

Planning Commission Meeting Minutes November 16, 2011

NELSON COUNTY PLANNING COMMISSION

MEETING MINUTES

November 16, 2011

Present: Chair Philippa Proulx, Commissioners Linda Russell, Michael Tapager and Supervisor Connie Brennan

Staff Present: Planning Director Fred Boger, Planner Tim Padalino and Secretary, Melissa Thompson

Call to Order: Chair Proulx called the meeting to order at 7:30 P. M. in the Board of Supervisors meeting room, County Courthouse, Lovingston.

Chair Proulx announced that Mr. Boger has confirmed that County Administrator, Steve Carter asked that the Planning Commission postpone their decision with respect to the county's application to permit placement of a 144 foot communication tower in Afton, application #2011-005.

Approval of Minutes: October 26, 2011 – Commissioner Russell made a motion to approve minutes as presented, Commissioner Tapager provided the second, and motion passed 3-0. Supervisor Brennan abstained.

1. Rezoning # 2011-001- Hope Foundation

Mr. Boger reported the Hope Foundation is requesting to rezone two parcels of land identified as Tax Map # 58-3-1 and # 58-A-17 from Residential, R-1 to Agricultural, A-1 to permit the sale of the properties. The properties are located on the east side of Thomas Nelson Highway north of Lovingston.

Mr. Boger stated the area in which the subject property is located has been zoned Residential, R-1, for decades. Changing the zoning classification of this property would break the integrity of this residential zoning district.

Mr. Boger said staff reviewed this rezoning request and cannot support it for the following reasons:

1. These are small parcels of land under a single ownership and they could be singled out for special and privileged treatment, namely to permit the placement of single-wide manufactured homes on them. The applicant can request a Special Use Permit to place a double-wide manufactured home on each parcel which would be compatible with the existing character of the surrounding area.
2. The rezoning of these two parcels does not appear to be in the public interest but only for the benefit of the land owner to permit the sale of the property.
3. The Comprehensive Plan designates the Lovingston area as "Rural Village" and a single-wide manufactured home does not appear to be compatible with this designation.
4. We do not believe the rezoning of these two parcels of land to Agricultural would be good planning. This type of zoning would be "spot zoning" and it should be discouraged

Supervisor Brennan asked if the property was partly zoned R-1 with the back portion being A-1. Mr. Boger stated that the R-1 zone extends 250' back from the road.

Mr. Harold Bare

Mr. Bare, representative of Hope Foundation shared its mission. He stated that some Nelson County residents are served by the charity. Mr. Bare suggested reasons to rezone the parcels would be to raise the tax value and improve their appearance. Mr. Bare also stated that his attorney does not believe the rezoning from R-1 to A-1 would be considered spot zoning. He said he has spoken with all but one of the adjoining property owners and that they have no problem with the rezoning request. Mr. Bare asked that rezoning of the parcels be recommended to the Board of Supervisors saying a buffer of trees could be included in the recommendation. Mr. Bare said he understood the reasons for the denial of the variance by the Board of Zoning Appeals and that is why Hope Foundation completed the application for rezoning. He then asked if Mr. Boger had letters from adjoining property owners. Commissioner Russell asked to see the letters. Mr. Boger said there were two form letters sent to the Board of Zoning Appeals and one was received today which was given to the Planning Commission to view.

Commissioner Russell asked about the entrance to the parcels. Mr. Bare stated that the entrance was grandfathered by VDOT. It was pointed out by Mr. Boger that the entrance provides access to Tax Map #58-A-2 and #58-A-2a. Mr. Bare stated there is a small house on 2a and that Hope Foundation would have to accept that the property owner will have a right of way. Mr. Bare stated that the hill breaks and that the property for which a request for rezoning has been made cannot be seen going north on Route 29. He said visibility is not an issue.

Chair Proulx told Mr. Bare that Hope Foundation or a purchaser could apply for a permit to place a double wide on the property as it is zoned currently.

The public hearing was opened.

Michael Horn:

Mr. Horn stated "it seems to me if you can put a double wide on there; what is the harm in rezoning with just the stroke of a pen".

The public hearing was closed.

Commissioner Russell said she had a real problem with this request as rezoning is done by district not by lot. The area has been zoned residential for many years and represents a sizable district. She stated if you take one or two pieces of property out of that district you break the integrity of the district. Ms. Russell stated this could lead to people all up and down Route 29 wanting to change the zoning on their property. She added this request would benefit a single property owner. Ms. Russell stated that by definition this is spot zoning. Ms. Russell stated that spot zoning by definition is a form of discriminatory zoning whose sole purpose is to serve the private interests of one or more landowners instead of furthering the welfare of the entire community as part of an overall zoning plan. Ms. Russell said she appreciates the situation the Hope Foundation is in but as Chair Proulx has said the applicant can come to the county for a Special Use Permit and put a double wide mobile home on the property without the need for rezoning. She suggested the applicant pursue a Special Use Permit.

Chair Proulx stated that she shared Commissioner Russell's opinion that this would be spot zoning. It's for the benefit of that one owner of the property. Chair Proulx said she would not want to set a precedent. The current zoning provides the property owner with a reasonable use of his land including placement of a doublewide manufactured home by Special Use Permit.

Commissioner Tapager stated that this property is one of the few areas zoned R-1, Residential in the county. He said typically it's the other way around; you have an agricultural district that in essence should be a residential district. Mr. Tapager stated that one of the problems when you spot zone is that all of the by-right uses that go with that rezoning go along with land so, in essence you're putting the possibility of a

hog lot(is the one we always hear) right in the middle of this residential area. He further stated the precedent we would be setting would be that if it's a residential neighborhood we could carve out a special agricultural area right in the middle.

Chair Proulx thanked Commissioner Tapager for expanding on the uses zoned agricultural.

Commissioner Russell made the motion for denial.

The Planning Commission recommends to the Board of Supervisors denial of rezoning application #2011-001 for Hope Foundation to rezone two parcels of land identified as Tax Map # 58-3-1 and # 58-A-17 from Residential, R-1 to Agricultural for the following reasons:

1. East and west sides of Route 29 have had an R-1 zoning classification for several years which extends some distance to the north and south. Rezoning would change the pattern of the entire zoning district.

2. There is no justification for the rezoning since the applicant can apply for a

Special Use Permit to place a doublewide manufactured home on the property.

3. Approval of this application would benefit a single individual as opposed to the

community's interest and would qualify as "spot zoning" which is not considered good planning practice.

The second was offered by Commissioner Tapager and the motion passed 3-0.

Supervisor Brennan abstained.

2. Class III Communications Tower, Application #2011-007, Buffalo Ridge, Gladstone

Mr. Boger reported that Mr. Dave Larsen, representing the applicant has submitted a good application to construct a 115 foot metal Communication Tower with a 5 foot lightning rod at the top. The total tower height is 120 feet. The proposed tower will be located at 16 Old Thirteen Lane, Gladstone, Virginia. The property is located on Richmond Road, (Route 60) west of Tye River Road.

The proposed tower is part of AT&T's deployment along Richmond Road. One tower has been approved for the Gladstone Rescue Squad property. Another tower is proposed to be constructed at 6109 Richmond Road west of Norwood Road. The third site in Nelson is the one under consideration now.

The application is requesting the following exceptions:

1. Section 20-8-1, Standards of height to permit the 120 foot tower.

2. Sections 20-8-2 Standards of location and 20-7-2a. The proposed height of 120 feet requires a 150 foot setback. The proposed tower will be located about 62 feet from the east property line and will be designed to collapse within the property.

Staff has reviewed the materials submitted, and found that Mr. Larsen has submitted a good application and some concerns about the tower height. AT&T has submitted a letter stating 115 feet is the minimum height required to provide seamless communication services to customers. Each AT&T tower proposed along Richmond Road will have a separation of approximately two miles. If the towers were higher this separation distance could possibly be increased. On the other hand, they are lower they might require additional tower(s) due to the terrain.

Section 20-7-5k (4) restricts the property owner from removing any trees other than to permit tower construction and installation without a waiver from the Planning Commission. It is important that the applicant makes the property owner aware of this restriction. The proposed tower height appears to work at this location due to the mature trees in front of it, along Richmond Road. If the trees were removed, the tower would be clearly visible which would be contrary to the intent of the Communication Tower Ordinance of protecting the rural character of Nelson County.

Chair Proulx asked how the county enforces the tree removal restrictions. She asked if it is part of the lease agreement. Chair Proulx asked Mr. Boger to contact the property owners to be sure they understand the restrictions. Mr. Boger agreed to contact the property owners.

David Larsen stated that this application is similar to one already submitted by A T&T and that this tower will be part of a larger network. After much discussion Mr. Larsen stated that Amherst County does not allow communication towers over 50'. He also stated that Verizon is requesting an extension of 20' to the Amherst County tower and that Amherst County is in the process of reviewing their ordinance. The Planning Commission reminded Mr. Larsen a tower is under consideration by AT&T which is 1.8 miles away from the one and that Nelson County requires a minimum distance of 2 miles. A T&T should be aware that the Planning Commission might look favorably on a row of towers located 2 miles apart immediately adjacent to Richmond Road.

The public hearing was opened.

Mark Shachtman:

Mr. Shachtman asked if the balloon testing was complete. He also asked what other areas were looked at for the communications tower. Chair Proulx told Mr. Shachtman that the commission could not answer that as the consultant conducted the study of other sites along Route 60. Mr. Shachtman asked if 120' towers were becoming the norm. He also asked what the difference was to put in 50' towers with no trees and 120' towers with trees. Commissioner Russell explained how terrain plays a part in the tower height. Chair Proulx explained that the average tree height in Nelson County is 80'. Supervisor Brennan stated that the taller towers are better for collocating. Commission Tapager stated that Nelson County is working with several carriers and that it is the commission's job to work out the aesthetic appeal. Mr. Tapager stated that the consultants look at the county ordinance and their budget before they come to the county with an application.

Mark Rosenthal:

Mr. Rosenthal stated that he has had a cell phone for 15 years that reached 97% of the United States. He asked that trees not be cut down to grow towers.

The public hearing was closed.

Commissioner Russell made the following motion:

The Nelson County Planning Commission recommends approval of a Class III Communications Tower application # 2011-007, Buffalo Ridge for Talon Solutions & Services, Agents for Central States Tower II to construct a 120 foot communications tower to be located on property owned by Ellie Funk and L.C. Campbell, 16 Old Thirteen Lane, Gladstone, VA, Tax Map # 96-1-1D. Furthermore, the Planning Commission recommends approval of the exception requested from Section 20-7-2a, with respect to the fall line based on the assurances from the applicant that the tower will be designed to collapse within the property line.

Commissioner Tapager offered the second and the motion passed 3-0.

Supervisor Brennan abstained.

Other Business-

Commissioner Russell expressed concern about errors recently found in the public hearing notices for the Nelson County Times. She suggested that perhaps we could remove any reference to specific exceptions requested by Tower applicants by simply stating that waivers and exceptions were requested. After discussion the Commission supported continuing to provide the more specific information.

Mr. Boger agreed to design an application specifically for Communication Towers.

It was decided that continued review on the Subdivision Ordinance, Transportation Ordinance and use of "Temporary Structure" would be deferred to the work session scheduled December 7, 2011 at 7:00 P.M.

Board of Supervisors Liaison Report – Connie Brennan

Supervisor Brennan reported on the legislative agenda for 2012 favored by the Association of Cities and Counties. The Board of Supervisors does not support the possibility of turning over the maintenance of secondary roads to the localities as the funds are a concern. She also shared information on options of impact fees and proffers, optional cluster development, urban development areas, and eminent domain.

Ms. Brennan reported that the health department will move to Blue Ridge Medical Center in June 2012. She stated that reassessment will begin soon.

A motion was made by Commissioner Tapager to continue the meeting to December 7, 2011.

Respectfully submitted:

Melissa M. Thompson

Planning & Zoning Secretary

The next meeting (work session) will be December 7, 2011, 7:00 P.M. in the Board of Supervisors room, 84 Courthouse Square, Lovingston, VA