

Minutes
Northampton County Planning Commission
Work Session
June 18, 2012

This was a recessed meeting of the Northampton County Planning Commission held on Monday, June 18, 2012 at 7:00 p.m. in the Board Chambers located at 16404 Courthouse Road in Eastville, Virginia. The purpose of the meeting was to continue discussion of Zoning Text Amendment 2012-07 with the applicants and review of the comprehensive plan draft revised vision statement.

Those present were Chair Martina Coker, Vice-Chair Michael Ward, Mary Miller, Dixon Leatherbury, Roberta Kellam, John Wescoat, Severn Carpenter and David Fauber.

Also attending were Sandra G. Benson, Director of Planning & Zoning; Peter Stith, Long Range Planner; and Kay Downing, Administrative Assistant.

The meeting was called to order and a quorum established.

The agenda was then revised to add "Process and Procedural Matters" as a new Item 6. Motion to accept the agenda as revised was made by Commissioner Miller with second by Commissioner Fauber. The motion carried unanimously 8 to 0.

The commission then continued discussion of Zoning Text Amendment 2012-07 as filed by Eastern Shore Communications, LLC.

Mr. Ron van Geijen and Mr. Bill Parr, representing the applicant, were present and responded to written comments and questions submitted from the commission over the previous week as follows:

It is premature at this stage of the process to contact existing tower owners about co-location capabilities.

Stimulus money was used to install the fiber optics but that money does not pay for the service itself.

Tower location will depend on availability of land and density of paying customers.

A maximum of 24 towers may be necessary, but all other co-location options will be pursued first. However, co-location on existing towers/structures is always a better option to keep costs down for customers.

A very sophisticated encryption system will be employed providing sufficient protection for sensitive information and data that meets FCC criteria. Proprietary algorithms will not be used.

Pine needles can absorb or mitigate a broadband signal.

Working with the Accomack-Northampton Planning District Commission (ANPDC), neighborhoods will be canvassed to acquire information needed to implement the home-based paperless classroom project hopefully with the assistance of loan funds.

Their goal is to encompass all segments of society and locating within towns only will prevent other areas from obtaining service.

There are no other service providers willing to provide broadband service to the Eastern Shore at this time.

Empirical evidence shows that the best service provider gets the most customers based on customer service, product flexibility and reliability, and consumer costs.

Focus will be to provide internet service only due to the low-wattage bandwidth used. Eventually, more services may be added.

Weather can interrupt service; however, down-time and outages are not easily calculated since there have been no hurricanes or major snowstorms at this point. It is anticipated that some service interruption or slow-downs may occur.

Some communities divide broadband into 2 categories: mobile and local/stationary. Mobile is considered the large "industrial" type towers that provide cellular service. The applicants' service is considered local low-power broadband that serves fixed locations.

Antennas can be mounted on flagpoles and trees if the trees do not sway too much. Solar panels can be installed to power antennas which require only 24 volts of power.

Their company is a limited liability corporation and has filed license applications to the Federal Communications Commission (FCC) and the state.

The towers used are segmented in ten-foot increments, can be expanded in height, and are constructed to withstand wind speeds up to 100 miles per hour or gusts up to 115 miles per hour.

In initiating the paperless schoolroom project, the public school system will pay for student laptop equipment and the internet service will be provided at cost. This pilot project will commence using sixth grade students in the 2012-13 school year. A separate fund will be established to assist those students whose household cannot afford to pay for the service.

During discussion Commissioner Kellam voiced concern that the proposed text amendment may show favoritism to one technology over another. Open competition is to be encouraged.

Mr. van Geijen noted that a zoning ordinance cannot impede a homeowner's right to install any medium including antennas and satellite dishes. Competition encourages lower rates and better service. He also noted that the 1996 Telecommunications Act includes wireless service.

Commissioner Ward voiced his concern that this service would only be available to those who could afford it.

Ms. Benson stated that the text amendment would apply to any provider, not just the applicant, thereby being equitable to any broadband service providers that wish to operate in the county making more consumer choices available.

When asked about obtaining FCC subsidies, the applicant noted that they are working with the FCC, have attended a recent FCC workshop, and hope to obtain funding as well. He also noted that they are communicating with congressional representatives to encourage a change in the definition of broadband or at least have it clarified in its current version.

Before proceeding to review of the specific zoning text amendment, Mr. van Geijen displayed the smaller prototype antenna for benefit of the commission.

It was noted by the applicant that the Virginia tax code differentiates between telecommunications and internet services.

Written edits to the draft language as recommended by the Chair were presented for the commission's consideration.

For the sake of discussion, it was assumed that "telecommunications" includes broadband as initially written in Section (A) (2).

In Section (B) (6) it was decided to use "telecommunications" rather than "communications".

The commission agreed that using height ranges rather than new terminology for various structures would be more consistent with other parts of the existing ordinance.

Discussion was held on tower location setbacks, breakpoint technology, by-right and minor special use requirements, and structure heights.

By consensus the commission agreed that 200 percent of the break-away tower section would be the required setback for towers 100 feet or greater in height. Additional setbacks should be required if an adjacent property has a residence. If setbacks cannot be met then a special exception may be sought or when lesser setbacks are desired. Any tower 50 feet in height or less would not require breakpoint technology.

A short break was taken at 9:00 p.m. and the meeting was reconvened at 9:08 p.m.

A straw poll revealed that smaller neighborhood structures should be allowed by right in all districts, but Commissioners Kellam and Fauber suggested that the Conservation District be excluded. Commissioner Wescoat opposed the suggestion that such devices be prohibited in any district that would deny citizens to have access to service.

Commissioner Miller suggested that legal counsel be obtained concerning use of acreage criterion since there is so much residential acreage close to agricultural land and the majority of commissioners agreed.

Motion was made by Commissioner Wescoat to continue the meeting beyond 10:00 p.m. which was seconded by Commissioner Ward and carried 6 to 2 with Commissioners Miller and Fauber opposed.

The commission noticed some possible discrepancies in other wording in code §154.109 which was not part of the proposed amendments as advertised for public hearing. It was decided to address such discrepancies in the near future. It was also noted that there should be a companion text amendment to add the new classes of wireless telecommunications support structures to Appendix A of the zoning code.

While discussing co-location issues, Commissioner Wescoat expressed his opinion that all tower owners should be contacted and not just the 9 that have co-location agreements. Commissioner Kellam stated that written justification of co-location efforts should be submitted to the county from any applicant. Mr. Parr noted that all tower owners throughout the county can be contacted on a one-time basis to see if co-location options are available which should meet the county's requirements.

The commission agreed to revisit at a future time the public hearing comment made on June 5 concerning lighting for the tower structures in consideration of safety concerns for air traffic.

Commissioners Leatherbury and Wescoat noted that bonds should not be required for towers 50 feet or less in height.

Action:

Motion to recommend approval of amendments to Code §154.109 to the Board of Supervisors as edited by the commission was made by Commissioner Ward and seconded by Commissioner Wescoat, The motion carried unanimously 8 to 0. The text as recommended is attached hereto.

Due to the late hour no other agenda business was conducted.

Noting that his term expires on June 30th, the Chair thanked Commissioner Fauber for his many years of service on the commission before the meeting was adjourned.

Due to the lack of quorum anticipated on July 3, the commission rescheduled the regular July meeting to Tuesday, July 17, 2012.

Adjourn:

At 10:30 p.m., motion to adjourn until July 17, 2012 at 7:00 p.m. was made by Commissioner Wescoat and seconded by Commissioner Carpenter. The motion carried unanimously 8 to 0.

Chair

Secretary

Text in black = current language

Text in red = applicant's proposal

Text in blue or highlighted in blue = Planning Commission recommendation 6-18-12

Northampton County Zoning Text Amendment Proposal

May 16, 2012

§ 154.109 WIRELESS COMMUNICATIONS FACILITIES STANDARDS

(A) Purpose and Intent: The purpose of this Section is to establish standards for the siting of wireless telecommunication service facilities. The goals are to:

- (1) Promote the general safety, welfare, **availability of services**, and quality of life for County residents;
- (2) Assure availability of wireless telecommunication **and wireless broadband** service to the public;
- (3) Discourage the location of **Major** telecommunication towers **greater than 100 feet in height** in residential, historic and environmentally-sensitive areas;
- (4) Discourage the development of new sites for transmission and receiving stations by **encouraging co-location on existing major support structures facilities, and on existing buildings and structures for Low Power Local Wireless Broadband Service**; and
- (5) Minimize adverse impacts, including visual impacts, on areas caused by tower/monopole sites.

Before new wireless communications facilities are constructed, and in order to minimize the need for new towers, it must be demonstrated to the satisfaction of the County that it is not feasible from either engineering or coverage bases to co-locate on existing buildings, structures, and towers. **, excluding facilities for providing Local Wireless Broadband Services which shall be provided on the smallest and least obtrusive structures available which meet building codes for such uses.** [Note: this requirement is redundant, as it is repeated in paragraph (3) (c) (f) under submission requirements for a special use permit under this section. The Planning Commission recommends that this provision be deleted in a subsequent text amendment process.]

(B) Definitions.

- (1) **Antenna Array:** One or more whips, panels, discs, or similar devices under 20 feet height used for the transmission or reception of radio frequency signals, which may include Omni directional antenna (whip, satellite dish), directional antenna (panel,

microwave dish), and parabolic antenna (disc), but not including satellite earth stations. The antenna array does not include the support structure as defined in this Section.

(2) *Attached Wireless Communications Facility (Attached WCF)*: An antenna array that is attached or affixed to an existing building or structure (including but not limited to a utility pole, sign, or water tower), along with any transmission cables and accompanying pole or device that attaches or affixes the antenna array to the existing building or structure.

(3) ***Breakpoint Technology***: The engineering design of a tower, mast or monopole wherein a specified point on the structure is designed to have stresses concentrated so that the point is at least five percent more susceptible to failure than any other point along the structure so that in the event of a structural failure, the failure will occur at the breakpoint rather than at the base plate, anchor bolts or any other point on the structure. For example, on a 100 foot tall structure with a breakpoint at 80 feet, the minimum setback distance would be 22 feet (110 percent of 20 feet, the distance from the top of the structure to the breakpoint) or the minimum side or rear yard setback requirements for that zoning district, whichever is greater.

(4) ***Local Wireless Broadband Service (LWBS)***: Low Power Wireless Radio transmitting in the Industrial Science and Manufacturing (ISM) bands as regulated by the FCC part 15 rules and regulations for wireless equipment, to provide access to the Eastern Shore of Virginia Broadband Authority fiber optic cable system of internet and data transmission services in all areas of the county, originating from area hubs via point-to-point and point-to-multipoint wireless connections to the end users.

(5) ***Low Power Transmission***: Transmitting under the FCC Part 15 regulation ISM radio bands. The ISM bands are defined by the International Telecommunication Union Regulations (ITU-R) in 5.138, 5.150, and 5.280 of the ITU Radio Regulations. FCC Part 15 controls power outputs and how unlicensed equipment should behave in these radio-bands.

(63) *Co-location (sometimes "collocation)* Use of a common WCF or common support structure by two (2) or more wireless communications license holders or by one (1) wireless communications license holder for more than one (1) type of communications technology, or, placement of a WCF on a structure owned or operated by a utility or other public entity, or placement of an Attached WCF.

(74) *Equipment Facility*: Any accessory structure used to contain ancillary equipment for WCFs, which may include cabinets, small shelters, pedestals, or other similar structures.

(85) *Support Structure*: Any structure designed and constructed specifically to support an antenna array, and may include a monopole, transmission tower, mast, stayed mast

and other similar structures. Any device used to attach an Attached WCF to an existing building or structure shall be excluded from this **and the following** definitions.

(a) *Monopole*: A single self-supporting **vertical** pole structure **that is attached to the ground**, tapering from base to top and supporting a fixture designed to hold one (1) or more antennas.

(b) *Transmission Non-Monopole Tower*: A **vertical** lattice structure, guyed or self-supporting, **that is attached to the ground and designed** used to support antennas. **A vertical self supporting structure that is attached to the ground and is designed to support antennas**

(c) *Mast*: **A vertical antenna support mounted on some other structure, which itself may be a tower, building or vehicle.**

(c) *Stayed Mast*: **A mast supported by stays or guy wires designed to support antennas.**

d) *Major Support Structure*: **Any vertical support structure in excess of 100 feet from the ground to the highest point, and any other structure which does not meet the allowed use or definition of a minor or neighborhood support structure**

(e) *Minor Support Structure*: **Any vertical support structure that is less than 100 feet from the ground to the highest point which is not guyed and which is either a monopole or steel lattice structure and used only for low power transmission of Local Wireless Broadband Service to local residents and businesses.**

(f) *Neighborhood Support Structure*: **any vertical support structure or stayed mast that is less than 50 feet from the ground to the highest point which is and which is either a monopole or steel lattice structure and used only for low power transmission of Local Wireless Broadband Service to local residents and businesses.**

(9 ~~6~~) *Wireless Telecommunications*: Any wireless services as defined in the Federal Telecommunications Act of 1996 which includes Federal Communications Commission (FCC) licensed commercial wireless telecommunications services including cellular, personal communications services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging, and other similar services that currently exist or that may in the future be developed.

(10 ~~7~~) *Wireless Communications Facility (WCF)*: Any unstaffed facility for the transmission and/or reception of wireless communications services, usually consisting of an Antenna Array, transmission cables, equipment facilities, and a Support Structure.

(C) Performance Standards: The following performance standards shall be applied to all WCFs.

(1) *Antenna Arrays:* Structure-mounted and roof-mounted antennas and related unmanned equipment may be developed subject to the performance standards below.

(a) An Antenna Array is permitted by right to co-locate on any existing guyed tower, lattice tower, monopole, electric utility transmission tower, fire tower, water tower, or building, provided that the installation of the new facility does not increase the height of the existing structure by more than 20 feet, to a maximum of 199 feet, subject to the other standards included herein. Such installations shall not require a special use permit but shall require site plan approval by the County and shall be added to the County inventory of wireless facilities. Any increase in height of an existing structure greater than 20 feet shall require a special use permit; however, under no circumstances shall the total height of a structure exceed 199 feet.

(b) Satellite and microwave dishes attached to towers and monopoles shall not exceed six (6) feet in diameter.

(c) Omni directional antennas shall be of a material or color which matches the exterior of the building or structure.

(d) Directional or panel antennas shall be of a material or color which matches the exterior of the building or structure.

(e) No commercial advertising shall be allowed on any antenna.

(f) Signals or lights or illumination shall not be permitted on any antenna unless required by the FCC, the Federal Aviation Administration (FAA), or any other state or federal authority.

(2) *Support Structures (Transmission Towers and Monopoles):*

(a) Minor Support structures used exclusively for providing Low Power Local Wireless Broadband services to local homes and businesses may be installed by right in the following districts:

Agriculture/Rural Business (A)

Hamlet (H)

Village 1 (V-1)

Village Neighborhood Business District (VNB)

Commercial General (C-1)

Existing Business (EB)

Existing Industrial (EI)

(b) Minor Support Structures will require the approval of a Minor Special Use Permit in all other districts and shall be subject to the same supplemental standards as a Major Support Structure

(c a) Neighborhood Support Structures 50 feet or less than height and used exclusively for providing wireless internet and data services to local homes and businesses may be installed by right in all districts.

(b) Support Structures greater than 50 feet in height may be installed in accordance with the following chart and may require the approval of either a minor (MS) or a major (SUP) special use permit as indicated. "R" means by right.

Zoning District >50 feet and ≤100 feet >100 feet and ≤199 feet

A/RB parcels ≥10 ac. R SUP

A/RB parcels <10 ac. MS SUP

Hamlet MS SUP

Village-1 MS SUP

Village-NB MS SUP

C-1 R SUP

Conservation MS SUP

Existing Business R SUP

Existing Industrial R SUP

(d c) Major Support Structures will require requiring the approval of a special use permit and shall be subject to the following supplemental standards.

(a) Where technically and reasonably feasible, monopoles will be considered preferable to lattice structures.

(b) New Support Structures and equipment facilities shall be subject to the site plan review and approval requirements set forth in Article IV herein. Approval of a site plan is required before a building permit is issued.

(c) Unless otherwise required by the FCC or the FAA, the proposed WCF shall harmonize with development in the vicinity with respect to color, lighting, materials, and architecture. In addition, the facility shall be located within the interior of the property and screened by any existing vegetation to the extent practicable.

(d) New Support Structures shall be designed to accommodate at least three (3) providers, but not so many as to necessitate a very tall, thick tower.

(e) The maximum height of a WCF shall be 199 feet.

(f) Support Structures shall be designed to collapse within the lot lines or lease lines, if leased area does not conform to property lot lines, in case of structural failure.

(g) No signals, lights, or illumination shall be permitted on a tower or monopole, unless required by the FCC, the FAA, or other state or federal authorities.

(h) No commercial advertising or signs shall be allowed on a tower, monopole, or associated structures.

(i) No tower or monopole shall be located within a designated historic district.

(j) Applicants for a special use permit for any **Major** WCF **greater than 100 feet in height** shall demonstrate that they have complied with applicable regulations of the FCC and the FAA. A finding by the FAA that the proposed facility is not a hazard or obstruction to aviation shall be a condition for the issuance of any special use permit.

(k) To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable federal, state, and local building codes and regulations.

(l) The following setback requirements shall apply to all Support Structures.

1. Transmission Towers and Monopoles **Major Support Structures greater than 100 feet in height, with or without breakpoint technology**, must be set back from any off-site residential structure no less than 400 feet and set back from any property line a minimum of 150 feet.
2. Guy wires and accessory facilities must be set back a minimum of 25 feet from any property line.
3. **Minor Support Structures between 50 feet and 100 feet in height which are allowed by right must be set back from any off site residential structure or property line no less than 110% of the height of the structure, or, (B) 110% 200% of the breakpoint distance from for a qualifying breakpoint technology structure.**
4. **Support structures between 50 feet and 100 feet in height which require a minor special use permit must observe the minimum setbacks for the zoning district in which they are located or 100% of the breakpoint distance for a qualifying breakpoint technology structure. If a structure is proposed to**

be located on a property situated adjacent to a property with a residence, an additional setback may be considered during the special use permit review process.

5. **Neighborhood Support Structures must be set back from any off site residential structure no less than 50 feet and not less than 25 feet from any property line.** Support structures 50 feet or less in height must be setback from property lines at least 110% of the height of the structure.
6. If lesser setbacks than those stipulated above are desired, a special exception may be sought utilizing the special use permit process.

(m) **Major Support Structure** WCFs greater than 100 feet in height shall be enclosed by security fencing no less than eight (8) feet in height and equipped with an appropriate anti-climbing device. The fence shall have a 24-hour emergency phone number posted. **Minor Support structures greater than 50 feet in height shall have anti-climbing shields installed and display industry standard warning signs along with 24 hour emergency phone numbers.**

(n) The following requirements shall govern the landscaping surrounding WCFs.

1. **Major Support Structure** WCFs greater than 100 feet in height shall be landscaped and maintained with a buffer of plant materials that effectively screen the view of the support buildings from adjacent properties. The standard buffer shall consist of a landscaped strip at least four (4) feet wide outside the perimeter of the facilities.
2. Existing vegetation may be removed only as authorized during the site plan review process to permit construction of the **Major Support Structure** WCF and installation of vehicular and utility access.

(o) Noise generated by the facility shall be limited to 50 DBA above ambient levels except when a back-up generator is needed.

(3.) *Submission Requirements.* Applicants for a special use permit under this section shall submit the following information.

- (a) Documentation in written and graphic form regarding the service area to be provided by the proposed WCF. This shall include propagation maps demonstrating that the facility, with collocation capabilities, is no higher in elevation than necessary.

(b) A scaled plan, a scaled elevation view, and other supporting drawings, calculations, and other documentation, signed and sealed by appropriate licensed professionals, showing the location and dimensions of all improvements, including information concerning topography, radio frequency coverage, tower height requirements, setbacks, drives, parking, fencing, landscaping and adjacent uses. The Zoning Administrator, the Planning Commission, or the Board of Supervisors may require other information to assess compliance with this ordinance. Additionally, the applicant shall provide actual photographs of the site that include a simulated photographic image of the proposed tower. The photograph with the simulated image shall include the foreground, the mid ground, and the background of the site.

(c) An engineering report which includes a statement of justification for the proposed site selection. The Zoning Administrator may require a review by a professional licensed engineer of any of the information required above. The costs incurred by Northampton County for such review shall be paid by the applicant.

(d) The applicant must submit a written commitment to the County that they shall allow other wireless carriers to co-locate antennas and other wireless facilities on the proposed facility.

(e) Each applicant for a WCF shall provide to the Department of Planning and Zoning comprehensive plan of its existing facilities in Northampton County, its anticipated facility needs, and probable future location sites. The Department of Planning and Zoning shall maintain an inventory of wireless facility sites and may share such information with other applicants applying for approvals or special use permits under this ordinance or other organizations seeking to locate antennas within the jurisdiction of the locality, provided, however, that the Department of Planning and Zoning shall not, by sharing information, in any way represent or warrant that such sites are available or suitable.

(4) Applicants shall demonstrate a good-faith effort to co-locate with other service providers. Such demonstration shall include evidence of contact with all other licensed carriers operating in the County and written justification from said carriers and the applicant if co-location is not feasible. In the event that other carriers refuse to respond to the applicant, submittal of certified mail receipts and copies of correspondence shall be considered demonstration of good faith effort. In determining the feasibility of co-location, the following factors will be considered:

- (a) No existing towers or structures are located within the geographic areas required to meet applicant's engineering and coverage requirements.
- (b) Existing towers or structures are not of sufficient height to meet applicant's engineering and coverage requirements.
- (c) Existing towers or structures do not have sufficient structural strength to support applicant's proposed antennas and related equipment.
- (d) The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.
- (e) The fees, costs, or contractual provision required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are patently unreasonable objectively.
- (f) The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.

(D) Removal of Abandoned Major, Minor and Neighborhood Structure WCFs. A bond shall be required to assure removal of an obsolete *Major Structure* WCF greater than 50 feet in height. Any antenna or tower that is not operated for a continuous period of 24 months shall be considered abandoned, and the owner of each such antenna or tower shall remove the WCF within 90 days of receipt of notice from Northampton County notifying the owner of such removal equipment requirement. Removal is defined as leveling structures to the ground and legally removing the materials from the site. If there are two (2) or more users of a single tower, then this provision shall not become effective until all users cease using the tower. The site shall be restored to its original condition after removal is complete.

(E) Required Yearly Report. The owner of each such WCF shall submit a report to the Northampton County Department of Planning and Zoning once a year, no later than July 1. The report shall state the current user status of the tower.

(F) Special Use Permit Review. Each special use permit approved for a WCF shall be reviewed at least every three years. While no additional fees or public hearing shall be required, the applicant shall demonstrate to the satisfaction of the Zoning Administrator that a good-faith effort has been made to cooperate with other providers to establish co-location at the tower site. Such cooperation shall include timely responses to co-location inquiries from other providers and sharing of technical information to evaluate the feasibility of establishing co-location. The owner/operator will also be evaluated for compliance over the period with any other terms and conditions of the special use permit.

(G) Provisions for *Local Wireless Broadband Service and Amateur Radio Antennas*. Amateur radio antennas and **Local Wireless Broadband Service facilities** are exempt from the portions of these regulations that pertain to co-location.