

Planning Commission Meeting Minutes-October 26, 2011

NELSON COUNTY PLANNING COMMISSION
MEETING MINUTES

October 26, 2011

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

Staff Present: Fred Boger, Melissa Thompson, Betty Fortune

Call to Order: Chair Proulx called the meeting to order at 7:30 P. M. in the Board of Supervisors meeting room, County Courthouse, Lovingson. She announced that the Class II Communication Tower for Verizon Wireless, Cove Mountain location, has been deferred by the applicant until December, 2011. She also explained the procedure to be followed for the public hearing.

Approval of Minutes – August 24, 2011: Supervisor Brennan asked for a correction of the following sentence: One company has been will be hired to work toward providing Broadband for County Offices, Health Department, Schools, Library, etc. along the main Broadband line. Commissioner Tapager made a motion to approve the minutes as corrected. Motion was seconded by Commissioner Russell, and motion passed 4-0, with Supervisor Brennan abstaining.

Approval of Minutes – October 5, 2011: Commissioner Tapager made a motion to approve the minutes as presented. Motion was seconded by Commissioner Russell, and motion passed 3-0, with Supervisor Brennan and Commissioner Harman abstaining.

Special Use Permit #2011-007 – Willie Parrish

Mr. Boger reported that Mr. Michael Parrish is requesting a Special Use Permit to place a mobile home on his father's property located at 1885 Cub Creek Road, Roseland, Virginia. The SUP is necessary because there is an existing manufactured dwelling on the property and the second one will constitute a mobile home park. The existing manufactured home is used as a weekend retreat and the new mobile home will also be used in this manner. Mr. Parrish previously asked for permission to bring the unit to the lot and was given permission to store it until after the Planning Commission and Board of Supervisors considered the SUP. Presently there is an old house on the property and Mr. Parrish indicated that he will be removing it because of its present condition. The new structure will be located between the two existing structures.

Mr. Boger added that VDOT has looked at the driveway entrance and has no problem with it. The Health Department official informed staff that a drain field was installed to serve a house and trailer in 1976. The permit was for eight bedrooms, 800 gallons per day. The system will need to be inspected before use. If the old house is removed and the system is working properly, it could handle the existing manufactured home as well as the new mobile home.

Commissioner Russell pointed out that there is a discrepancy between the tax map and GIS as to the location of the property. Mr. Boger said that this had been noted and that the tax map is the
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official document used for identifying property. The GIS map shows the location of the two houses on the property, but the property line is definitely incorrect, according to Mr. Michael Parrish. There is no survey of the property.

Mr. Michael Parrish spoke for his father who was also present. He said that the lake is behind the houses, but is not owned by his father. Mr. Willie Parrish owns one parcel of 12.59 acres and one of 5.00 acres. He agreed that the property lines don't appear to be correct on either document.

The public hearing was opened. There were no comments, and public hearing was closed.

Chair Proulx asked if the applicant for a building permit has to prove ownership of the property. Mr. Boger said that property records were used for this purpose. Commissioner Russell asked when the existing home is to be torn down, and Mr. Parrish said they plan to do that within six months. She said she had no problem with the request except the quality of the records the Commission is asked to base the decision on. She suggested that Mr. Parrish get his deeds and pursue getting the records corrected. Mr. Boger said a survey would provide the most accurate record.

Commissioner Russell made a motion to recommend that Board of Supervisors approve the application, as stated in the following resolution¹:

The Nelson County Planning Commission recommends approval of Special Use Permit #2011-007 pursuant to Section 4-1-24a of the Zoning Ordinance to place a second mobile home on property located at 1885 Cub Creek Road, Roseland, Va., Tax Map 42-1-1. The property is zoned A-1 and consists of

12.59 acres. As a condition, removal of the existing vacant house must be within one year of placement of the second mobile home.

Commissioner Harman provided the second, and motion passed 4-0, with Supervisor Brennan abstaining.

Supervisor Brennan explained that the tax records are very confusing in this case. She explained to the audience that she does not vote on these cases since she is the BOS representative and will act on the decision when the Board meets.

Mr. Boger reported that the County Administrator has submitted an application to erect a Class III tower at 10368 Critzer Shop Road, Afton, Tax Map #4A-3-105. This property is zoned A-1, with some surrounding properties zoned M-2. He showed an aerial view of the residential subdivision that will contain the tower. The proposed tower will be 140 feet tall with a 4 foot lightning rod.

Class III Communications Tower, Application #2011-005, County of Nelson

Mr. Boger stated that the County is requesting four waivers and exceptions:

1) A waiver of Section 20-7-5k, landscaping

1 Resolution – Parrish

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2) An exception of Section 20-8-3, two-mile tower separation requirement

3) An exception to Section 20-7-2e, required setback of one mile from designated Scenic Byway

4) An exception to Section 20-7-2a requiring 125% setback from property line.

Mr. Boger added that Nelson County does not intend to place antennas on this tower, but will make the site available to broadband providers on an open access basis in accordance with efforts to improve broadband availability to the unserved and underserved Afton areas. Certification from a structural engineer was requested to show that the tower will collapse within the lease area. Central States Tower, Inc. has advised that this certification cannot be provided until the tower is designed which won't take place until approvals are secured.. VDOT has inspected the site and approved the existing entrance off of Rockfish Valley Highway.

Chair Proulx asked about a 50 foot unimproved right-of-way easement. Mr. Boger confirmed that there is an easement and showed a survey. Commissioner Russell stated her understanding that a separate road is planned. Mr. Boger said he was not aware of this plan.

Chair Proulx asked if an exception to the tower height was specified in the advertisement. Mr. Boger said it was not because it was not indicated in the report from the County. Staff uses the application to prepare the advertisement, and the narrative was not received until after advertisement was placed. Chair Proulx stated she was not aware of the need for this exception until tonight's hearing.

Mr. Boger said that information has been received from FAA stating that "marking and lighting (at this site) are not necessary for aviation safety." At this time it is unknown how utilities will access the property. TJSWCD has reported that no E & S plan is required; however, if the easement is used for access, that will have to be considered. In any case, before a building permit can be issued, all E & S requirements must be met.

Supervisor Brennan stated her concern with cutting down trees. Mr. Boger referred to Section 20-7-5k(4) which states that "existing trees within 300 feet of the tower shall not be removed except as may be authorized to permit construction of the tower and installation of access for vehicles and utilities." The County has the right to use the easement/road, as needed.

Commissioner Harman asked if the tower had been designed. Mr. Boger said that it will be designed after approval of the permit.

Commissioner Russell asked what other towers are in the "spine" and where they will be located. Mr. Boger said that Mr. Carter will be able to provide this information. Supervisor Brennan asked if there are other places on this site where the tower could be located. Mr. Boger said that the property slopes downward, but he is not aware that other locations were considered.

Steve Carter, County Administrator, said he would be glad to answer questions and provide additional information. He said that there is no plan for removing existing trees. Chair Proulx asked if they can expect the County to make a commitment to that effect, and Mr. Carter said trees will be kept for screening. He stated that in 2006 the Board of Supervisors agreed that

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broadband provision was a priority for the County. Since that time, a number of grants have been received and in 2009 the County applied again for a federal stimulus grant. When all approvals are received, construction could begin within two weeks.

Mr. Carter stated that the County did look at alternate sites. There were concerns about issues that might arise if the tower was located within the Blue Ridge Parkway viewshed or near historical sites. After moving from one location to another, they negotiated with Dr. Andrew and Mrs. Patricia Hodson for the site being discussed. It is expected that 800 households can be served from this tower location.

Mr. Carter added that there are five proposed tower locations as part of the broadband project:

- (1) Veritas site
- (2) Martin's Store site (intersection of Rockfish Valley Highway and River Road)
- (3) Massies Mill site (in negotiation)
- (4) Colleen site on Central Virginia Electric Cooperative property (existing)
- (5) County Courthouse site (existing)

Fiber optic cable will be placed underground along Rockfish Valley Highway, River Road, and Thomas Nelson Highway.

Commissioner Russell asked why the first site at Veritas Winery location was rejected. Mr. Carter said that the owners did not approve of this site, and that an industrial site is better suited. This particular property is zoned A-1, but is located adjacent to industrial property. He said the County felt this location was the least intrusive on adjoining property, and after reaction from the audience, said that this was a poor choice of words.

Commissioner Russell asked if the Commission was being asked to approve a tower with no antennas. Mr. Carter replied that at this time only the tower needed approval. If additional antennas are requested, application would be made to the Planning Commission. He pointed out that one objective is to generate additional revenue, which could come from collocations.

Chair Proulx expressed concern about the proximity of the tower to two Scenic Byways.. Commissioner Russell said she has a problem with the height and that she would prefer a greater number of shorter towers. Mr. Carter said that goal is to provide maximum broadband coverage to the area. Coverage area will be Afton and parts of Crozet. Nelson is partnering with Albemarle County on this project.

Commissioner Russell asked if any attempt was made to obtain agreement with adjoining property owners regarding the fall line encroachment and Mr. Carter said that was not addressed.

The public hearing was opened and the following citizens spoke:

Mr. Tanycus asked that this application be tabled because adequate notice was not received. He expressed concern regarding the following: (1) high speed data service already exists in his area; (2) Possible impact on health, particularly the elderly and children; (3) impact on wildlife, migration patterns of birds, and possible connection to the disappearance of bees; (4) negative

Michael Tanycus, 102008 Critzer Shop Road, Afton

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impact on vegetation; (5) danger of radio frequency waves; (6) better location on Veritas would provide better reception; (7) negative effect on property values; (8) addition of antennas to accommodate other carriers; (9) approval is being requested without a final design of the tower; (10) four exceptions were requested with an additional one heard for the first time tonight, which would allow a tower taller than the ordinance allows.

Mr. Shachtman is concerned that if the tower falls, it could fall on his house, cars, etc. He felt adequate advertising was not done to everyone concerned. Placement of this 144 foot tower would affect tourism and detract from the beautiful mountains of the area, and would place financial strains on property owners because of decreased property values. He owns two lots and had planned to build a house on the lot adjoining the proposed tower site but now questions the financial feasibility of this plan. Mr. Hodson will reap the benefit from this tower financially, but the stress on property owners is not a fair situation.

Mark Shachtman, 85 Magnolia Acres Lane, Afton

Mr. Rosenthal read a prepared statement which is attached to these minutes

Mark Rosenthal, 140 Magnolia Acres Lane, Afton

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Mrs. Rosenthal read the Purpose of the Communication Tower Ordinance, as stated in Article 20. She expressed concern about the effect on tourism and the proximity of this tower to the Scenic Byway of Rockfish Valley Highway. She stated that this is not the appropriate location for a 144 foot tower and that a more remote site would be preferable.

Suzann Rosenthal, 140 Magnolia Acres Lane, Afton

Mr. Koon said that the tower would be a terrible eyesore, and that this is not the appropriate location. He suggested the firehouse location where residents would not be affected by the tower.

Ray Koon – 278 Afton Mountain Road, Afton

Mrs. Shachtman expressed concern that her garden site is adjacent to the proposed tower location and could be health-affecting. She feels this is not an appropriate location.

Christine Shachtman – 85 Magnolia Acres Lane, Afton

Ms. Ray lives on the hill across from the proposed tower site and says this is an inappropriate location and the tower too intrusive.

Ellie Ray – 307 Afton Mountain Road, Afton

Dr. Hodson said that he was approached by the County for this project and several sites were considered. According to the engineer, the proposed one was the most favorable. He expressed a personal sensitivity to the fact that people in the neighborhood thought that he had initiated a contact with the County so that he would benefit financially, and that he is being “vilified” by the community. He stated that he and his wife have raised over \$100,000 for non-profit organizations in Nelson County and have no desire to harm anyone. He said he had contacted people in the neighborhood about this project.

Andrew Hodson – 145 Saddleback Farm, Afton

2 Mr. Rosenthal’s statement

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Mrs. Miller said that Mr. Carter has not done due diligence on this project. She’s concerned about the County not having answers to pertinent questions and that the presentations did not represent the best face of our county.

Connie Miller – 24 Magnolia Acres

Mr. Rosenthal and Mr. Shachtman spoke again to clarify that they contacted Dr. Hodson rather than being contacted by Mr. Hodson. Mr. Rosenthal questioned whether the red flag on the property signified the location of the tower, and that if so, it does not appear to be the same as the site plan shows.

Mrs. Shachtman spoke again, saying that no notification was made and no signs posted concerning this project.

Mr. Tanyucus spoke again, expressing concern that if the tower falls, it could go in his stream and contaminate the water.

Chair Proulx asked if anyone else wished to speak before the public hearing was closed. She explained that the Planning Commission’s role is to make a recommendation to the Board of Supervisors and that a public hearing will be held by the Board at that time. There were no further comments from the public.

Public Hearing Closed

Chair Proulx clarified that the advertisement for this application appeared in the Nelson County Times twice which is the required notification. Letters are sent to adjoining property owners and are mailed at least 10 days prior to the meeting, but will discuss with Staff the possibility of sending letters earlier. She stated that GIS and tax maps are not the responsibility of the Planning Director and apologized for their inaccuracy

Commissioner Russell added that Nelson County’s website displays the agenda weeks prior to meetings. She addressed health issues by stating that the Telecommunications Act of 1996 declares that states/counties may not consider health issues when addressing telecommunications tower applications. Commissioner Tapager stated that it appears to the public that they came in late on these issues, and that was not the intention. The purpose of the Planning Commission is to inform and make recommendations, but he understood their frustration with the County project. He expressed sadness that the community and Dr. Hodson seem to be at odds because of this project.

Chair Proulx said that since high speed data service is available in the area, she wanted to know the benefit to the County of broadband. Mr. Carter said the grant met the criteria that this part of the County was underserved or unserved. Their application in 2009 showed the potential to serve approximately 800 household with this service. Chair Proulx asked how that information was determined and Mr. Carter said he would be glad to make it available. He stated that one

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goal of the project is to make this type of service more affordable, and that he felt this was the most appropriate site. He also said he could contact the consultant regarding other sites.

Chair Proulx stated that she understands the urgency in getting this project started, but is still concerned about the neighborhood, the proximity to Scenic Byways, and the fall zone. Mr. Carter said the project is very time-consuming and requires a detailed negotiation process. He feels the provision of this service will be very helpful to the County, and it is possible that the County will recommend the same site after further study is done.

Supervisor Brennan said that broadband will be very helpful to the County, but would like to see the location changed. The Hodsons have made great contributions to the County and did not ask the County to place the tower on their property and they should not be vilified. The County will try, in good faith, to find another site.

Commissioner Harman said that, while being excited about broadband, he was not thrilled with the proposed location and felt a more acceptable location could be found with the possible use of a tower of less height.

There was no further discussion and Commissioner Tapager made a motion to defer action on this matter until the next Planning Commission meeting on November 16. Commissioner Harman provided the second, and motion passed 4-0, with Supervisor Brennan abstaining. Chair Proulx stated that if the site changes, the application will be re-advertised.

Mr. Boger reported that the County Administrator has submitted an application for a communication tower permit to erect a Class III tower at 5519 Rockfish Valley Highway, Afton, Tax Map #12-A-103, which is zoned A-1. The property is owned by Central Virginia Electric Cooperative (CVEC) and is generally known as CVEC's Martin's Store Substation. The County has entered into a lease agreement with CVEC for this site. He has received a letter from Nick Brosky, adjacent landowner stating opposition to the tower.

Class III Communications Tower – Application #2011-006, County of Nelson

Mr. Boger continued by saying that the proposed tower will be 140 feet tall with a 4 foot microwave dish. There will be a 3.5 foot antenna. The County does not intend to place antennas on this tower, but will make the site available to broadband providers on an open access basis in accordance with efforts to improve broadband availability to the unserved and underserved Avon and Afton areas.

Mr. Boger stated that the County is requesting that the Planning Commission waive Section 20-7-5k(1), landscaping requirement, and that a recommendation be made to the Board of Supervisors for exceptions to Section 20-8-3, two-mile tower separation requirements and Section 20-7-2e, required setback from Scenic Byway. VDOT has approved the existing entrance.

Commissioner Russell asked if the lease agreement had been signed and whether the existing entrance or a new one will be used. The site plan needs to show which one will be used.

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Mr. Carter did have a signed agreement and stated that the County is partnering with CVEC on this project. They have an agreement with CVEC which allows them to collocate on the Colleen tower and build a new tower at Martin's Store location. It is projected that approximately 1100 households will be served. An E & S Plan is required before the building permit is approved.

Commissioner Russell recommended that the equipment building contain no motion-sensitive lights and that the tower be painted, as required with all other towers.

The public hearing was opened, there were no comments, and the public hearing was closed.

Commissioner Russell made a motion to recommend to the Board of Supervisors approval of this application, as stated in the following resolution:

The Nelson County Planning Commission recommends approval of a Class III Communications Tower application # 2011-006 for County of Nelson to construct a 144 foot communications tower as part of the Nelson County Broadband Project funded by BTOP grant from the U. S. Department of Commerce to be located on property owned by Central Virginia Electric Cooperative, 5519 Rockfish Valley Highway, Afton, VA, Tax Map # 12-A-103. In addition, the Planning Commission approves a waiver of Section 20-7-5k(1), a landscaping provision, and recommends that the Board of Supervisors grant exceptions for Section 20-8-3 with respect to the two mile tower separation requirement, Section 20-7-2e with respect to the required setback of one mile from a designated Scenic By-Way, and Section 20-8-1 with respect to the height of the tower. Furthermore, the County understands the CVEC will install one microwave dish and future antenna installations will be referred to the Planning Commission for approval. The CVEC has agreed to remove the existing 85 foot tower. This recommendation is contingent on final E & S approval. The Nelson County Planning Commission further recommends that a light on the equipment building have an off/on switch and not be subject to a motion detector and that the tower be painted a brown color meeting with the approval of the Director of Planning and Zoning.

Supervisor Brennan suggested that the tower be painted grey instead of brown. Commissioner Russell said approval of the color would be at the discretion of the Planning Director.

Commissioner Harman provided the second, and motion passed 4-0, with Supervisor Brennan abstaining.

1) Continued review of Subdivision Ordinance. Mr. Boger presented proposed wording concerning residential entrances to public roads. It was agreed that discussion on this item would continue at the November meeting.

Other Business

2) Use of "Temporary Structure" for caregiving. Discussion on this item will continue at the November meeting.

3 Resolution – Martin's Store tower

BOS Liaison Report – Supervisor Brennan

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Supervisor Brennan noted that Nelson County Times reporter Erin McGrath will be leaving the position soon and thanked her for her good reporting on Nelson County through the years.

The Sheriff's Department and Dispatch have moved into the new courthouse complex; however, other moves are running behind schedule.

Mr. Carter said that three candidates have been interviewed for the Planning Director position, and that a decision will probably be made by next month.

The elevator will be available to the public when the new entrance is completed.

At 10:05 P. M., Commissioner Russell made the motion to adjourn and motion passed 5-0.

Adjournment

Next Meeting: November 16, 2011

Respectfully submitted,

Betty Fortune, Temporary Secretary

Melissa Thompson, Incoming Secretary

Planning & Zoning

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A RESOLUTION

RECOMMENDING APPROVAL OF SPECIAL USE PERMIT #2011-007

FOR WILLIE PARRISH

WHEREAS, Mr. Willie Parrish has filed a petition with the Nelson County Planning Department for a Special Use Permit pursuant to Section 4-1-24a of the Zoning Ordinance to place a second mobile home on property located at 1885 Cub Creek Road, Roseland, Va., Tax Map 42-1-1. The property is zoned A-1 and consists of 12.59 acres; and

WHEREAS, a notice of Public Hearing for the review of the SUP by the Nelson County Planning Commission was published in the Nelson County Times on October 6 and 13, 2011; and

WHEREAS, on October 26, 2011, the Nelson County Planning Commission held the required public hearing on said SUP; and

NOW, THEREFORE, BE IT RESOLVED BY THE NELSON COUNTY PLANNING COMMISSION as follows:

The Nelson County Planning Commission recommends approval of Special Use Permit #2011-007 pursuant to Section 4-1-24a of the Zoning Ordinance to place a second mobile home on property located at 1885 Cub Creek Road, Roseland, Va., Tax Map 42-1-1. The property is zoned A-1 and consists of 12.59 acres. As a condition, removal of the existing vacant house must be within one year of placement of the second mobile home.

Motion made by Commissioner: Linda Russell

Motion seconded by Commissioner: Michael Harman

Motion Passed: 4-0, Brennan abstaining

APPROVED: _____

CHAIR

ATTEST: _____

Temporary Planning Commission Secretary DATE:

October 26, 2011

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A RESOLUTION RECOMMENDING APPROVAL OF A

CLASS III COMMUNICATIONS TOWER PERMIT #2011-006

FOR COUNTY OF NELSON

WHEREAS, the County of Nelson has submitted an application for a Class III Communication Tower

Permit, pursuant to Article 20, Subsection 20-8 of the Nelson County Zoning Ordinance to construct a 144 foot communications tower as part of the Nelson County Broadband Project funded by BTOP grant from the U. S. Department of Commerce; and

WHEREAS, the proposed communications tower site is located on property owned by Central Virginia Electric Cooperative, 5519 Rockfish Valley Highway, Afton, VA, Tax Map # 12-A-103; and

WHEREAS, the applicant is requesting the following Zoning Ordinance waivers and exceptions: (1) landscaping requirements as stated in Section 20-7-5k(1); (2) two mile tower separation requirement as stated in Section 20-8-3; (3) required setback of one mile from a designated Scenic By-Way as stated in Section 20-7-2e; and (4) standards of height as stated in Section 20-8-1; and

WHEREAS, a notice of the required Public Hearing by the Nelson County Planning Commission was published in the Nelson County Times on October 6 and 13, 2011; and

WHEREAS, a notice to adjacent property owners was mailed on October 18, 2011; and

WHEREAS, on October 26, 2011, the Nelson County Planning Commission held the required public hearing on said application; and

WHEREAS, the Commission has considered the Planning Director's report and comments from the applicant and citizens;

NOW, THEREFORE, BE IT RESOLVED BY THE NELSON COUNTY PLANNING COMMISSION as follows:

The Nelson County Planning Commission recommends approval of a Class III Communications Tower application # 2011-006 for County of Nelson to construct a 144 foot communications tower as part of the Nelson County Broadband Project funded by BTOP grant from the U. S. Department of Commerce to be located on property owned by Central Virginia Electric Cooperative, 5519 Rockfish Valley Highway, Afton, VA, Tax Map # 12-A-103. In addition, the Planning Commission approves a waiver of Section 20-7-5k(1), a landscaping provision, and recommends that the Board of Supervisors grant exceptions for Section 20-8-3 with respect to the two mile tower separation requirement, Section 20-7-2e with respect to the required setback of one mile from a designated Scenic By-Way, and Section 20-8-1 with respect to the height of the tower. Furthermore, the County understands the CVEC will install one microwave dish and future antenna installations will be referred to the Planning Commission for approval. The CVEC has agreed to remove the existing 85 foot tower. This recommendation is contingent on final E

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& S approval. The Nelson County Planning Commission further recommends that a light on the equipment building have an off/on switch and not be subject to a motion detector, and that the tower be painted a brown color meeting with the approval of the Director of Planning and Zoning.

Motion made by Commissioner: APPROVED: _____

Linda Russell Planning Commission Chair

Motion seconded by Commissioner: ATTEST _____

Michael Harman Planning Commission Secretary

Motion Passed: 4-0, Brennan abstained DATE:

October 26, 2011