairperson Fleck answered "yes". Motion carried, 4-0.

#### **ADMINISTRATIVE REPORT:**

Ms. White added that she had sent out a work session e-mail regarding a meeting on September 22, 2016 at 6:30 pm, in the conference room.

Ms. White also stated that she has started the Design Review preliminary review for expansion of the Lake County Commissioners Office.

There being no further business, the meeting was adjourned at 8:58 pm.

---

Tina B. Pomfrey, Secretary

---

Carol Fleck, Vice Chairperson