

**NELSON COUNTY PLANNING COMMISSION**  
**MEETING MINUTES**  
June 22, 2016

**Present:** Chair Philippa Proulx, Commissioners Mike Harman, Linda Russell, Mary Kathryn Allen, Robert Goad and Tommy Bruguiere (Board of Supervisors Liaison)

**Staff Present:** Tim Padalino, Director of Planning & Zoning and Stormy Hopkins, Secretary

**Call to Order:** Chair Proulx called the meeting to order at 7:01 P. M. in the General District Courtroom, County Courthouse, Lovingson.

**Approval of Minutes – May 25, 2016:**

**Commissioner Harman made the following motion:**

**I move that the minutes from May 25, 2016 be approved as updated on June 14<sup>th</sup> and June 20<sup>th</sup>; the vote 5-0 with Commissioner Allen abstaining.**

**Public Hearing Items:**

- 1. Proposed Amendments to Zoning Ordinance Article 10 - (General Floodplain District FP): (referral made at 12/8/2015 BOS meeting; PC review continued from 4/27/2016 PC meeting)**

Mr. Padalino noted this is a **meeting public hearing** of the referred amendments regarding Article 10 – (General Floodplain District FP).

Mr. Padalino noted that in January 2015, County Staff began coordinating with the Virginia Department of Conservation and Recreation (DCR). VA DCR administers the Floodplain Management Program for the Commonwealth. That coordination led to a request from the County Administrator on June 2, 2015 to have DCR formally review/audit the County's existing floodplain ordinance. The results of that review/audit were received on June 15, 2015. Using the recommendations/requirements from DCR, staff developed the original proposed floodplain amendments that were presented to the Board of Supervisors (BOS) on August 11, 2015. Mr. Padalino then continued with a summary of the amendment review process to date (as described in the Staff Report dated June 14, 2016 – see attached).

Mr. Padalino then spoke about the purposes and values of the County having a floodplain management ordinance and program (referencing the draft dated May 26, 2016 and as described in Section 10.1). He explained that during the ordinance audit by DCR, several "higher standards" were recommended – and stated that such higher standards are encouraged by both the Code of Federal Regulations (CFR) and DCR. Specifically, the CFR says, "any community may exceed the minimum criteria by adopting more comprehensive floodplain management regulations." Additionally, a document published by VA DCR in 2014 titled "Guidance for Local Floodplain Ordinances in VA" states that, "states and communities are encouraged to enact more restrictive requirements where needed to better protect people and properties." He also noted that Nelson County has four (4) types of High Hazard Areas (HHA), which includes alluvial fan flooding; flash flooding; mud slides; and erosion. Mr. Padalino also stated that in addition to these types of HHA, "we are also a community which witnessed and was impacted by Hurricane Camille in 1969," and cited the Nelson County Flood Insurance Study published by FEMA which says, "damage resulting from tropical storm Camille was the worst in Virginia's history... this torrential rain represents one of the all-time meteorological anomalies in the United States."

Mr. Padalino summarized that there is recognition that Nelson County has suffered through some of the most extreme storms on record and that the County contains several examples of HHA – and therefore there may be good reason to have these higher standards in our floodplain ordinance.

Mr. Padalino provided a summary of the Proposed PC Modifications of Referred Amendments (as described in the Staff Report dated June 14, 2016 – see attached).

1. *Separate “Special Use Permit” and “Variance” Procedures and Requirements;*
2. *Replace the “Special Use Permit” requirement for “all uses, activities, and development” with an administrative “zoning permit” requirement; and*
3. *Modify the (proposed) higher standards to be less restrictive.*

Mr. Padalino noted that, before the PC can make a formal recommendation to the BOS, the PC must review an additional policy issue not addressed in the May 26 version of the proposed amendments. That issue is the concept of a “Variance,” and more specifically the definition of the term “Variance” as it relates to floodplain management purposes. The existing definition of “Variance” in Z.O. Article 2 (“Definitions”) differs from the definition contained in the model ordinance. The model ordinance defines “Variance” as follows: *“Variance means a grant of relief by a community from the terms of a floodplain management regulation.”* He believes it is important to recommend modifications to the definition of “Variance,” to be different than the definition of Variance as defined in Article 2 and as would be applicable in more general circumstances unrelated to floodplain management. Mr. Padalino also noted that Mr. Payne (County Attorney) has confirmed that it is acceptable to have a definition within Article 10 that is specifically applicable to floodplain management administration, as long as it is so noted, without affecting or conflicting with the other definition of “Variance” found in Article 2.

Mr. Padalino then stated that the critical importance of this issue is derived from the fact that using the universal term for “Variance” in connection with these proposed amendments could be problematic. He noted that this issue involving the definition of “Variance” was identified on May 26<sup>th</sup>, the day after the previous PC meeting (at which time the Commission had already directed staff to advertise for a public hearing).

Commissioner Russell asked if the model ordinance definition conflicts with the Code of Virginia. She also noted that she understands there are three different definitions of “Variance” (model ordinance; County ordinance; and Code of Virginia). Mr. Padalino indicated that he believes that to be correct. He noted that the County’s ordinance and the Code of Virginia are different but very similar; but the state’s model floodplain ordinance is very different, because it specifically relates to floodplain management purposes.

Chair Proulx wanted to emphasize that while SUP is not being used in the proposed amendments to the floodplain ordinance, if the underlying zoning district requires a SUP for a given use then that use would still require a SUP for the use but not for floodplain management purposes. Mr. Padalino confirmed that was correct, and added that the SUP requirement would only be eliminated as it relates to the floodplain overlay district, not the underlying zoning district.

Mr. Padalino then summarized the proposed text amendments as originally referred by the BOS (as stated in the Staff Report dated June 14, 2016 – see attached).

- *Increase freeboard from existing 12” requirement to 18” requirement;*
- *Define “critical facilities” and prohibit them in all Special Flood Hazard Areas (SFHA);*
- *Restrict “hazardous materials” and fuels in all Special Flood Hazard Areas (SFHA);*
- *Limit land uses in the Floodway to only non-structural uses;*
- *Modify the requirements for when the Base Flood Elevation needs to be identified and included on subdivision plats; and*
- *Restrict the placement of fill in all Special Flood Hazard Areas (SFHA).*
- *Editorial revisions intended to bring existing ordinance into compliance with model ordinance.*

Chair Proulx opened the public hearing at 7:21pm.

Vicki Wheaton: Ms. Wheaton stated that she, “would like to thank each of you for your diligence in reviewing and supporting the recommended updates to Nelson’s floodplain ordinance over the last four months. And I’d also like to thank Tim Padalino for his diligence over the last (almost) two years. These meetings have been my first exposure to how the Planning Commission proceeds – and if I had to give you a grade, it would be an A+. You consult experts to clarify and guide; you ask pertinent and intelligent questions; and it’s apparent that you care deeply for your County, the County you represent. I never realized the commitment that it takes for you to fulfill your duties in serving Nelson County’s ever growing and often times complex needs. And I just want to thank you from the bottom of my heart for serving your county. Thank you.”

Chair Proulx thanked Ms. Wheaton for the kind **works** words and asked if there were any other comments from the public. With no further comments; the public hearing was closed at 7:22pm.

The Commissioners had the following questions/concerns/comments:

1. *There was correspondence (between Mr. Padalino and Mr. Charles Kline) given to the Commissioners at the last meeting. In those correspondences, it appears to be the issue of how the pipeline will affect the County. At the last meeting Commissioners received copies of correspondence between Mr. Padalino and Mr. Charles Kline discussing how transmission pipeline construction should be treated in flood plain ordinances. Mr. Kline (in an emailed dated April 30<sup>th</sup>) states, “The construction would require a local floodplain development permit, only if surface development occurs in the SFHA. If surface development occurs in this SFHA, as part of the project, a locality must permit according to the regulations set forth in the local governments adopted floodplain ordinance.” Commissioner Russell questioned the “must”. Mr. Padalino noted that he does not take “permit” to be synonymous with “approve.” He indicated that he believes “must permit” means to administer the ordinance according to the regulations contained within said ordinance, and to either approve or deny as may be applicable.*
2. *Chair Proulx noted that within those same correspondences it states “regardless of whether it is on the surface” and asked if that was still the understanding? Mr. Padalino noted that is correct, and read the section in question from the correspondence dated May 21, 2015, which reads: “the construction will require a local floodplain development permit regardless of whether development occurs on the surface or not within the SFHA. The locality must evaluate submitted engineering study for approval of any development according to their regulations set forth in their local governments adopted floodplain ordinance.” He also noted that this was a document that was distributed to many localities across the Commonwealth.*
3. *In regards to the “variance” definition; if one goes before the BZA for a floodplain variance, do they still need to meet the same criteria that they use for other requests? Mr. Padalino indicated that the criteria would be different, because the floodplain ordinance contains variance criteria specific to floodplain management purposes. He added that the County is missing the “connecting link” to say that the variance refers to the variance in this Article, and not the variance applicable to the remainder of the Z.O. Mr. Padalino then referred to the existing Z.O. Section 10.22 which refers to SUP and Variances. He further noted that under the proposed amendments, everything in Section 10.22 pertaining to variances would remain, and all SUP references would be eliminated.*
4. *If a definition for “variance” is added to Section 10, how is confusion avoided with the standard reference to “variance”? Mr. Padalino noted that are some other examples of that kind of double-definition in the Z.O. He stated it would be important for the definition of Variance in Article 10 to explicitly note that the definition applies to floodplain management purposes (is applicable to Article 10), and to create language that distinguishes it from the definition of Variance in Article 2.*
5. *In the BZA “variance” section, does a reference need to be made there as well? Mr. Padalino noted that when a Variance request is submitted regarding floodplain management regulations, it would be pursuant to Article 10.13 and Section 10.22. And if a Variance request is submitted regarding other issues such as setback or lot size requirements, it would be submitted pursuant to 14-2-4. So the type of variance request would be distinguished from the initial point of application, and there would not be any procedural or technical issues. He also noted that he does not believe a review of Article 14 (BZA) was part of the review to date, and may be something that is highly prudent.*

Draft: 07/8/2016  
Updated: 07/12/2016  
Final: 07/27/2016

The Commissioners agreed to add a definition for “variance” to Article 10, but do not want to ~~make a decision~~ vote on a recommendation to the BOS at tonight’s meeting. They will make a recommendation at next month’s meeting.

Chair Proulx mentioned Mr. Bank’s offer for a Work Session on floodplain issues. She believes it would be interesting and would provide the general population with more awareness. She would like to know how to pursue that option. Mr. Padalino noted that it would be best for any such coordination to occur through the BOS and the County Administrator. He also noted that conducting a floodplain workshop could be a part of the PC’s recommendation.

Chair Proulx asked that draft language for variance be provided in the next meeting packet. Mr. Padalino noted that it would; and that, per the commission’s directive, the entire draft ordinance would not be reprinted, and only the newly affected section(s) would be printed.

### **Other Agenda Items:**

#### Introduction of Class C Tower Permit Application #2016-08 / SHENTEL

Mr. Padalino noted that this was an introduction for a Class C Communication Tower Permit. The application was received from Ms. Jessie Wilmer of SHENTEL (formerly nTelos). He noted that there is an existing facility on the subject property, and showed maps of the subject property’s location and characteristics. The parcel is identified as Tax Map Parcel #45-A-40, and is zoned Agricultural (A-1). There are two existing monopoles on the property. The proposed tower would be a steel monopole at 130’ total height above ground level to replace one of the wooden monopoles.

Commissioner Russell asked if there are any structures on the property. Mr. Padalino indicated that he does not believe there are. Mr. Bruguere noted that the majority of the property is a hay field. Mr. Padalino further noted that the application materials shows the fall-zone setback. He showed excerpts from the Site Plan provided by the applicant that depicted the existing tower fall-zone setback and the proposed tower fall-zone setback area.

Mr. Padalino noted that the County received a set of revised drawings/plans (dated June 10, 2016) which address several review comments that he provided to the applicant after his initial review for application completeness. He explained that those revised plans were provided to the Commissioners at tonight’s meeting for their subsequent review. He then provided a summary of those revisions as follows: the inclusion of a vegetative/landscaping buffer between the lease area/compound and Route 29; and a revision of the tower height from 132’ to 130’.

Mr. Padalino concluded by discussing the various aspects of the review process, which includes a balloon test that is scheduled for Monday, June 27<sup>th</sup>; and the Planning Commission review and make a recommendation. He noted that a PC public hearing is optional for a Class C Communication Tower permits.

The Commissioners had the following questions/concerns/comments:

1. *Is the 130’ inclusive of the antennas?* Mr. Padalino indicated that it is; the top of the tower would be 126’ and the lightening rod would be at 130’.
2. *What is the lighting on the equipment shed at present (manual or motion sensitive)?* Mr. Padalino indicated that he was not sure.

Chair Proulx asked the applicant to address the Commission’s questions, including questions about lighting.

Jessie Wilmer, SHENTEL: Ms. Wilmer noted that they do not have an equipment shelter but cabinets. Those cabinets have a small light on them that can be turned on when work is being performed.

3. *Will there be details of the proposed landscaping?* Ms. Wilmer noted that she can do that. They typically plant Leyland Cypress unless told otherwise.
4. *How tall are the trees and how far apart are they when planted?* Ms. Wilmer noted they are around 5' and are planted 10' on center, staggered. This could be shown on the plan if needed. She further noted that it is not landscaped now and the equipment on the ground is not changing.

Commissioner Russell noted that she is concerned with the proposed tower's height due to the fact that it is considerably higher than the existing tower. Ms. Wilmer noted that the tower was installed in 1999 as a wood pole; the life of a wood pole is about 20 years. The equipment on site has not changed since 1999 but technology has. The wood poles have deteriorated and are not able to handle the equipment that is required for the upgrades. She further noted that, "the height increase, while we were proposing to replace this site, we could do a steel pole, one-for-one replacement (administratively) like we have some of the other ones along 29. However, we looked at the coverage between this site and the site that we have right up on the mountain here at Lovingsston, and coverage gets pretty weak between those two sites. And if you look at the other carriers (I provided some maps to Tim earlier), AT&T and Verizon both have sites in the vicinity of this site and we're all at the same spot at Lovingsston on the mountain. But, AT&T and Verizon both have a site in between there; so they have one extra site to cover that stretch of road on 29. So by raising it 30', it will drastically improve coverage; and then we won't have to build another site with another road, and with another utility run within that space in between, like the other carriers have."

5. *Will you be able to accommodate any co-location?* Ms. Wilmer indicated that it will be able to accommodate other carriers. She also indicated that the lease area used to be a smaller area but now it is larger with the under-lying landlord to accommodate for other carriers to co-locate there as well.
6. *How reflective will the new tower be?* Ms. Wilmer indicated that they are proposing for the tower to be painted brown with flush-mount antennas.
7. *Is the site accessed off of Davis Creek Lane?* Ms. Wilmer indicated that the site is accessed off of Route 29 and it is an old road.
8. *Will a flag be at the site for the balloon testing?* Ms. Wilmer said that it would and that her vehicle would also be there. Commissioner Russell noted that the ad (legal notice) indicated that it would be flagged. She also believes that to be one of the requirements in the Z.O.
9. *Commissioner Russell, referencing Section 20-6-1 (Design Standards) – Item 2, noted that the distance from the exterior of the pole to the exterior of the antenna is limited to 12". She noted that the proposed equipment is 12" from the exterior of the pole to the back of the antenna, but the Z.O. uses language for the face of an antenna.* Ms. Wilmer noted that was correct, that the drawings show 12" distance from the pole to the back of the antenna. Ms. Wilmer added that Albemarle County recently amended their ordinance so that the 12" requirement relates to the distance between the exterior of the pole and the back of the antenna (not the face of the antenna). Commissioner Russell noted that she does not like that the ordinance states "existing structure" and will get with Mr. Padalino to discuss it further.
10. *Were the landowners notified of the balloon test?* Commissioner Russell noted that an ad was placed in the Daily Progress. It was also noted that the neighbors would be notified if a public hearing is held.

The Commissioners discussed whether or not to conduct the optional public hearing. Commissioner Goad and Mr. Bruguere thought it would be unnecessary since it is far away from homes and in an obsolete area. Commissioner Russell indicated that she would personally like to wait until the balloon test to render a decision. Chair Proulx noted that the BOS would have to hold a public hearing.

**Commissioner Goad made the following motion:**

**I move to not hold a public hearing for Class C Communication Tower. Commissioner Harman provided the second; the vote 5-1 with Commissioner Russell voting against the motion.**

**Other Business:**

**Referral of Agricultural and Forestal District (AFD) Application #2016-01:** Mr. Padalino noted this was an informal introduction of the application. The application is by Mr. Marc Chanin, a landowner on Greenfield Road. This is a proposed addition to the existing Greenfield AFD. Mr. Padalino showed two maps that were provided by the applicants, showing the location of the two parcels being proposed for the addition.

Mr. Padalino then noted that the AFD Advisory Committee has scheduled a meeting on July 19<sup>th</sup>. He also noted that this is the same day as when the PC packets are mailed out, so a Staff Report with their recommendation would not be provided. However, one or more members from the AFD Advisory Committee have agreed to attend the July 27<sup>th</sup> PC meeting to provide a summary of their review, findings, and recommendations. He further noted that if the PC is comfortable with this approach, the July 27<sup>th</sup> PC meeting could include the introduction and recommendations from the Advisory Committee and also the public hearing portion of the application review. He asked if the PC would like to advertise for public hearing for next month's meeting, and if they had any questions regarding the application.

The Commissioners discussed the issue of having a public hearing, and did not have any problem with doing so. Mr. Padalino confirmed that it would be advertised for the July 27<sup>th</sup> meeting, and that he would verify that the AFD Advisory Committee would have someone in attendance for that meeting.

Mr. Bruguiere asked if there was a minimum acreage requirement for AFD applications. Mr. Padalino noted that there is a minimum acreage for new AFD districts or new "cores" adjacent to existing districts. He further noted that if a parcel is adjoining or nearby an existing core, **than** then a proposed addition can include smaller parcels. He also noted that he would look more closely at that language, and if he finds anything noteworthy, he will include it in the Staff Report.

Mr. Bruguiere asked if the two small parcels would be afforded land-use taxation if included in the Greenfield AFD? Mr. Padalino indicated that he believes they would be, but is not sure if they would be if they were outside of the AFD. He noted that he would check into this further.

**Rockfish Valley Area Plan (RVAP):** Mr. Padalino noted that a Rockfish Valley Area Plan Open House meeting is scheduled to take place on Tuesday, June 28<sup>th</sup> at the Rockfish Valley Community Center from 6:30-8:30PM. There will be one presentation given twice. There is a public survey that is available to gauge people's interest/concerns/priorities specific to the Rockfish Valley. Those are available online as well as in paper format.

**Board of Supervisors Report:** Mr. Bruguiere provided the following details:

1. Mrs. Jackson's Special Use Permit application was approved.

**Adjournment:**

Commissioner Harman made a motion to adjourn at 8:04 pm; vote 6-0.

Respectfully submitted,



Stormy V. Hopkins  
Secretary, Planning & Zoning