

**MINUTES OF A
SPECIAL PUBLIC MEETING
OF THE JACKSON COUNTY
BOARD OF COMMISSIONERS
HELD ON
FEBRUARY 26, 2019**

The Jackson County Board of Commissioners met in a Quasi-Judicial Hearing on February 26, 2019, 1:00 p.m., Justice & Administration Building, Room A201, 401 Grindstaff Cove Road, Sylva, North Carolina.

Present: Brian McMahan, Chairman
Boyce Deitz, Vice Chair
Mickey Luker, Commissioner
Gayle Woody, Commissioner
Absent: Ron Mau, Commissioner

Don Adams, County Manager
Heather C. Baker, County Attorney
Angela M. Winchester, Clerk to Board

Chairman McMahan called the meeting to order.

(1) GENERAL INFORMATION: Chairman McMahan stated that the purpose of the meeting was to have a quasi-judicial hearing, which was an evidentiary hearing where the Board of Commissioners would make a decision based solely on competent, material and substantial evidence in the record. The record was all of the materials and input that were presented to the Board, including the application, exhibits, testimony and related materials. The record may include some insufficient evidence, but the Board may not base its decision on it.

(2) OPENING THE HEARING: Chairman McMahan called the case:

- (a) Project: Wireless Communication Tower – Moose Lodge Property
- (b) Applicant: Capital Telecom Holdings II, LLC; Jonathan Yates, Legal Counsel
- (c) Service Provider: Verizon Wireless.
- (d) Location: 19 Moose Lodge Road, Sylva, NC 28779

Motion: *Commissioner Deitz moved to open the Public Quasi-Judicial hearing for a wireless communication facility permit. Commissioner Woody seconded the Motion. Motion carried by unanimous vote.*

(3) DISCLOSURES: Chairman McMahan stated that Members of the Board of Commissioners shall disclose any site visits, Ex parte communications with any person, including County Staff, specialized knowledge related to the case, fixed opinion on the case, family, business or other similar relationship with the applicant or other affected person, financial interest in the outcome or any other relevant information.

- (a) *Chairman McMahan stated he had none.*
- (b) *Commissioner Luker stated he had none.*
- (c) *Commissioner Woody stated she had none.*
- (d) *Commissioner Deitz stated he had none.*

(4) PARTIES: Chairman McMahan inquired if there was anyone other than the Applicant and the County Staff that wanted to be a party to the action.

There were none.

(5) **SWEARING IN:** All persons, including County Staff and consultants, who intended to present evidence were sworn in by the Clerk to the Board.

(6) **EVIDENCE:**

(6A) **STAFF PRESENTATION OF REPORT:** John Jeleniewski, Senior Planner, presented the staff report: Capital Telecom is proposing to construct a wireless communication tower 179' in total height (175' tower structure, 4' lightning rod) on the referenced property owned by the Loyal Order of Moose. This property is not located in a zoned jurisdiction, however, the Jackson County *Wireless Communications Ordinance* will apply. The tower and supporting facilities will be located on the eastern portion of the property and will be contained within a 54'x70' "leased" area; the existing accessory building in this location will be removed prior to the commencement of construction. Within the leased area, a 44'x60' secured compound is proposed which will contain the monopole tower, meter rack and future equipment shelters; all of which will be surrounded by a secured chain-link fence, 8' in height. The area immediately beyond the 44'x60' compound will be landscaped with approximately 16 evergreen trees (Carolina Sapphire, min. 2" caliper), 10' on-center, in a 10' wide mulched bufferyard. The proposed facility (leased area) will be accessed by the existing, adjacent paved parking area on the Moose Lodge property which is adjacent to Skyland Drive (S.R. 1432) and is a public right-of-way maintained by the NCDOT. The proposed site construction plans show minimal grading of the proposed leased area (54'x70') and no retaining walls will be required. The submitted site construction plans include measures for erosion control/stormwater compliance; erosion control best management practices (BMP's) will be applied to this site. The power service for this proposed facility will be supplied by Duke Energy and any required utility easements will be provided by the property owner. The required balloon test was conducted on November 17, 2018; notice for this balloon test was published in the Sylva Herald on October 31/November 7 2018 and formal notifications of this test were mailed to adjacent property owners on October 22, 2018. Jackson County Staff and the applicant met in a required "pre-application" meeting on October 31, 2018. The official Wireless Communication Application was and received by the Jackson County Planning Department on December 28, 2018. The Jackson County Planning Department completed its administrative review of the submitted application on January 24, 2018. This proposed tower, supporting accessory structures, site construction and erosion control/stormwater measures will be required to obtain all necessary permits prior to commencement of construction. Advertising and posting for the quasi-judicial hearing is as follows:

- At their scheduled Board meeting on February 5, 2019, the Board of County Commissioners called for a quasi-judicial hearing to be heard on February 26, 2019 at 1:00 p.m.
- The quasi-judicial hearing was advertised in the Sylva Herald on February 14th and 21st, 2019.
- Adjacent property owners were mailed notices of the quasi-judicial hearing on February 11, 2019.
- The property was posted with notice of the quasi-judicial hearing on February 11, 2019.

Procedural Requirements for a Wireless Communication Facilities Permit (Conditional Use Permit):

The procedures set forth for the review and consideration of the proposed Wireless Communication Facilities permit shall be followed for new Wireless Support Structures, substantial modifications, and any other proposal requiring a Wireless Communication Facilities permit as required or otherwise specified in this section. The procedure for review and approval of a Wireless Communication Facilities permit shall be a 2 Conditional Use Permit process, which will require a quasi-judicial hearing by the Jackson County Board of Commissioners.

Staff Review:

Planning Department review. Following submittal of the application for the Wireless Communication Facilities permit, the application shall be reviewed by the staff of the Planning Department for compliance with the requirements of this ordinance. The Planning Department may request input from consultants and/or experts to assist in the thorough review of the wireless communications permit application. The Planning Department shall review the permit application within 15 working days of its submittal to determine if the application is complete. When the Planning Department determines that the application is complete, it shall notify the applicant in writing via electronic mail. Responses to ordinance requirements are detailed in *italics*.

Ordinance Section 30-22. Standards for Wireless Communication Facilities

A. Location of Wireless Communication Facilities

1. It is recommended that applicants for all Wireless Communication Facilities locate, site and construct said Wireless Communication Facilities in accordance with the following priorities, in order:

- a. On existing Wireless Support Structures without substantial modification of the tower or structure.
- b. On existing Wireless Support Structures with substantial modification(s).
- c. On existing structures other than Wireless Support Structures, such as electrical transmission towers and buildings, capable of accommodating the facilities.
- d. On properties in areas developed for business use.
- e. On properties in areas developed for rural use.
- f. On properties in areas developed for residential use.

2. If the proposed site is not proposed for the highest priority listed above, then a detailed explanation and documentation (i.e. intermodulation study) must be provided in the application as to why a site of a higher priority designation was not selected.

3. Notwithstanding the above, the County may approve any site located within an area in the above list of priorities, provided that the county finds that the proposed site is in the best interest of the health, safety and welfare of the county and its inhabitants, will not have a deleterious effect on the nature and character of surrounding properties and the community and is otherwise in compliance with this ordinance.

- *The applicant has submitted "Propagation Maps" which is provided for review in "Attachment 11" of the application and was prepared by Verizon.*

B. Type and height of Wireless Support Structures and towers.

1. The usual maximum height for Wireless Support Structures shall be 100 feet. The Jackson County Board of Commissioners may approve increases in Wireless Support Structure height up to a maximum height of 180 feet based on a showing of need and after consideration and satisfaction of the other requirements of this ordinance.

- *The Jackson County Wireless Ordinance allows for only a 180' total tower height (including appurtenances), the submitted plans indicate a proposed tower with a total height of 179' (structure and lightning rod).*

2. Wireless Support Structures and towers may be monopole or lattice type.

- *This proposed Wireless Communication Tower will be a monopole.*

3. Wireless Support Structures and towers may be located on a protected mountain ridge as defined in the Jackson County Mountain and Hillside Development Ordinance provided that:

- a. The Wireless Support Structure does not extend more than 20 feet above the average height of the tree canopy within 100 feet of the tower site. If any antenna extends more than two feet from the side of the support structure, the portion of the tower extending above the vegetative canopy shall be camouflaged to appear like the top of a coniferous tree with all antennas concealed within simulated foliage
- b. The Wireless Support Structure or tower is not visible from a public road within one half mile of the proposed site.

- c. There is no other Wireless Support Structure or tower located on a ridge within one (1) mile of the proposed site.
- d. The proposed Wireless Support Structure or tower is a monopole.
- e. The proposed Wireless Support Structure or tower is not visible from and within two (2) miles of the Blue Ridge Parkway.
- f. There are no other structures, including electrical transmission towers, within the search area capable of accommodating the wireless communications equipment.
 - *This proposed Wireless Communication Tower is not located on a Protected Mountain Ridge.*

C. Section Reserved in the current ordinance

D. Visibility and noise of Wireless Communication Facilities.

1. Lighting. Wireless Communication Facilities shall not be artificially lighted or marked, except as required by federal regulations. If lighting is legally required, the applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under state and federal regulations. For any Wireless Communication Facilities for which lighting is required under the FAA's regulations, or that for any reason has lights attached, all such lighting shall be affixed with technology that enables the light to be seen as intended from the air, but that prevents the ground scatter effect so that it is not able to be seen from the ground to a height of at least 12 degrees vertical for a distance of at least one mile in a level terrain situation. Such device must be compliant with or not in conflict with FAA regulations. A physical shield may be used, as long as the light is able to be seen from the air, as intended by the FAA. If lighting is required by the FAA or other government agency, then such lighting shall be installed pursuant to the FAA or other government agency standards. The applicant shall present the options for selection by the county, being mindful of the impacts of the proposed lighting upon people whose residences are located at higher elevations.

- *No tower lighting is required per FAA standards. The proposed site construction plans do not indicate the location of any proposed outdoor "yard" lighting; state building code may require building lighting at the time of accessory structure placement.*

2. Retrofitting. In the event a Wireless Communication Facilities that is lighted is modified, at the time of the modification the county may require that the tower be retrofitted with the technology set forth in the preceding subsection.

- *Not Applicable*

3. Camouflage/Concealment. All new Wireless Communication Facilities are encouraged to utilize camouflage and/or concealment techniques to the maximum extent feasible. Wireless Communications Facilities to be located within residential areas, rural areas, and scenic areas are encouraged to employ camouflage or concealment techniques.

- *This proposed Wireless Communication Tower will be unpainted, galvanized steel.*

4. Wireless Communication Facilities finish/color. Structures shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this section and subject to FAA requirements.

- *The design of this proposed Wireless Communications Tower will be manufactured of galvanized material.*

5. Noise. All facilities at a Wireless Communication Facilities, regardless of the owner of the facilities, shall comply with the county's noise control regulations, without exception.

- *Accessory structures are not proposed at this time. Future "colocation" will be required to comply with the Jackson County Wireless Communications Ordinance and any conditions set forth by the Jackson County Board of Commissioners.*

E. Security of Wireless Communication Facilities.

All Wireless Communication Facilities shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

1. All Wireless Communication Facilities, including antennas, towers and other supporting structures, including guy anchor points and wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and

2. Transmitters and communications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.

- *The proposed site construction plans specify a minimum 8' in height, chainlink security fencing with a barbed-wire cap. It appears that all compound equipment and accessories are accessible to authorized personnel only.*

F. Signage.

Wireless Communication Facilities shall contain a sign no larger than four square feet shall be installed to containing the name(s) of the owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. On tower sites, an FCC registration site, as applicable, is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.

- *Site signage at the access gate is proposed and shown on the submitted plan sheet "C-7" and comply with the standards set forth in the ordinance.*

G. Setbacks.

1. Unless otherwise stated herein, each wireless support structure shall be set back from all property lines a distance equal to its engineered fall zone plus ten percent. The setback shall be measured from the nearest portion of the right-of-way of any public road or thoroughfare and any occupied building or domicile. Further, the nearest portion of any new access road leading to a wireless communication facilities shall be no closer than 15 feet to the nearest property line.

2. Accessory structures shall be located within the footprint of the approved facility and meet the minimum property line setbacks for the district or 30 feet from adjacent property lines whichever is more restrictive.

3. There shall be no development of habitable buildings within the wireless support structure setback set forth in the preceding subsection.

- *Setback dimensions are provided on sheet "C-1.1 and C-2" (Site Plans). For this project, the engineered fall zone is 65' plus 10% for a total of a 71.5' fall zone setback. The distance between the center of the proposed tower and nearest abutting property lines are 77'-7" and 82'-3" respectively. The fall zone has been designed by a licensed engineer and supporting documentation can be found in "Attachment 8" of submitted application. There are no habitable buildings within the fall zone area.*

H. Accessory Structures.

The accessory structures associated with wireless communication facilities shall maximize the use of building materials, colors, and textures designed to blend with and harmonize with the natural surroundings.

- *The proposed accessory buildings will be pre-fabricated and finished with wood siding or other high quality material that blends with the surrounding environment. Accessory buildings are not proposed in this application, however, Planning staff will apply this standard to all future co-locate reviews.*

I. Utilities.

All utilities at a wireless communication facilities site shall be installed underground if practical and in compliance with all laws, ordinances, rules and regulations of the county, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate.

- *All proposed utilities will be installed underground if possible and comply with all local, State, and Federal codes.*

J. Site Access.

At a wireless communication facilities site an access road and turnaround space for an emergency vehicle shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road design and construction shall comply with the private road standards set forth in the Jackson County Subdivision Regulations. Maintenance of the access roads shall be provided to assure vehicular access to the site at all times. All erosion control and storm water management facilities shall be maintained at all times. A maintenance log that documents inspections of the site and access roads shall be maintained at the communications facility site. The required maintenance log shall be placed in a location accessible at all times to the Jackson County employees charged with review of the log. Inspections shall be made at least quarterly by the owner/lessee of the site to confirm that the access road and site are maintained with no erosion or storm water issues and that all equipment is in good order. The employee of the site owner/lessee conducting the inspection shall note the date of the inspection and condition of the site and access road on the inspection log. Inspection logs shall be reviewed at least biennially by the Jackson County Planning Department. Any failure to maintain the inspection log and/or to maintain the erosion control and storm water management measures at the site and on the access roads shall be considered a violation of this article.

- *This proposed tower site will be accessed from an existing, paved parking area at the rear of the Moose Lodge property. The existing access drive and parking area is maintained by the property owner (Moose Lodge).*

K. Code Compliance.

All wireless communication facilities, shall be constructed, operated, maintained, repaired, provided for removal of, modified, or restored in strict compliance with all current applicable technical, safety and safety related codes adopted by the county, state, or United States, including, but not limited to, the most recent editions of the ANSI Code, National Electrical Safety Code, and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.

- *The proposed site, tower and building construction shall comply with all applicable codes and ordinances.*

L. Facilities Permit.

A holder of a wireless communication facilities permit granted under this section shall obtain, at its own expense, all permits and licenses required by applicable law, ordinance, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the county or other governmental entity or agency having jurisdiction over the applicant.

- *The proposed site, tower and building construction shall comply with all applicable codes and ordinances.*

M. Building Permit.

A building permit shall not be issued for construction of the wireless support structure unless there is an FCC authorized or licensed spectrum carrier which has indicated it will be installing equipment to use such spectrum on the wireless support structure.

- *A commitment from Verizon Wireless for this proposed wireless communication tower is included in "Attachment 3" of the submitted application package.*

Additional Application Requirements:

The applicant has provided the following required documents.

- *Site Plans and drawings*
- *Lease Agreement*
- *Verizon Intent Documentation*
- *Compliance Letter*

- *Tower Removal Letter*
- *FCC Licenses*
- *Collocation Policy Letter*
- *Fall Zone Letter*
- *FAA Analysis*
- *Lack of Collocate Document*
- *Balloon Test Report and Photo Simulation, Test Notice and Mailing Information*
- *Removal/Performance Security Bond*
- *Certificate of Liability Insurance*
- *Generator Specifications, Appendix "A"*
- *Condition of approval from the Board of Commissioners will be that the final structural analysis be submitted and reviewed by staff prior to commencement of construction.*

(6A) 1. Cross Examination by the Applicant, followed by other parties:

- Wyatt Stephens, Attorney inquired of Mr. Jeleniewski if he had reviewed the entire application (Exhibit 1) and went through the Jackson County Wireless Telecommunication Ordinance and compared it with each and every one of the documents that had been submitted by his client in support of the application?
 - Mr. Jeleniewski stated that was correct.
- Mr. Stephens inquired of Mr. Jeleniewski if he was satisfied that the application met or exceeded all of the requirements of the Jackson County Wireless Telecommunication Ordinance, with the exception of the requirement they establish the structural engineering for the tower itself subject to that, was he satisfied that it complied with the ordinance?
 - Mr. Jeleniewski stated he was.

2. Questions from the Board of Commissioners or County Attorney: *None.*

(6B) APPLICANT PRESENTATION OF EVIDENCE AND WITNESSES: Mr. Stephens that he practiced law in Asheville with Roberts Stephens. He was there with Jonathan Yates, an Attorney from Charleston, South Carolina.

Mr. Yates stated that he had represented cell tower companies and providers for more than 25 years and had represented SBA for 20 years.

- Mr. Stephens inquired of Mr. Yates if he had assisted Capital Telecom Holdings in connection with putting together this application for submission to Jackson County?
 - Mr. Yates stated that he had, with help from the Jackson County staff.
- Mr. Stephens stated there was a checklist for the ordinance that had certain items that had to be considered.
 1. In general terms, was it an option to place the equipment on an existing tower?
 - Mr. Stephens stated that the pole was designed for Verizon and their competitors, but they were trying to provide additional coverage and relieve capacity issues.
 2. Mr. Stephens stated that the ordinance stated the height of the structure was 100 feet or less unless the Board approved an increase with a maximum height of 180 feet. The proposed tower was for 175 plus 4. Why did this Board need to improve the increase?

- Mr. Yates stated that at 100 feet, they would not be able to make their connections to the rest of the network. They designed the tower to be 175 and added a 4 foot lightning rod.
- 3. Mr. Stephens stated that one of the items stated that the proposed use or development of the land would not materially endanger the public health or safety. He asked Mr. Yates to speak to that.
 - Mr. Yates stated that the purpose was to actually enhance public health and safety. In the United States, 80-84% of all 911 calls were made from a wireless device.
- 4. The proposed use or development of the land was reasonably compatible with significant natural and topographic features on the site. There were hills, mountains and trees, in his opinion, did this proposed 175 plus 4 foot tower meet that criteria?
 - Mr. Yates stated that yes it did. He thanked the Moose Lodge for granting permission for the lease to place the tower on their property, as it was an ideal location. They would strategically place the tower behind the lodge.
- 5. Was Mr. Yates aware of any of the adjacent/adjoining property owners coming forward to demonstrate that the proposed tower would substantially injure the value of adjoining or abutting properties?
 - Mr. Yates stated that he had none whatsoever.
 - Mr. Stephens stated that Mr. Jeleniewski talked about all of the public notice requirements that had been met. In addition to that, he saw an article in the Smoky Mountain News about the tower.
- 6. The site could be accessed by service and emergency vehicles. Did this tower meet that?
 - Mr. Yates stated that it absolutely did. They had perfect access in and out, all the way around.
- 7. Mr. Stephens inquired if he received a copy of Mr. Jeleniewski's staff report earlier.
 - Mr. Yates stated that he did.
 - Mr. Stephens stated he would offer that as Exhibit 2 in the record.

- (6B) 1. Cross Examination by other parties: *None.***
2. Questions from the Board of Commissioners or County Attorney: *None.*

(6C) OTHER PARTIES PRESENTATION OF EVIDENCE AND WITNESSES:
None.

(6D) REBUTTAL: *None.*

(6E) CLOSING STATEMENTS: *None.*

(7) BOARD DISCUSSION: Chairman McMahan stated that this ended the evidentiary portion of the Hearing and that there would be no further input from parties, though they may answer questions if asked by the Board during discussion. The applicable ordinance for this hearing was the Jackson County Wireless Communications Ordinance and the requirements were set forth in Section 30-23(b)(3).

During this Quasi-Judicial hearing, the Board must determine the following criteria and make findings with regard to each criteria:

(a) The proposed site is not proposed for the highest priority location listed in Section 30-22(a)(2), the applicant has satisfactorily demonstrated the reason or reasons why such a permit should be granted for the proposed site. Section 30-22(a)(2).

Consensus: *The Board determined this statement to be true based on Mr. Jeleniewski's report and Mr. Yates testimony.*

(b) The height of the Wireless Support Structure is 100 feet or less or the Jackson County Board of Commissioners approves an increase in the height of the Wireless Support Structure based on a showing of need and after consideration and satisfaction of the other requirements of this ordinance. Section 30-22(b)(1).

Consensus: *The Board determined this statement to be true based on Mr. Jeleniewski's report and Mr. Yates testimony.*

(c) The proposed use or development of the land will not materially endanger the public health or safety. Section 30-23(b)(3)(b)(3)(1).

Consensus: *The Board determined this statement to be true based on Mr. Jeleniewski's report and Mr. Yates testimony.*

(d) The proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed facility, site and access road design and any mitigation techniques or measures proposed by the applicant. Section 30-23(b)(3)(b)(3)(ii).

Consensus: *The Board determined this statement to be true based on Mr. Jeleniewski's report and Mr. Yates testimony.*

(e) The adjacent/adjoining property owners have not demonstrated that proposed use or development of the land will substantially injure the value of adjoining or abutting properties. Section 30-23(b)(3)(b)(3)(iii).

Consensus: *The Board determined this statement to be true based on Mr. Jeleniewski's report and Mr. Yates testimony.*

(f) The site can be accessed by service and emergency vehicles. Section 30-23(b)(3)(b)(3)(iv).

Consensus: *The Board determined this statement to be true based on Mr. Jeleniewski's report and Mr. Yates testimony.*

(g) The application, site and proposed improvements comply with all provisions of the ordinance. Section 30-23(b)(3)(b)(3)(v).

Consensus: *The Board determined this statement to be true based on Mr. Jeleniewski's report and Mr. Yates testimony.*

(h) The application for a wireless communication facilities permit is approved with conditions.

Consensus: *The Board approved the facilities permit with the following conditions:*

- *The final structural analysis be submitted and reviewed by staff prior to commencement of construction.*

(i) Decision:

Motion: *Commissioner Luker moved to approve the facilities permit, with the condition stated above and as it met the requirements set forth in the ordinance for the proposed use and the findings made above shall be incorporated into a written decision as the findings for approval of this application for wireless communication facilities permit. Section 30-23(b)(3)(b)(4). Commissioner Woody seconded the Motion. Motion carried by unanimous vote.*

(j) The proposed use meets the requirements set forth in the ordinance for the proposed use and the findings made in numbers 1-7 above shall be incorporated into a written decision as the findings for approval of this application for wireless communication facilities permit.

Chairman McMahan stated the hearing was concluded.

There being no further business, Commissioner Woody moved to adjourn the meeting. Commissioner Luker seconded the Motion. Motion carried and the meeting adjourned at 1:55 p.m.

Attest:

Approved:

Angela M. Winchester, Clerk to Board

Brian Thomas McMahan, Chairman