

**KETTERING CITY COUNCIL
REGULAR MEETING MINUTES
February 26, 2019**

The Council of the City of Kettering, Ohio, met in regular session on Tuesday, February 26, 2019, at 7:30 p.m. in Council Chambers at the Kettering Government Center South Building, 3600 Shroyer Road. Vice Mayor Lautar presided and the Clerk of Council, LaShaunah D. Kaczynski, recorded. This meeting was telecast live on the cable access channel.

Council Members Present: Lautar, Klepacz, Duke, and Wanamaker

Council Members Absent: Patterson, Fisher, Scott (Excused)

Total Members Present: Four (4)

Vice Mayor Lautar led the audience in the Pledge of Allegiance and gave the invocation. He introduced the cable TV operator Joe McKenzie.

Mr. Duke made a motion to amend the agenda by removing item number five regarding the ordinance in first reading (to amend Chapter 618 of the Codified Ordinances and declaring an emergency). Mr. Wanamaker seconded the motion followed by an unanimous like sign vote.

Vice Mayor Lautar mentioned that Mayor Patterson, Mrs. Fisher, and Mr. Scott have excused absences.

The Pages this evening were Jamal Alkhateeb and Tristan Burns from Kettering Middle School. Vice Mayor Lautar thanked them for their assistance.

APPROVAL OF MINUTES

February 12, 2019- Council Meeting & Workshop Minutes

Mr. Klepacz reported that he reviewed the above minutes and moved the minutes be approved. Mr. Wanamaker seconded the motion of the above minutes and there being three (3) yea votes, one (1) abstain vote (Mr. Duke) and no (0) nay votes for the February 12, 2019 Council Meeting & Workshop Minutes, the motion was declared carried by roll call vote.

PROCLAMATIONS, SPECIAL PRESENTATIONS, AWARDS, SPECIAL RESOLUTIONS, APPOINTMENTS TO BOARDS AND COMMISSIONS

Appointment- Board of Community Relations- Fabrice Uwihirwe (Term ending 5/31/19)

Mr. Klepacz made a motion to appoint Fabrice Uwihirwe to the Board of Community Relations. Mr. Wanamaker seconded the motion followed by an unanimous like sign vote.

PUBLIC HEARINGS

Appeal of the Board of Zoning Appeals decision regarding BZA 18-013- A height variance for a single amateur radio tower to be installed in the rear yard of the property located at 4800 Mad River Road.

Vice Mayor Lautar opened the public hearing and asked that any person that intends to speak to City Council about this matter should stand and take an oath. Those that planned to speak took the oath.

Mr. Hundt, City Planner made the staff presentation this evening. He has been a City Planner for 41 years and 39 of those years have been with the City of Kettering. He has been the Zoning Administrator for the last 10 years. The request this evening is for a 50 foot tall amateur radio tower in the rear yard of 4800 Mad River Road. This case did require a variance to be granted. This amateur radio request was for a 50 foot tall amateur radio which would require a 25 foot high variance. The applicant did submit a structure permit for the tower, and the city could not approve the height because it did not meet the 25 foot maximum variance that was in the code. The appeal that was submitted by the property owner was for the 25 foot variance. There was a public hearing held in November of 2018 where there were testimony by the applicant and neighbors and a petition opposing the request. At that time, there was some concern about what the appearance of the tower would be. It was determined at the end of the public hearing to continue the case to allow time to seek options of what the possible tower would look like. Staff took pictures of similar installations of towers within the region. Staff did find some towers in Miamisburg, and those pictures were provided to the Board of Zoning Appeals so they could have further information. Copies were also distributed to the general public if they requested it. A continuation of the public hearing was held in December of 2018 where these pictures were presented and additional testimony was given by the applicant and neighbors who spoke in opposition at the previous meeting. The staff report was supportive of the 25 foot variance based on their understanding of the law on variances. However, the Board of Zoning Appeals came to a different conclusion and they had a motion to disapprove the 25 foot height variance. The property owner has submitted an appeal which is the matter before City Council this

evening. The aerial photographs that were provided were a year older prior to the garage being built. The proposed tower will be in between the back of the house and the garage.

Mr. Mancz, Attorney for the applicant asked Mr. Hundt to take a seat in the witness box.

Mr. Mancz mentioned he is with the law firm of Rogers-Greenberg in Dayton, and he is here this evening on behalf of the applicant in this case.

Mr. Mancz- Mr. Hundt we met this evening and one time before, is this correct?

Mr. Hundt- We met this evening, but I do not recall if we have met before.

Mr. Mancz- As a Planner, you recommended that the variance be allowed.

Mr. Hundt- That is correct.

Mr. Mancz- You came to that conclusion by reviewing each of the variance standards, and how the request by the applicant met those standards.

Mr. Hundt- That is correct.

Mr. Mancz- 9 out of the 10 variance standards were met.

Mr. Hundt- They were met or could be met.

Mr. Mancz- In your report you alluded to the Ohio Revised Code section 5502.031.

Mr. Hundt- That is correct.

Mr. Mancz- Are you familiar with this section of the Ohio Revised Code?

Mr. Hundt- Enough to know what it implies.

Mr. Mancz- Ohio Revised Code section 5502.031 went into effect in 2012.

Mr. Hundt- I'm not familiar when that section went into effect.

Mr. Mancz- The purpose of this section was to protect amateur radio operators and their rights to established communication facilities on their properties.

Mr. Hundt- I understand that to be the intent.

Mr. Mancz- In that regard it also follows the federal regulations that are in place for amateur radio operators as well.

Mr. Hundt- That is correct.

Mr. Mancz- By the statute of the State of Ohio, this municipality is not permitted to pass a law that would affect the communication provided by amateur radio operators.

Mr. Hundt- I am not sure that is true in regards to the choice language that was provided.

Mr. Mancz- I believe that is true, the true language was provided in the packet of information in support of this appeal. He handed Mr. Hundt a copy of the statute. Section (b) says legislative authority- the authority to preclude sections of amateur radio communication.

Mr. Hundt- I see that.

Mr. Mancz- Legislative authority should not restrict the height or location of amateur towers in a way to prevent effective amateur radio communication.

Mr. Hundt- That is what it says.

Mr. Mancz- He handed Mr. Hundt his staff report. Inaudible.

Mr. Hundt- Yes.

Mr. Mancz- One of the inquiries she made by email was 50 foot tower the minimal height he needs for the operation of the tower.

Mr. Hundt- I remember seeing that.

Mr. Mancz- According to your response you said that according to the applicant 50 foot height is the lowest he needs for his desired transmission and reception.

Mr. Hundt- You have what I said.

Mr. Mancz- You got this information from Mr. Roller.

Mr. Hundt- Yes.

Mr. Mancz- According to the staff report regulations cannot preclude the effective communication by amateur radio operator.

Mr. Hundt- That is what it says.

Mr. Mancz- Have you been involved in any other cases that involve amateur radios in the City of Kettering?

Mr. Hundt- I have not.

Mr. Mancz- Have you been involved in any other cases in any other jurisdictions involving amateur radio operators regarding the application of Ohio Revised Code section 5502.031.

Mr. Hundt- Only my job as a Zoning Administrator to see if a property in Kettering was being maintained properly, but not a height variance.

Mr. Mancz- In your report you found 9 of the 10 standards were met or could be met.

Mr. Hundt- That is correct.

Mr. Mancz- Was there anything in the decision of the Board of Zoning Appeals recognizing the section of the Ohio Revised Code?

Mr. Hundt- I'm not sure. I would have to recheck the motion.

Mr. Mancz- Handed Mr. Hundt the motion as it was presented to the Board of Zoning Appeals. Is there any reference in that motion that refers to Ohio Revised Code section 5502.031

Mr. Hundt- That is correct.

Mr. Mancz- In that Ohio Revised Code section it mentioned that the rules should accommodate a minimum practicable regulation necessary to accomplish the legislative authority purpose.

Mr. Hundt- I see that.

Mr. Mancz- In respect did the Board of Zoning Appeals acknowledge an accommodation to the applicant request.

Mr. Hundt- Can you repeat the question.

Mr. Mancz- In the motion, there is nothing that acknowledges anything other than an application of the variance standards which are contained in the Revised Code for the City of Kettering.

Mr. Hundt- That is correct.

Mr. Mancz- There is no indication that certain things are precluded by the Ohio Revised Code or the Code of Federal Regulation.

Mr. Hundt- That is correct.

Mr. Mancz- Asked Mr. Hundt to read subsection (c) of the Ohio Revised Code section 5502.031. In the Code of Ordinance for the City of Kettering after the variance standards does it appear that there is authority by the Board of Zoning Appeals to introduce conditions of variance standards?

Mr. Hundt- Yes.

Mr. Mancz- There weren't any conditions offered in respect to this application for a variance.

Mr. Hundt- That is correct.

Mr. Mancz- You discussed certain conditions.

Mr. Hundt- I did.

Mr. Mancz- One of those conditions was there could be landscape screening to provide a buffer to the visible tower on the property.

Mr. Hundt- That is correct.

Mr. Mancz- A variance request once granted goes with the land.

Mr. Hundt- That is correct.

Mr. Mancz- The concern of the neighbors is if the tower goes up then it is there forever.

Mr. Hundt- That is not his concern.

Mr. Mancz- I am reflecting on the concerns that were presented by the neighbors at the meeting. Wasn't that the primary concern of all the people present?

Mr. Hundt- I would characterize it as such, not sure if that is accurate.

Mr. Mancz- When you made your report to the Board of Zoning Appeals you reviewed the standards and there would not be a large impact to the community.

Mr. Hundt- That is correct.

Mr. Mancz- It would not affect property values in a deleterious way.

Mr. Hundt- I did not agree that there would be that type of that effect on the property values.

Mr. Mancz- In your report you mentioned once again that there are 9 out of the 10 standards that are met or could be met.

Mr. Hundt- Yes.

Mr. Mancz- He has no further questions.

Mr. Hamer, Law Director asked Mr. Hundt if he had anything else he would like to say in rebuttal.

Mr. Hundt- No.

Mr. Mancz called the applicant Wynn Rollert to the witness stand.

Mr. Mancz- Please state your name.

Mr. Rollert- Wynn Rollert.

Mr. Mancz- Where do you reside?

Mr. Rollert- 4800 Mad River Road.

Mr. Mancz- Is that your permanent residence?

Mr. Rollert- Yes that is correct.

Mr. Mancz- You are the applicant for a variance to put up a radio tower in your back yard.

Mr. Rollert- Correct.

Mr. Mancz- What is your experience in the amateur radio business?

Mr. Rollert- I got my first license in 1952. I got the extra class license (highest license) amateur radio license in 1955 and he has been active with it since then.

Mr. Mancz- How do you get an extra class license?

Mr. Rollert- You take a series of difficult tests to evaluate your skills and knowledge. You have to go to a major city to be tested.

Mr. Mancz- When did you get that permit?

Mr. Rollert- 1955.

Mr. Mancz- Has it been in effect ever since?

Mr. Rollert- It has.

Mr. Mancz- Have you been involved in the placement of towers for commercial businesses?

Mr. Rollert- Yes.

Mr. Mancz- Can you please provide some examples.

Mr. Rollert- Amateur radio has nothing to do with business, but the properties were business properties.

Mr. Mancz- Have you been engaged in radio communications that have been utilized by businesses in the Dayton area.

Mr. Rollert- Businesses cannot utilize amateur radio but, the facilities allow them to run their equipment.

Mr. Mancz- Where have you placed those facilities?

Mr. Rollert- Channel 22, Channel 16, water tank in Vandalia, Bethany Village, and a couple of others.

Mr. Mancz- How many individual towers have you been involved with the placement?

Mr. Rollert- I would estimate that to be about 25.

Mr. Mancz- What is the relationship between the height of the tower and the effectiveness of the communication?

Mr. Rollert- For point to point communication there has to be a physical path between the two antennas for the communication to work. The public service equipment he has provided for many years does require a line of sight to operate effectively.

Mr. Mancz- What is the relationship between the height of the tower and the antenna to get those results? More effective with a higher tower or less effective?

Mr. Rollert- Once you have a radio path, going higher doesn't really help much.

Mr. Mancz- What about ground interference being utilized by other devices by your neighbors?

Mr. Rollert- The higher above the ground the less radio interference. It would be reduced dramatically.

Mr. Mancz- Would that be your understanding of the Code of Federal Regulations in regard to equipment control of amateur radio towers interference questions that are left up to the Federal Government?

Mr. Rollert- That is correct.

Mr. Mancz- You reviewed items that he has provided accompanying his appeal.

Mr. Rollert- That is correct.

Mr. Mancz- One of those is a technical page that was attached to your appeal.

Mr. Rollert- I remember something about that.

Mr. Mancz- The executive summary about that page concluded 70 feet is a minimal effective height.

Mr. Rollert- That is correct.

Mr. Mancz- Do you agree with that with your professional opinion?

Mr. Rollert- That is correct. That is a generally accepted number.

Mr. Mancz- Mr. Hundt mentioned that he learned from you that a 25 foot variance was the minimal that would allow effective communication for you.

Mr. Rollert- That is correct.

Mr. Mancz- You stand by that?

Mr. Rollert- Yes and my application.

Mr. Mancz- Is it fair to say that in most circumstances the higher the antenna and tower the greater distance you can have communication.

Mr. Rollert- Yes.

Mr. Mancz- It also increases your chances for clarity in communication.

Mr. Rollert- Correct.

Mr. Mancz- Were you ever offered conditions by anyone from the city or the Board of Zoning Appeals to allow your variance to be approved.

Mr. Rollert- No.

Mr. Mancz- Is one of the conditions that at the end of your residence at 4800 Mad River Road you will take the tower down?

Mr. Rollert- Yes.

Mr. Mancz- Your willing to put up a fund for the expenses associated with that?

Mr. Rollert- Yes I am willing to do that.

Mr. Mancz- You had expressed willingness to discuss landscape screening?

Mr. Rollert- I have.

Mr. Mancz- You have insurance for your property?

Mr. Rollert- Yes.

Mr. Mancz- It will cover items relating to the tower?

Mr. Rollert- I have specific insurance for that.

Mr. Mancz- What is the amount of that in the terms of liability?

Mr. Rollert- Two million dollars.

Mr. Mancz- In the operation of your amateur radio facilities what compensation do you receive from anyone if it is put to a public use?

Mr. Rollert- You are not allowed to ask for any compensation or receive any.

Mr. Mancz- Has any of your facilities been used for a public purpose?

Mr. Rollert- Yes.

Mr. Mancz- Please provide examples.

Mr. Rollert- Blizzard of '78, Xenia tornado, hurricane Ike, and a couple of others. We also do training for people so they can learn how to effectively use the equipment.

Mr. Mancz- An example.

Mr. Rollert- Red Cross has a training program and other amateur radio operators. The Federal Communications Commission allows the use of certain radio spectrum space because they do provide significant help to public service people. If we didn't do that, I wouldn't be able to operate at all.

Mr. Mancz- No agency reimburses you in any way for the operation of the radio or the repair and maintenance of it. You have to pay for all of those expenses?

Mr. Rollert- Yes.

Mr. Mancz- That is all I have.

Vice Mayor Lautar- Mr. Hundt do you have any questions for this witness?

Mr. Hundt- I do not.

Mr. Mancz called Sue Choate to the witness stand.

Mr. Mancz- You had testified twice in this case.

Ms. Choate- Correct.

Mr. Mancz- You testified on November 12 and December 10.

Ms. Choate- Correct.

Mr. Mancz- I would like for you to answer some questions for me because I have a transcript of the November 12, 2018 hearing, but the transcript says that your introductory remarks were inaudible.

Ms. Choate- That would be the first time people couldn't hear me.

Mr. Mancz- Somehow that happened. He handed Ms. Choate a copy of the transcript and pointed out all of the sections where the transcript indicated her opening remarks were inaudible.

Mr. Mancz- I have tried to listen to the audio of this and I could not understand what is being said either, but you know what you said in the beginning.

Ms. Choate- Yes I do.

Mr. Mancz- What you said was captured by the Dayton Daily News.

Ms. Choate- That I do not know.

Mr. Mancz- You mentioned you appreciate the work of amateur radio operators like Mr. Rollert.

Ms. Choate- I do as an 18 year Red Cross employee.

Mr. Mancz- You mentioned you worked with the Red Cross for 18 years and you worked closely with amateur radio operators and they do a fantastic job.

Ms. Choate- Yes.

Mr. Mancz- From your perspective as a Red Cross employee you never concerned yourself with what the towers look like.

Ms. Choate- I'm not sure how to answer that.

Mr. Mancz- Your primary concern was that you had proper communication through the use of the operator's facilities.

Ms. Choate- I wasn't worried about it but what you are getting at is true. They do a fantastic job when I worked with the Red Cross, and as for the radio tower I am no expert when it comes to the communication waves.

Mr. Mancz- It didn't matter to you it just mattered that it was effective.

Ms. Choate- For the people they were helping.

Mr. Mancz- You were interested in helping others in the public.

Ms. Choate- Yes.

Mr. Mancz- You testified on December 10 that you had conversations with realtors.

Ms. Choate- Yes.

Mr. Mancz- None of the realtors showed up to the meeting on the 10th.

Ms. Choate- No.

Mr. Mancz- None of the realtors provided information that would facilitate an understanding of what they were saying.

Ms. Choate- No. I cold called four realtors. I did not know them, I was trying to call about property values.

Mr. Mancz- None of those people would come to testify.

Ms. Choate- Correct. They also gave a reason. I would like for the people to hear that reason.

Mr. Mancz- The transcript from the meeting showed you mentioned you could not get any of the cold call realtors to come and speak directly because they did not want to get involved in a range war.

Ms. Choate- That is what they said.

Mr. Mancz- At least one of the realtors said that they have never even heard of someone asking for a 50 foot radio tower in Kettering. Isn't that what they said?

Ms. Choate – Not exactly. The realtor said they have never recalled a 50 foot tower being in the Kettering area, so it would be very hard for them to give an exact appreciation or de-appreciation value.

Mr. Mancz- The realtor provided you no reference or source that would establish that a tower would have a deleterious effect on the community.

Ms. Choate- Not exactly. The realtor did not have a frame of reference that they could not give her an exact account but that common sense would say that clients do not want to see properties that have a radio tower or a water tower on the property.

Mr. Mancz- He is going to allow the statement but you're arriving at a conclusion that doesn't bear upon why they do not want to buy that property.

Ms. Choate- I am reiterating what a professional realtor said to me.

Mr. Mancz – They provided no references that you could go see to what effect a radio tower has on a property, did they?

Ms. Choate- No.

Mr. Mancz- Thank you that is all I have.

Vice Mayor Lautar – Mr. Hundt do you have any questions for this witness?

Mr. Hundt – I do not.

Vice Mayor Lautar asked Mr. Mancz if he had any other witnesses.

Mr. Mancz- I do not have any other witnesses but I would like to make a presentation on behalf of Mr. Rollert. It is our opinion that this particular action taken by the Board of Zoning Appeals is wrong and may even not pass legal muster. For the reason that state of Ohio's laws requires something that allows for a consideration of those things that which would allow the accommodation of a ham radio operator. That is the function of the statute. The reason that is true is because of the recognition of the public importance of ham radio operators. In point of fact when Ohio Revised Code Section 5502 was introduced to the legislature in 2009, and I will provide this exhibit to Councilmembers at the conclusion, it specifically reads this way "The legislative authority shall not restrict the height or dimensions of amateur station antenna structures in such a way as to prevent effective radio service communications. For purposes of structure restrictions 75 feet must be considered a reasonable antenna structure height." You have heard from Mr. Rollert that 70 feet is most effective for his purposes and the statute as introduced into the legislature specifically provided 75 feet would be reasonable. Remember the law requires, the State of Ohio law and Federal law a reasonable accommodation to the ham radio operator. Similarly when legislation was passed in the 2011-2012 session interestingly enough in the summary, and I will provide this to you as well, it provides to enact certain sections of the Ohio Revised Code including 5502.031 of the Revised Code to codify federal restrictions on local zoning of amateur station antenna structures and here's the critical passage thereby preserving amateur radio service communications as a homeland security resource, and to place the burden of proof for compliance on the zoning authority. It is up to the zoning authority to show that reasonable accommodation occurred or the effort was made. Considering those two requisites then you proceed to a consideration of the motion that was presented and the way that the standards were addressed thusly:

1. Whether special conditions and circumstances existed peculiar to the land and structure involved that are not applicable generally to other lands, etc. etc. The BZA says in the motion no it does not meet the standard, nothing unusual with physical conditions, which we would take into consideration.

The question is what would be necessary as a reasonable accommodation against the 25 foot limit in this case. One of the reasons why Mr. Rollert only asked for 25 feet is because his property is at an elevation above sea level that is significantly higher which facilitates the probability that effective communication can occur with a 50 foot tower and antenna.

2. Whether the property in question will yield a reasonable return or whether there can be any beneficial use to the property without the variance. No, it does not meet the standards says the BZA, strong residential area, property can continue to serve as residential use.

That is not the question the variance question is as it relates to both a permitted and protected activity. Permitted and protected both by state law and federal law, that's the question. In both of these first two instances Mr. Hundt found that the standard would or could be met and recommended the approval. Well let me back up on that I actually think number two (2) could possibly consider if there was an effect on residential area and this value question about whether it has a deleterious effect or not.

3. Whether the variance is substantial or is the minimum necessary to make possible the reasonable use of the land or structures. No, it does not meet the standards. The applicant stated in the first meeting that he would like the height to be 50 feet.

You have heard from Mr. Hundt and Mr. Rollert, the 50 feet was the minimum to allow for effective communication at that site.

4. Whether the essential character of the neighborhood would be substantially transformed or whether adjoining properties would suffer substantial detriment as a result of the variance. The BZA says no it does not meet the standard and after visits to the property looking at the site from all directions, the neighborhood would be impacted.

No, that doesn't even meet the standard of consideration of a reasonable accommodation. The neighborhood would be impacted, what does that even mean? It means nothing.

5. Whether the variance would adversely affect the delivery of governmental services such as water, sewer, trash pickup. Yes, would meet the standard.

6. Whether the property owner purchased the property with knowledge of the zoning restrictions. No, does not meet the standards. The applicant was aware of the zoning code restrictions.

This is not any typical variance, this variance is for a protected activity. The applicant was very aware of trying to find a site where he would not need as much of a variance and that's why he chose where he was.

7. Whether special conditions or circumstances exist as a result of actions of the owner. No, does not meet the standard, the owner purchased the land knowing a variance was going to be needed.

Again, Mr. Hundt disagreed with that conclusion and recommended for approval of the variance. This is a protected activity and the variance was needed to allow for the activity to be effective as the state law requires.

8. Whether the property owner's predicament feasibly can be obviated through some method other than a variance. Yes, the applicant can continue to seek out site locations to expand capabilities.

That is not a reasonable accommodation, these standards are not a reasonable accommodation. Mr. Mancz cited a case from New York, which was one of his exhibits to be given to City Council, where this type of legislation does not pass muster under the federal regulations and probably not the state either.

9. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance. No, does not meet the standard. The neighborhood would be impacted.

It is meaningless.

10. Whether the granting of the variance requested will confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district. Yes, meets the standard. Properties in the area could also have an amateur radio tower and could also seek a variance.

The BZA found only 2 of the 10 standards were or could be met and yet again under the federal law and state law it is not the question because there was no indication that any effort was made for a reasonable accommodation. Mr. Hundt agreed the standards of what the state and federal government set out and that's what is required. As you also agreed and are familiar with the City of Kettering ordinances recognizes that the BZA has the authority, has the power to impose conditions on a variance. Again if we are looking at the state and federal law, reasonable accommodations should require that effort at least. The case I was referring to is Randall J. Palmer vs. The City of Saratoga Springs and The City of Saratoga Springs Planning Board and this case came out of New

York in 2001 and what was at issue here is much the same as what we're all about here this evening and, that was a request for a variance of the standards required by that particular municipality. The action of the city was shot down because there was no evidence of reasonable accommodation and what was suggested was we have already made up our minds, we're going to hold you to our standards and we don't care about the state law and we don't care about the federal law. That is exactly what happened in this case and forgive me I'm not trying to be harsh but I am saying that I think that an absence of an understanding or experience with this state law, which has only been in place since 2012, may have led to these mistakes. But they can't go uncorrected and City Council has that authority. Finally as I said the action of the Board of Zoning Appeals in no way reflects either a consideration or understanding of Ohio Revised Code section 5502.031 and in fact I believe that consideration of the standard does apply to this case would not pass muster with the law. Interestingly enough, as we show from the passage of when the Ohio law was passed that ham radio operators are protected because of their important to all of us. Their important to all of us in those situations when the means of other communication has failed or become otherwise inoperable. That is something that needs to be recognized, that didn't happen here and Council should reverse this decision by the Board of Zoning Appeals and again remain open to the imposition of conditions and discussion of the same. Thank you.

Vice Mayor Lautar asked if there were any other comments from the public either for or against concerning this public hearing.

Sue Kelly Choate, 4908 Bofield Dr. – She mentioned that forty years ago she and her husband purchased the property on Bofield with the thought of turning this house into a home and joining a community that we take a great deal of pride in. We did not purchase the property because of this elevation and ability to emit radio waves. We built it to live there and that what's we planned and that's what we have done. She did cold call four realtors because she was curious about these towers, her personal opinion is that they are ugly, and she wanted to know about property values. Realtors she contacted, who all wanted to remain anonymous, said that a tower would depreciate the property that the tower was on but also the surrounding properties. The attorney tonight mentioned that property depreciation doesn't matter because of state law. Well it matters to us a great deal. The realtors mentioned that common sense has shown that when a potential client pulls into a property and sees a water tower or a radio tower many clients are no longer interested in that neighborhood. Our area Locust to Bofield to Honeysuckle to Mad River are modest ranch homes, the realtors said that it would affect our property value because a 50 foot tower is viewable despite all of the pictures that were shown at the other meetings. Mr. Rollert will plant things the tower will still show. The realtors also mentioned that the higher price your home is listed the more depreciation there would be. Again, a common sense approach. Mr. Rollert mentioned in his appeal that if he leaves the area he will take down the 50 foot tower, the concrete would still be there. Her question is who enforces the removal of the tower if Mr. Rollert does leave. The realtors she spoke to also mentioned that is the subject property is for sale and is unsellable then it becomes a vacant property. Ms. Choate mentioned that another concern is safety, the metal structure can withstand winds up to 90 mph but we never did receive an answer on how much taller the antenna would be on top of the tower. Mr. Rollert said in the previous meetings that it fell within the fall zone. The fall zone consists of many easements and oak trees.

Scott Scarberry, 4900 Bofield Dr. – He mentioned this evening that he has heard a lot about effective communication. He wonders how you define effective communication and who makes that determination - what is effective. When he heard about the variance, he heard the phrase most effective as opposed to effective communication. Again who makes that determination and in what way is that also tied into the elevation of the tower, as it is now, it is on top of one of the highest hills in the Miami Valley. Does that any way tie into it as well is it gaining the most effective communication by being on that highest hill. His concern is what is effective communication, how is it defined and who makes that determination. He is aware of the federal legislation being passed right before he came to the meeting. His concern is reasonable accommodations is that an absolute, you can put a 50 or 75 foot tower anywhere you want regardless of location. In terms of safety we have power lines around our neighborhoods and the failure of the tower or antenna and it falls on a power line that is a serious issue. We have a number of children in the neighborhood, there are a lot of safety concerns and I just can't see the details of this legislation being absolute. Again effective communication it sounds like our new neighbor has multiple towers across the Miami Valley, how many towers and antennas do you need to have effective communication. Why is this new tower and new antenna needed when clearly there are other properties that he owns that help him provide effective communication. He just wanted to bring up the whole term of effective communication, what is that, who determines it and has Mr. Rollert already attained that. Would he be able to attain that with another 25 foot tower or a 25 foot tower that telescopes up to 50 feet that he could elevate when needed. Thank you.

Janet Nixon, 4917 Bofield Dr. – She would like to mention that this hearing was not handled fairly when Mr. Roller's attorney gets to question certain people and neighbors and we don't get to question Mr. Rollert, and his attorney gets to talk an hour before repeating information that we already have. In his appeal Mr. Roller said that he has remote controlled radio systems on tall buildings, tall towers and there are about 8 of them around Greene County, Preble County, Montgomery County and Miami County. They are on water towers and they are on tall commercial buildings. That goes to the idea of a public purpose, and he mentioned even more tonight, Bethany Village. How many of these towers

does he need to fulfill the public purpose? She does think it's admirable that he is a well-qualified ham radio operator and it's wonderful the service that they provide in emergency situations. But it would seem to her with all of these towers already that we are pretty well covered. At the zoning meeting Mr. Rollert could not pin down what kind of antenna he would use on this tower. He said language like "it all depends, I don't know until I start putting antennas up and just see what takes." In other words he could not say what it would be. Picture shown of Ohio Historical Marker for Mad River Road. She does not know how many of those are in Kettering but that's right in front of David's Cemetery and as you drive up the hill you would see Mr. Roller's house and the 50 foot tower right there, it would be very obvious. He said at the zoning meeting that the antenna would go on the lattice part of the tower. The antenna at this house in Vandalia and one in Dayton the antenna is above the lattice work, so the 50 foot would just be a starting point and the antenna would extend above that. (Inaudible while Ms. Nixon was showing various pictures). She was eager to read the appeal where it talked about property values, what he submitted in his appeal was a report from 20 years ago, in 1998, and it talked about Sudbury, Massachusetts and the properties that had antennas did not affect negatively neighboring homes. She lived in Massachusetts many years ago before she moved to Kettering and that's like apples and oranges to compare there to here; it's like apples to grapes. Zoning laws are very different there, lots are very large and heavily treed. In the summer, she could not even see her neighbor's houses with foliage. Another reason you can't compare is those are suburbs of Boston, and Boston is an eastern coastal city with a hub of universities and businesses and so there is a growing demand and property values are going to go up. That's not the case with Kettering.

Roxanne Hemmelgarn, 4904 Bofield Dr. – Mentioned that Mad River is a historic road, but you don't see in the picture the elevation, as you are coming from Dayton going south you go up a hill therefore your eyesight is not straight ahead your eyesight is upwards, and the first thing you're going to see when you go to the top will be his tower. She has no problem with him having the radio tower but is in an inappropriate place. We are a totally inclusive residences and then he wants this tower. He talked about landscaping, where do you find 70 foot pieces of landscaping? They keep talking about an antenna and a tower but their two different things, the tower is 50 foot and the antenna could be up to 20 more feet is what she is understanding. He talked about utilities, if it would fall over it would fall on our power lines. In October, in the fall, we had two power outages, what's going to happen when we lose our power, he said he has insurance of \$2 million dollars, who's going to watch that insurance and who does he show and prove that he maintains it. She's worried about kids that can climb up the tower, where is the gate and who is going to write the provisions that provide the insurance and provide the gate so the children don't come. The cemetery had an 80 foot pit and the kids loved to come from all around and go into the pit at the cemetery, they are going to love and come see the tower. It's an inappropriate place to have this and he knew when he came that he would have to have extra provisions. He's infringing on us who have been there and the values of our homes. He just needs to find another place that's what we're objecting to. Thank you.

Alice Kemper, 4808 Bofield Dr. – Mentioned her house is almost directly behind Mr. Rollert's home and when she comes out of her front door she can look right into his back yard. She has lived in her house for many years and when we first got it we had electronic interference and we had to hire an engineer to come in and find what was causing it and put some electronic adapters on her house and it was a tower one over on David Rd. by the radio stations. So she is concerned and have heard other comments that these things frequently interfere with television, radio and any other kind of electronic equipment you have. Thank you.

Steve Chavel, 4761 Mad River Rd. – His home is a 1920's era home and he is concerned with the aesthetics of the tower as he lives right across the street caddy corner from Mr. Rollert's home. He uses his front porch when weather allows and he would be staring right at the tower. Given the historical prominence of Mad River Rd. as was shown earlier, even David's Cemetery which has historical significance as well, he is concerned with that. As was stated earlier, the values of the homes, his home would end up being one of those homes in the range that they were talking about that would probably have the most impact. He does not want to see that impact to his home. He is a lover of history, preservation of both natural and architectural history. He doesn't see anything that would benefit the community from that perspective given that we have other options for that, knowing what the ordinances were coming into this environment. He comes from an agricultural background, lived in Nebraska and came from Montana and he would love to have chickens in his yard and he would see benefit from that. But out of respect for his neighbors he would not want to do anything that would be a detriment, the majority of his neighbors are not wanting chickens in his yard so he is not going to do that. He would go live in the country where he could do that. He chose where he lives because of the beautiful area and he would hate to see that marred as well. Thank you.

Kathryn Payne, 4901 Bofield Dr. – Mentioned if she had just come tonight she would have thought this was about an ordinance that protects equipment for a public service. A good case was made for that with professional help. She has gone to all three of the meetings and only tonight was the public service emphasized. The impression that she got and other people did too was the main reason for this tower is for personal use, for personal pleasure, a hobby and for fun. She thought it was really clear from the other times that we met that this is why he wanted this tower and only occasionally has his hobby been useful and that it's good that it's useful in those occasions. For personal disaster, there have only been a few times that his equipment has been used for these. His primary use is for his own pleasure which is good but it affects the other people around him. Thank you.

Vice Mayor Lautar asked if there were any other comments from the public either for or against concerning this public hearing, none were heard.

Vice Mayor Lautar closed the public hearing and explained City Council will consider legislation regarding this matter at a future City Council meeting.

P.C. 19-001- Zoning Text Amendment

Vice Mayor Lautar opened the public hearing and asked that any person that intends to speak to City Council about this matter should stand and take an oath. Those that planned to speak took the oath.

Mr. Hundt, City Planner gave the staff presentation this evening. He mentioned that the city is not the applicant in this case. He will let the applicant introduce himself. The city has cooperated with the applicant in the fact we have provided a text change that would accommodate the requested action. Basically, this involves the removal of limitation on the location of state stores within the City of Kettering. He will go over very few items so the applicant is able to speak. The standards for approval of a text amendment have been met, and there was no opposition to this. This amendment is not site specific like a zoning request; this request is for a text amendment that affects not only the applicant but also others who may come into the city. The city has looked at the standards for location and feels that the State of Ohio has sufficient regulations in place to the point where the city feels they do not need to with additional regulations. We are in support of the applicant request.

Gaurav Bhatara, 4704 Kohls Ct. West Chester, OH gave the applicant presentation this evening. He is the owner of Springboro Wine in Spirits located in Springboro, OH and he has been at that location since 2010. His store has a great reputation in Springboro, and they just moved into a new location. He showed some pictures of his new store. His store has a modern appeal to it, and he has received recommendations from the Mayor of Springboro, Police Chief, and the Chamber of Commerce. They were selected by the State Liquor Board to open a store in Kettering based on their records. In the last ten years, they have done very well with having no violations at their Springboro location. He would like to have the opportunity to provide the same type of quality service in Kettering. The new store in Kettering will be modern and clean if given the opportunity. There were a lot of applicants, but the state selected his store to be in Kettering. Opening a store in Kettering will also allow his company to add 7 to 8 full-time and part-time jobs.

Mr. Hundt wanted to add that all standards to recommend approval of this particular text change have been met. Eleven different sections of the ordinance will be impacted because they are connected to other usage within the Zoning Code. So a number of sections will have to be modified to remove limitations on state stores. Since it meets the standards and the report is part of the record, he will not go over the report.

Mr. Duke asked if this text change is approved, how will this impact the potential of other spirit liquor stores in the community? Will these changes carry over anywhere within the city?

Mr. Hundt informed Council that there are two other state stores located within the city. Both of those stores do not meet the standards of the Zoning Code that was adopted in 2015. By taking out locational standards, those sites are no longer not conforming. This will benefit those sites if they would like to expand or relocate to a different location. This will not be opening a flood gate to state stores because they are heavily regulated. The state does not allow an overflow of state stores in a single community because there are limitations to the number of state stores that are permitted. There are some additional state stores that could be established based on the city's population within the region, but it is unlikely that we would get one or two more in Kettering. There are standards for notification for churches and schools that are already built into state requirements, which have already been done for Mr. Bhatara required notice. Two churches were identified. One church did not have an objection, and the other church had an objection but did not request a public hearing. There are safeguards in place that will allow other usage to have the same strict review by the state. There will only be two more state stores added in Kettering if that. The state wouldn't congregate the state stores together. He recommends approval of the amendment.

Vice Mayor Lautar asked if there were any other comments from the public either for or against concerning this public hearing, none were heard.

Vice Mayor Lautar closed the public hearing and explained City Council will consider legislation regarding this matter at a future City Council meeting.

PUBLIC COMMENT ON LEGISLATION

Sterling Abernathy- He is here this evening to speak about items number four and five on the agenda this evening, but since item number five has been removed from the agenda this evening he will address those concerns later in the meeting. Item four contains a supplemental appropriation to increase the spending for the arts project on Schantz Bridge from \$350,000 to \$420,000. That's a \$70,000 increase and a 20% cost overrun. This is not money to rebuild the bridge, but it is \$420,000 for decoration only. The Schantz Bridge Art Project consists of tall red metal screens on the bridge, and a 22 foot tall red cigar shape tower. During the past two years, City Council has repeatedly

approved resolutions pertaining to this project stating that the total cost of this project with related expenses would be \$350,000. All of the 94 artist and the semi-finalist who made proposals were told the total cost limit for their work was \$250,000. At the City Council two weeks ago, City Council was informed that the lowest bid for the art was \$305,000 which is \$53,000 over budget. City staff presented an option to avoid cost overrun to keep the project at budget by eliminating the tower. The resolution this evening will increase the spending on this project to \$420,000. After repeatedly approving the project for \$350,000, allowing a 20% overrun sets a bad precedent. This sends a signal to staff, the art committee, and future contractors that budget limits for art are meaningless. If you approve this resolution this evening, City Council is being rolled and you are allowing the tax payers to get rolled. We are being rolled not for a critical infrastructure, but for an expensive vanity project.

ORDINANCES IN SECOND READING

RESOLUTIONS

A RESOLUTION
NO: 10288-19
BY: MR.KLEPACZ AND MR.DUKE

AUTHORIZING THE CITY MANAGER TO CONTRACT WITH ROZZI'S FAMOUS
FIREWORKS FOR THE PURCHASE AND DISPLAY OF FIREWORKS FOR THE ANNUAL
GO 4TH! CELEBRATION AT DELCO PARK

Mr. Klepacz read the above resolution and moved for approval. Mr. Duke seconded the motion.

Mr. Schwieterman, City Manager gave a brief description of the resolution.

The following votes were recorded: Mr. Klepacz, Yea; Mr. Duke, Yea; Mr. Wanamaker, Yea; Vice Mayor Lautar, Yea. There being four (4) Yea votes and no (0) Nay votes, the motion was declared carried and the resolution duly adopted.

A RESOLUTION
NO: 10289-19
BY: MR.DUKE AND MR.WANAMAKER

TO MAKE SUPPLEMENTAL APPROPRIATIONS FOR CURRENT EXPENSES AND OTHER
EXPENDITURES OF THE CITY OF KETTERING, STATE OF OHIO, DURING THE FISCAL
YEAR ENDING DECEMBER 31, 2019

Mr. Duke read the above resolution and moved for approval. Mr. Wanamaker seconded the motion.

Mr. Bergstresser, Assistant City Manager gave a brief description of the resolution.

The following votes were recorded: Mr. Klepacz, Yea; Mr. Duke, Yea; Mr. Wanamaker, Yea; Vice Mayor Lautar, Yea. There being four (4) Yea votes and no (0) Nay votes, the motion was declared carried and the resolution duly adopted.

ORDINANCES IN FIRST READING

CERTIFICATIONS AND PETITIONS

MANAGER'S REPORT/COMMUNITY UPDATE

Mr. Schwieterman, City Manager updated Council on upcoming and community events.

- "Spring Ahead" one hour on Saturday night, March 9. Daylight savings time begins Sunday morning, March 10.
- Coming to the Frazee:
 - Michael Bolton- Thursday, May 23 at 7:30 p.m.
 - Little Big Town - Saturday, June 29 at 7:30 p.m.
 - Steve Miller Band & Marty Stuart- Tuesday, July 16 at 7:00 p.m.Tickets can be purchased to all events at the Frazee Pavilion Ticket Office, Frazee Fanfare store located in Town & Country Shopping Center, www.frazee.com, www.etix.com or charge-by-phone at 1-800-514-3849.
- The Yard Debris Center will reopen on Monday, March 4.

OTHER BUSINESS NOT ON WRITTEN AGENDA

Audience Participation (5 Minute Limit per Speaker)

Sterling Abernathy- He is here this evening to speak about the amendment to the city ordinance regarding animal control that has been removed from the agenda this evening, but it will come up at the next meeting. He has many concerns about the ordinance, but he will only mention a few. The city is adding a provision that no owner can have over five household pets on your property. This does not limit dogs or cats, but also fish, fowl, amphibians, and other species that are household pets. If you

have an aquarium with more than five fish, the owner will be over the limit. If you have four fish, a parakeet, and a dog, an owner will be over the limit because that will be a total of six household pets. If you are over the limit you're guilty of a minor misdemeanor which will be subject to a fine of \$150. You will have to go to court, and a judge will have sentence an owner for their crime. What business is it of the City of Kettering how many household pets are on someone's property if they are otherwise abiding by the law. Why is it having an aquarium or a Koi pond with a half dozen fish a crime? His second concern is about the provision about trapping nuisance wild animals. Suppose you have squirrels in your attic nesting and chewing on wires, or raccoons and skunks living under your deck approaching people. Complying with state law, an owner hires a license trapper to catch or remove the animal from your property. Once you do that, you have just violated Kettering law. This ordinance would first require a property owner to first contact Kettering's Animal Control Officer, who would then have to agree that the animal is a nuisance would you then be able to call a license trapper to remove the animal. Violation of this provision would include being guilty of a second degree misdemeanor which could be subject to jail up to 90 days, a fine of \$750 or both. In Kettering, if you hire a state license trapper to remove the nuisance animal from your property without getting permission in advance from the city, you are a criminal and can be incarcerated according to the ordinance. Why should you need permission from the city to hire a license trapper? His third concern is that the approval of this ordinance is being rushed. This ordinance was first issued last Friday, and few members of the public are not aware of the provisions within the ordinance and they have not had a chance to give input. City Council should allow the normal two weeks to be informed before you approve this ordinance.

COUNCIL COMMITTEE REPORTS

Mr. Lautar reported:

- On February 24 he was a judge for the J.E. Prass science expo.

Mr. Duke reported:

- Compliments to the Cub Scout in the audience who stayed for the entire meeting.

Mr. Wanamaker reported:

- No report.

Mr. Scott reported:

- Absent.

Mr. Klepacz reported:

- On February 23 he attended the "Diva's in Paris" event for Kettering Backpack Program.
- Sister Cities will be hosting a youth exchange in July from Steyr, Austria.
- Shop Kettering.

Mrs. Fisher reported:

- Absent.

Mayor Patterson reported:

- Absent.

They're being no further business to come before this meeting of the Kettering City Council; Vice Mayor Lautar adjourned the City Council Meeting at 9:23p.m.

ATTEST:

BILL LAUTAR, VICE MAYOR

LaShaunah D. Kaczynski
Clerk of Council