

Virginia:

AT A CONTINUED MEETING of the Nelson County Board of Supervisors at 7:00 p.m. in the General District Courtroom located on the third floor of the Nelson County Courthouse.

Present: Thomas D. Harvey, North District Supervisor
Thomas H. Bruguire, Jr. West District Supervisor
Larry D. Saunders, South District Supervisor – Vice Chair
Allen M. Hale, East District Supervisor
Stephen A. Carter, County Administrator
Candice W. McGarry, Administrative Assistant/Deputy Clerk
Tim Padalino, Director of Planning and Zoning

Absent: Constance Brennan, Central District Supervisor - Chair

I. Call to Order

Mr. Saunders called the meeting to order at 7: 00 PM with four (4) Supervisors present to establish a quorum and Ms. Brennan being absent.

- A. Moment of Silence
- B. Pledge of Allegiance – Mr. Bruguire led the Pledge of Allegiance

II. Public Comments

Mr. Saunders opened the floor for public comments and the following persons were recognized:

1. Clay Stewart, Stewart Computer Services

Mr. Stewart expressed his company's concerns regarding the County not helping him bring more internet to the county and the time it was taking to build out for wireless internet services in the County. He noted that he had asked for a build out lease months ago and had requested the use of High Top tower years ago. He noted that he offered his advice in where to place the towers for the broadband project in order to get cheaper fiber in so he could get to more people at a lower cost. He noted that he supported fiber and fiber to the home; however he expected a discount on the wireless towers and the actual network costs were not what were expected from the beginning. He added that he had requested the top of the NCBA towers and was not successful. He noted that months had been lost in getting the tower lease agreements worked out and in setting the rates. He noted that he had offered to come up with a public/private partnership to help get internet out to the people. He noted that he was told no by the County and that the County could not show favoritism towards any one company. Mr. Stewart then noted that CIT had related to the County a model of this from a successful project done in Franklin County. He noted that there was evidence of these partnerships in other counties.

2. Mary Creed Pallone, Shipman

Ms. Pallone began to speak about the tower ordinance and was advised that the public hearing on this subject would be later in the meeting.

3. Elwood Waterfield, Arrington

Mr. Waterfield noted that there was an article in the Nelson County Times regarding the need for Keep Nelson Beautiful (KNB) and that he was asking that KNB remain intact. He noted that Schuyler and the South district were the worst and that unclean equaled unsafe. He reiterated that KNB was needed and they needed to keep their focus on these two areas of the County. Mr. Waterfield reiterated that he had been denied membership to KNB for five years and alleged he was then appointed to the Board after he had threatened litigation. He added that the seats had expired in January and the vacancies had not been advertised. He added that he thought the Board had discriminated against

him and their actions constituted misconduct in office and malfeasance. He added that he would pursue having them investigated for misconduct.

III. Public Hearings & Presentations

- A. **Public Hearing -Proposed Ordinance O2014-01**: Repeal Appendix A - Zoning Ordinance, Article 20, Communication Towers, §20-1 through §20-19, including the Fee Schedule, and to enact replacement §20-1 through §20-21.

Mr. Padalino reviewed the major changes in the amendment as follows:

Section 4 definitions: moving from Class I-IV to class A, B, and C. He then noted each of these definitions as follows:

Class A Communication Tower: A communication tower which is equal to or greater than forty (40) feet in tower height and which is less than or equal to one hundred (100) feet in tower height and not in a residential district.

Class B Communication Tower: Any communication tower located in a Residential, R-1; Residential, R-2; or Residential Planned Community, (RPC) District; or any communication tower in any district that is greater than one hundred (100) feet in tower height, to a maximum allowed height of 130 feet; or any communication tower within three hundred (300) feet of an occupied dwelling, provided however, if the owners of all such occupied dwellings affirm in writing to the applicant that they have no objection to the proposed tower, then this final clause shall not, standing alone, cause the proposed communication tower to proceed as a Class B communication tower application.

Class C Personal Wireless Services: Would be similar to what was on the books as a Class IV tower.

Section 5 deals with procedures for each class. Class A permits would be issued by the Planning & Zoning Director and Class B permits would be issued by the Board of Supervisors. Class C would be administrative in nature and would have to comply with proposed Section 20-18. He noted also that subsection 1 required that a \$1 million dollar insurance policy be maintained.

Section 6 details application procedures for a Class A tower permit and requires the Planning and Zoning Director to check applications for completeness and compliance with the Ordinance.

Section 7 details application procedures for a Class B tower permit and establishes the requirement for a balloon test and review by the Planning Commission and optional public hearing. Provides factors for the Board of Supervisors to consider in reviewing applications and requires a public hearing prior to a determination being made on a Class B tower permit.

Section 8 deals with view sheds and minimum setbacks based on the height of the tower. He noted that the current Ordinance has a setback of 1 mile for the Blue Ridge Parkway and Scenic byways and he noted the proposed setbacks as follows:

Required Minimum Setbacks – View Sheds (1) and (2).

1. A communication tower which does not exceed 100 feet in tower height: 500 feet from the boundary line of the Blue Ridge Parkway, Skyline Drive or Virginia Scenic Byway closest to the tower.

2. A communication tower that is greater than 100 feet in tower height but does not exceed 130 feet in tower height: 1,000 feet from the boundary line of the Blue Ridge Parkway, Skyline Drive or Virginia Scenic Byway closest to the tower.

3. A communication tower greater than 130 feet in tower height: 2,000 feet from the boundary line of the Blue Ridge Parkway, Skyline Drive or Virginia Scenic Byway closest to the tower.

Section 11 requires completion of a tower within a year of the issuance of the permit and provides for a one year extension and a ninety day removal requirement if the permit becomes void. He noted that it also required that the Planning and Zoning office be notified within thirty (30) days if a change in tower ownership occurred.

Section 16 is the application Fee Schedule as follows:

Class A Communication Towers: An application permit fee of one thousand dollars (\$1,000.00)

Class B Communication Towers: An application permit fee of two thousand dollars (\$2,000.00)

Section 17 allows for modifications of certain regulations as follows:

- A. The Board of Supervisors may modify the location or height restrictions, or both, upon a determination that (i) the strict application of the ordinance would produce undue hardship; (ii) such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and (iii) the authorization of the modification will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by the granting of the modification.
- B. In authorizing a modification, the Board of Supervisors may impose such conditions regarding the location, character, and features of the communication tower as it may find necessary for compliance with the purposes set forth in Section 20-2.
- C. No such modification shall be authorized except after notice and hearing as required by Section 15.2-2204 of the Code of Virginia.

Section 18 provides that Class C towers are defined the same as Class IV towers except for some provisions that would be moved into Section 20-20. These provisions concern policies, procedures, and fees for collocation, permit amendments, and un-classed poles - monopoles less than 40 feet in height and temporary tower permits. He added that these would also be reviewed administratively.

Section 21 covers appeals and provides for denials to be made in writing. He noted that Class A appeals would be made to the Board of Supervisors.

Supervisors and Staff then discussed the following:

Section 20-8 Viewsheds was discussed and it was noted that in regards to the Parkway and the Skyline Drive, there were some provisions where Federal agency comment on tower placement was required.

Mr. Hale questioned the need for inclusion of any towers greater than 130 feet and Mr. Carter noted that in Section 20-17, there was a provision where the Board could allow a tower over 130 feet. Mr. Hale then noted that this was not of great concern for him.

Mr. Harvey questioned how far a view shed went and Mr. Padalino advised that the ordinance provided it was one air mile from the outermost boundary of the Parkway or Skyline Drive. Mr. Harvey questioned whether or not homes disrupted view sheds such as the ones at Wintergreen and Mr. Hale read aloud the view shed definitions from the Ordinance as follows:

View Shed (1) Blue Ridge Parkway; Skyline Drive: An unobstructed sight or the range of one's sight while traveling, visiting, driving or otherwise, using the natural or man-made resources of the Blue Ridge Parkway (BRP) or the Skyline Drive. For the purposes of

this ordinance, the view shed distance is one (1) air mile from the outermost boundary line of the Blue Ridge Parkway or Skyline Drive.

View Shed (2) Virginia Scenic Byway: An unobstructed sight or the range of one's sight while traveling, visiting, or driving along a highway that has been designated by the State of Virginia as a Scenic Byway.

Mr. Harvey noted he did not like the term view shed because every time someone puts something up on their property, the neighboring views change. He and Mr. Saunders both indicated that the setbacks concerning the Scenic Byways needed to be removed.

Mr. Hale suggested that there was no harm in including them if the Board had the ability to grant exceptions.

Mr. Harvey noted that he thought that there was still more work to be done on the Ordinance.

Mr. Bruguire noted that citizens wanted better communications and if the Ordinance made the towers be placed so far off of the Scenic Byways, there would be far more detriment to the environment by having more roads, power, and shelter installations. Mr. Harvey concurred and noted that everywhere else, the towers were along the highways.

Mr. Saunders then opened the public hearing and the following persons were recognized:

1. Clay Stewart, Stewart Computer Services (SCS)

Mr. Stewart noted that his concern was with the sections of the draft Ordinance pertaining to towers 40 feet and under. He added that he thought that this part of the Ordinance was created to go directly against SCS broadband infrastructure given that only he used poles ranging from 2 ft to 30 ft. He questioned the motivation for implementation of the Ordinance and noted it was not requested by any citizen concerned with the safety of the 1 watt radios used, the poles used, or the chimney mounts and he did not understand why there was an Ordinance for this. He noted that completing Zoning Applications took time away from him deploying his network.

He added that there was no consideration of grandfathering his current installations and he again questioned where the force came from to produce such an Ordinance for something having so small of an impact. He concluded by asking again why the County was not helping him to get internet out and noted that the Ordinance was another big thing to deter him from doing this since his business was so labor intensive.

2. Mary Creed Pallone, Shipman

Ms. Pallone noted she was in favor of creating a better radio and cell tower network in the county; however she noted that the County could do this in a manner that did not remove the public notification and hearing process. She then noted that she would like the setback for Class B towers to occupied dwellings to be greater than three hundred (300) feet. She added that she thought this was too close in a rural environment. She then noted that she thought the major problem was that there was no requirement to notify adjoining property owners of neighboring tower construction. She then distributed a photograph of a balloon test near her house that had been conducted under the current ordinance. She noted that this would not be required under the new Ordinance. She noted that if the new Ordinance was passed the way it was, she would have no input on the placement of the neighboring tower and it would be within three hundred (300) feet of her horse shed and pasture. She also objected to there being no rules in place to make applicants look for an alternate tower placement.

3. Steven Waller, Consultant in Wireless Industry (Verizon)

Mr. Waller thanked the County for its efforts to improve service throughout the County. He noted that Verizon has had representatives that have provided input throughout the Ordinance development process and they appreciated that. He noted that he was present

to answer any questions and he then addressed the photo of the balloon test that Ms. Pallone had provided. He advised that the balloon test was done at 95 feet and that the site was on hold to see what direction the County would go in with the Ordinance. He added that Ms. Pallone and other neighbors had been contacted for input ahead of them putting in the tower application for that particular site because they and the applicant wanted to be a good neighbor. He noted that the balloon had to be flown about fifty (50) feet out of the woods because the actual site was so heavily wooded and they wanted to hide the base. He noted that there was considerable difficulty in presenting a realistic picture of how the site would look.

4. Mary Creed Pallone, Shipman

Ms. Pallone rebutted Mr. Waller and noted that she was not involved until they knew she owned the driveway to get to the site.

5. Gary Sherwood, Shipman

Mr. Sherwood noted that he was the landowner and applicant neighboring Ms. Pallone and that he felt like he was in the middle. He advised that through Verizon, he had informed Ms. Pallone at every step of the process. He added that he was speaking to the Ordinance in that it was his right to put up a 100 foot tower without permission.

6. Joe Dan Johnson, Arrington

Mr. Johnson noted that he thought that the Ordinance was too restrictive and that the purpose as stated in the Ordinance did not say anything about encouraging broadband across the county in a responsible fashion or encouraging economic development, or helping education; and it in fact said that the purpose was to minimize the economic impact on tourism. He added that he thought broadband services were imperative for tourism and he added that people needed connection while visiting sites for various reasons.

He noted that the proposed Ordinance would cause hardships to local providers and would put the County's only local wireless service provider out of business. He noted it would treat wired poles and wireless poles differently. He noted that the application process and charges were disparate. He added that the wording in the applications for the Class C facilities was misleading and it said that the facility was the house and not the antenna or antenna array. He then noted that the removal provisions for Class A and B towers were often discussed in the Ordinance and then there was nothing for Class C installations. He reiterated that the verbiage was confusing. He then questioned whether or not two-way communication capabilities meant an antenna was considered to be commercial and he noted that this would affect exempt and non-exempt status. He noted that whip antennas were addressed two different ways in the proposed Ordinance and that receiving and broadcasting created confusion.

Mr. Carter noted that wired poles were regulated by the state and Mr. Johnson noted that even so, poles with DSL were not required to pay the \$100 local fee that wireless providers were.

Mr. Johnson reiterated that the Ordinance verbiage created areas where some statements were counteracted by wording in other places.

Mr. Johnson reiterated that he thought the Ordinance, as proposed, was restrictive and almost treated towers as a bad thing and he would like to see the purpose revised to reflect the benefits of towers and broadband. He reiterated that the verbiage needed to comport throughout the document. He noted that most importantly, the mindset of the document needed to be changed to reflect that the County wanted broadband for tourism and better quality of life and to encourage this for the least physical cost. He encouraged the Board to move forward and hit more areas of the county with Broadband.

Mr. Saunders then noted for the public that the intent of the Board was not to approve an Ordinance that night but to discuss it.

7. Jace Goodling, Afton

Mr. Goodling asked the Board to look at the spirit of the Broadband project which was to provide broadband to as many people as possible as quickly as possible. He added that he had heard that the top of the broadband towers were reserved for profit seeking cellular companies. Mr. Goodling then noted that he hoped the Board of Supervisors would take a good look at the proposed Ordinance as it needed to be cleaned up. He noted that he thought it to be far overreaching in its fees and taxes and it gave the appearance of trying to shut SCS down.

Mr. Goodling noted he thought the County was acting in the role of a business and was competing with other businesses in the county. He added that the draft Ordinance was not in line with the spirit of the Broadband Project and the Board should scrap it and start over. He concluded by stating that he thought the County should assist SCS in continuing to provide services.

Mr. Harvey noted that it was known within the scope of the broadband grant that outside income would be needed to make the project work. He added that income from cellular companies was included because they would pay a lot more to be on the towers than others. He added that this was part of the business plan from the start.

Mr. Goodling stated that the project was done with government money and he did not think it was intended to be that way.

8. Shelby Ralston Bruguere, Afton – provided to the Board via email

“It may not be the best course of action to include strict setbacks in the Ordinance. The location of the towers should be determined by the topography and characteristics of the land, so as to position towers in the most advantageous locations in order to maximize coverage with fewer towers being needed. Having the Ordinance stipulate setbacks, may prevent the best coverage being attained.

Also, the setbacks seem to not only discriminate against owners of smaller tracts of land (which may not meet setback requirements, but have the best site location characteristics), but will also have placement of towers compromise the view-shed in an even more negative manner; IE, the farther a tower is setback from the roadways, the more intrusive the tower is to the view-shed.

Further when considering tower placement along roadways, it should be noted that the setbacks for commercial operations are 75 ft. Some of the buildings which have been recently constructed (and currently under construction along Rt 151) block the view of an entire mountain as you drive along this scenic by-way. Requiring a tower to have setbacks which are farther from the road than actual buildings does not treat residents/business/commercial interests equitably.

Again, I think we should leave tower location determinations to the service provider and the land owner, in order to ensure the towers are in the most advantageous positions to maximize service coverage. This also reflects the spirit of the broadband initiative, which is to achieve the highest level of communication and connectivity services possible in Nelson County.”

There being no other persons wishing to be recognized, Mr. Saunders closed the public hearing.

Mr. Bruguere noted that he thought the Ordinance needed more work and suggested that the Board have a work session to go through it. He added that even though the Planning Commission recommended its adoption, the Board needed to consider the comments presented.

Mr. Saunders agreed and noted that he was not in favor of a lot of restrictions and he wanted the Ordinance to work for businesses. He concurred that the Board should have a

work session and he reiterated that the proposed Ordinance would not be acted upon that night.

Mr. Harvey agreed with Mr. Saunders and added that he thought the Ordinance should contain grandfather provisions.

Mr. Carter then explained that the Class IV provisions were originally written to relieve WISPS of having the same responsibilities as larger tower companies and that the new Ordinance was actually more favorable to SCS. He added that under the old Ordinance, Mr. Stewart was in violation, which was ignored because the County knew the revision was imminent.

Mr. Hale noted that the Board's intent was to be proactive and beneficial to wireless companies and broadband provision. Mr. Harvey added that the Board's goals were the same as they originally were. He noted that the highest goal would be to have 100% broadband coverage of the county; however it may not ever be possible. He acknowledged that the County had a lot of kids that had to have the service and it was needed for college courses.

Mr. Hale noted that the difficulty the Board has had was that there were cell phone towers which did have a significant impact on adjoining properties and the Board's intent was to provide public notice and have limitations on these. He noted that these were in a different category from antennas or poles under 40 feet and that the Board was trying to tackle both and not succeeding.

Mr. Harvey then inquired as to when balloon tests were done, what determined the diameter of balloon used. He noted that he thought the balloon should show how the top of the pole would look from various locations.

Mr. Waller of Verizon noted he could answer the question and he was then recognized by the Chair. Mr. Waller noted that Verizon did not conduct the balloon test themselves, their consulting engineering firm did. He noted that the one shown in Ms. Pallone's pictures was six (6) ft in diameter. He added that it depended on the product each engineering company used and the site conditions. He noted that there was really no way to replicate the true size and color of what the tower would look like with a balloon test. Mr. Harvey supposed that they could use computer simulations which would be more realistic.

Mr. Harvey then asked what the average size of the top of an average tower was. Mr. Waller noted that one like the tower at Woods Mill was about 18 inches in diameter at the top and then there were antennas attached, which made it about 52 inches across. He noted that with the proposed Ordinance the flush mounted antennas would not necessarily be the norm; however the diameter would not be much more than 52 inches.

Mr. Padalino added that the draft Ordinance did not prohibit platform antenna configurations on the towers.

Mr. Saunders thanked the public for their comments and noted that the Board would go back and work on the Ordinance.

B. **Presentation** – Piedmont Virginia Community College Annual Report
(Dr. F. Friedman)

Dr. Friedman, President of Piedmont Virginia Community College (PVCC), addressed the Board to present his annual PVCC update.

Dr. Friedman reported that total enrollment was just under 8,000 and Nelson County enrollment was 299, up 10 from the previous year. He added that Nelson County students made up 4% of enrollment and this number included twenty-nine (29) students that had just graduated from NCHS, sixty-two (62) that were taking dual enrollment classes at NCHS and half were taking at least one course from them online. He added that

the online class program really made a difference and that Broadband access was important to these students.

Dr. Friedman then reported that enrollment was leveling off after five (5) years of growth and this may mean that the economy is picking up because this was an inverse relationship. He added that the college had opened up off campus sites in Greene County and at the Jefferson School in Charlottesville. He noted that the students at these locations averaged 1.5 classes per person and that the Culinary Arts program had filled up immediately.

Dr. Friedman noted that their priority now was expanding short term programs so people could get back to work. He noted that they were looking at adding an Early Childhood Education program for preschool workers, Pharmacy Tech, Central Sterile Processing - Sterilization of Medical things that had been requested by the hospitals and would be a semester or two long, Retail Sales Management, Hospitality, and Cyber Security.

Dr. Friedman then noted that their biggest next project was construction of a Student Success Center. He explained that the campus currently had no student space; they were okay on classroom and lab space but needed more room for students. He added that the College has had legislation introduced to start the funding process through the state and that they would be seeking site development funds from localities 2-4 years from now.

In conclusion, he requested that the Board appoint a new PVCC Board member and he offered his assistance.

Mr. Bruguire then asked how the dual enrollment students at the High School were affected when they missed school for snow days. Dr. Friedman noted that most High Schools had more time built in for these classes and losing this time should not have an effect. He added that the Deans would work with faculty to be sure these students were getting through what was required.

Dr. Friedman then thanked the Board for their time and distributed packets of information for their reference.

IV. New/Unfinished Business

A. Approval of Minutes (R2014-08)

Mr. Harvey moved to approve resolution **R2014-08** Minutes for Approval and Mr. Bruguire seconded the motion. There being no further discussion, Supervisors voted (3-0-1) to approve the motion, with Mr. Hale abstaining due to his absence from that meeting, and the following resolution was adopted:

**RESOLUTION R2014-08
NELSON COUNTY BOARD OF SUPERVISORS
APPROVAL OF MEETING MINUTES
(December 10, 2013)**

RESOLVED, by the Nelson County Board of Supervisors that the minutes of said Board's meeting conducted on **December 10, 2013** be and hereby are approved and authorized for entry into the official record of the Board of Supervisors meetings.

B. PVCC Board Appointment

Mr. Hale asked to defer consideration of this appointment until he had a chance to speak to both of the applicants. He noted he had spoken to one of them and he would like to speak to the other. After brief discussion, the Board agreed by consensus to defer this until the next regular meeting.

V. Other Business (As May Be Presented)

Mr. Harvey noted he would like to ask the Board for a short Executive Session dealing with a potential property acquisition for a public purpose.

Members indicated their willingness and Mr. Harvey moved to convene in closed session to discuss the following as permitted by Virginia Code § 2.2-3711(A) (3): discussion or consideration of the acquisition of real property for a public purpose.

Mr. Bruguere seconded the motion and there being no further discussion, Supervisors voted unanimously (4-0) by roll call vote to approve the motion.

Supervisors conducted the closed session and upon its conclusion, Mr. Hale moved to return to open session and Mr. Bruguere seconded the motion. There being no further discussion, Supervisors voted unanimously (4-0) by roll call vote to approve the motion and the Board reconvened in open session.

Upon reconvening in open session, Mr. Harvey moved that the Nelson County Board of Supervisors certify that, in the closed session just concluded, nothing was discussed except the matter or matters specifically identified in the motion to convene in closed session and lawfully permitted to be discussed under the provisions of the Virginia Freedom of Information act cited in that motion. Mr. Hale seconded the motion and there being no further discussion, Supervisors voted unanimously (4-0) by roll call vote to approve the motion.

Following certification of the closes session, no action was taken by the Board.

VI. Adjourn and Continue to February 4, 2014 at 9:00 am in the Board of Supervisors Room of the Courthouse, Lovingson VA for Board of Supervisors Retreat/Work Session.

At 8:39 pm, Mr. Hale moved to adjourn and continue the meeting until February 4th at 9:00 am in the old Board of Supervisors Room. Mr. Bruguere then suggested starting at 10:00 am and Supervisors agreed by consensus to stay with a start time of 9:00 am.

Mr. Harvey then seconded the motion and Supervisors voted unanimously (4-0) by roll call vote to approve the motion and the meeting adjourned.