

**NELSON COUNTY PLANNING COMMISSION  
WORK SESSION  
October 15, 2013**

**Present:** Chair Proulx, Commissioners Linda Russell, Michael Harman and Mary Kathryn Allen.

**Absent:** Commissioner Emily Hunt

**Staff Present:** Tim Padalino, Director of Planning & Zoning

**Guest:** Phillip Payne

**Call to Order:** Chair Proulx called the Planning Commission work session meeting to order at 7:05 P. M. in the General District Courtroom, County Courthouse, Lovington.

Chair Proulx began the work session by thanking Mr. Payne for attending and asking that he address the questions that Mr. Padalino had submitted.

Mr. Payne began by giving some background information. First he referenced the Sinclair Decision where the court determined that granting modifications to the permitting process for communication towers was a legislative function. Since it was a legislative function, neither the Planning Commission nor the Planning Director could impose conditions. The Court reiterated that the Commission is an advisory body only, but if permitted by ordinance the Planning Director could make modifications to the zoning ordinance requirements. Secondly, Congress passed the American Recovery Act (ARA), requiring that requests for co-location and tower improvements within certain defined limits had to be permitted without out any local interference. Third, Mr. Payne had previously concluded that the then-existing ordinance covered every fixed commercial antenna. With the Broadband Authority creation and county installation of fiber optic systems, it became apparent that Article 20 required expansion to address personal wireless systems. Finally, the Board of Supervisors requested that the entire permitting process be streamlined.

Mr. Payne proceeded to answer these questions:

1. Does the Court decision preclude the Planning Director from seeking “advice” from the Planning Commission on select applications? As an example, that might include towers whose height is greater than 100’ but less than 130’ or all towers in any zoning district in proximity of a “residential areas.” The proximity to a residential areas will likely become an issue that cannot be adequately addressed simply by looking at the zoning of a parcel, since many subdivisions and “residential areas” are in A-1 districts which would not require public notice.

Mr. Payne stated that the county currently uses the Special Use Permit permitting process. The Planning Commission at a minimum can review the application and make

recommendations. The Planning Commission has generally held a public hearing review but it is not required. He suggested changes in tower height cutoffs for what is ministerial and what requires a more extensive review. The proposed draft requires any proposed tower in an R-1 or R-2 district to undergo a Class II permitting process. One possible way to address the issue raised would be to require the more extensive permitting process for any tower proposed for location within a certain number of feet from a residence in all districts. The Planning Commission would be more involved. The State Code requires the Planning Commission to review applications to determine compliance with the Comprehensive Plan.

Commissioner Allen thought that increased public awareness was important. No one would be happy to discover that a 140 foot tower was going to be built next to their property line without some kind of notification.

Mr. Payne said that under the existing Class I the Planning Commission held a public hearing and made the final decision without the Board of Supervisors input. The county should pick a tower height cutoff such that really obtrusive towers require extensive review.

Commission Harman stated there would still always be a public hearing by the Board. Mr. Payne reiterated that would only occur with towers that are the 130' and above under the proposed draft. Chair Proulx stated she would like to see new height standards for towers. Commissioner Russell stated that the proposal does not require a relationship between tower height and vegetative canopy. A 125' tower could be located a mile away from the nearest tree.

Mr. Padalino said he would like to provide a mechanism for sending certain challenging applications to the Planning Commission for review and comment. The 130' maximum for administrative review seems too high above the existing tree heights in the county. Perhaps consideration should be given to allowing all towers below 100' by administrative review. Everything else would be subject to the public hearing process and Board approval. Commissioner Russell added that she was unclear whether the Board wanted the process streamlined for the county or the applicant.

2. Could the Planning Director have authority to impose conditions if recommended by the Planning Commission?

Mr. Payne said no.

3. Albemarle approves some towers through the Board of Supervisors Consent Agenda. What is a Consent Agenda? Who determines its content? Would this idea work here in Nelson?

Mr. Payne stated that under Robert's Rules a Consent Agenda would be anything that would not draw opposition - those things that are routine.

4. Do regulations in Section 20-18 Class IV Personal Wireless Services apply to the proposed Class I and II? If so, should they be repositioned to the beginning of the section on towers?

Mr. Payne stated that Class IV was tacked on to the existing statute. Class IV contains the “substantial increase” language which applies to Class I and Class II. Class IV is a stand-alone. It could go in the beginning but it is not necessary.

5. Section 20-7B allows the PC to determine compliance with the Comp Plan only. Can the Planning Commission make recommendations or attach conditions? If not, why not? Could the Planning Commission also determine compliance with “purposes” section to Article 20?

Mr. Payne stated that the Planning Commission can make recommendations. The Planning Commission should explain why it disapproved an application and make recommendations on how it can be made to comply.

6. Under the current ordinance (see Section 20-7-2c) special limitations apply to towers built on mountain ridges or peaks. Should this be included in the proposed?

Mr. Payne stated that, yes it certainly can be.

7. Scenic-by-ways and Fan Mountain are not included as protected under purposes. (Both are in the current ordinance.)

Mr. Payne stated he would add them back in to the proposed recommendations.

8. In the proposed definition of Tower Height – a lightning rod of 2’ or less is not included in height determination. What if lightning rod is greater than 2’?

It was agreed by all that reference to lightning rod would be included in the tower height in the proposed ordinance.

9. Proposed Section 20-7D(1) – how is “date the application was submitted” determined? Shouldn’t it be “complete application”?

Chair Proulx stated that nothing should be advertised until the application is complete. Mr. Padalino suggested having a simple checklist to be submitted with applications which must have initials next to every required item or it would not move forward. It was agreed by all that it should read “complete application.”

Further discussion focused on temporary towers – they should meet the same Class requirements as other towers. Commission proposed towers not to exceed 100’ and remain for no more than 90 days.

Mr. Payne stated that Section 20-11 (Co-location Policy) is a Federal requirement.

Chair Proulx stated there needs to be a maximum height limit. Mr. Payne noted that under the existing ordinance the Board of Supervisors is the only body that can approve a height exception. Chair Proulx proposed a Class I tower limit of 100’. Commissioner Russell proposed a minimum 100’ tower as Class II and a maximum of 130’.

Commissioner Russell stated that on page 10, under F, the Balloon Test should be added to include photo simulations. She brought up a question that came up in the public hearing Section 20-6-C states the Fall Area is the minimum distance from the tower base to the property line. If the tower is 85' or less, the distance of 0% should be changed to 100%. She also suggested that where the ordinance states "with the approval of Nelson County" should be changed to read "The Final Approving Authority." Also, should read "either/or".

The PC proposed to add the following to the Special Exemption; Section 20-13:

1. A Class II tower would be 100' through 130' in height. Class I would then be up to 100'.
2. Allow Board of Supervisors to vary the criteria.
3. Reasonable distance of 300' from a residence (use Magnolia Acres as a guide). Any tower within this distance would require the more extensive review of Class II.

**Adjournment:**

At 9:13 P.M. Chair Proulx made a motion to continue discussions in November. Commissioner Harman offered the second. The motion passed 4-0.

Respectfully submitted,

Stormy V. Hopkins  
Secretary