

**GEORGETOWN-SCOTT COUNTY PLANNING COMMISSION
REGULAR MEETING
MINUTES
January 14, 2016**

The regular meeting was held in the Scott County Courthouse on January 14, 2016. The meeting was called to order by Chair Rob Jones at 6:00 p.m. Present were Commissioners Jeff Caldwell, Janet Holland, Byron Moran, John Shirley, Steve Smith, Mark Sulski, and Frank Wiseman, Director Joe Kane, Planners Megan Chan and Matt Summers, Engineer Brent Combs, and Attorney Charlie Perkins. Absent was Commissioner Regina Mizell.

Motion by Sulski, second by Holland, to approve the December invoices. Motion carried.

Motion by Shirley, second by Caldwell, to approve the December 10, 2015 minutes. Motion carried.

With the change of hearing New Business before Old Business, motion by Smith, second by Holland, to approve the January agenda. Motion carried.

Postponements/Withdrawals

There were no items for postponement or withdrawal.

Consent Agenda

A representative of the Santa Barbara Fortiline application agreed to their conditions of approval and there were no comments from the public or Commission. Motion by Holland, second by Wiseman, to approve the Santa Barbara Fortiline application. Motion carried.

Chairman Jones announced that on Tuesday, January 26 at 6:00 p.m., there will be a Comprehensive Plan kick-off meeting, to be held at the Scott County Extensive Office. He encouraged everyone to attend and Mr. Kane passed out flyers about the meeting.

PDP-2015-40 Canewood Unit 2 Townhomes - Amended Preliminary Development Plan for 27 townhome units located east of Canewood Center Dr.

Everyone intending to speak before the Commission were sworn in by Mr. Perkins.

Mr. Kane reviewed the staff report. He stated that the type of unit has been changed to a townhome which will face the street rather than a rear greenspace. He stated that the main issue is the landscape buffer between Mission Path and the adjacent commercial area. It was to be installed at the time of development, but has not been installed yet. He also stated that sidewalks need to be discussed because of the new townhome layout.

Mr. Kane stated that there will be no change in the platted lots.

Regarding the sidewalks, he stated that the only way to access them is to walk on the alleyways. He suggested that an internal sidewalk loop be installed along Mission Path and Stone Wall Path providing an off-street pedestrian connection from the townhome area to Canewood Center Drive. Public sidewalks were not required on the previously approved plan because of the courtyard-type layout.

He noted that the conditions of approval include providing an agreement between the HOA and purchaser that establishes who is responsible for the construction of unfinished infrastructure and the landscape buffer, and also the installation of the sidewalk loop along Mission Path and Stonewall Path.

The guest parking spaces were discussed.

Commission Wiseman felt that there is no advantage to requiring a sidewalk beside the current concrete area. Mr. Kane stated that to have a pedestrian walkway off the main road will be safer after the development builds out.

Mr. Kane noted that standard conditions #7 and #8 have been completed with the prior approval, but rather than deleting them, he suggested adding "if needed," because new construction plans may or may not be required.

Rory Kahly, representing the applicant, agreed with the first ten conditions of approval. He stated that this fourth amended development plan is simply to change the units' footprint, and to require a sidewalk loop (condition #11) would be very problematic in that a loop would go onto other homeowner's established lots. He added that the development was approved with no curb and gutter, and there are swales and inlets that are flush with the asphalt. The addition of sidewalks would be difficult without disturbing the drainage system.

Discussion continued on the sidewalks. Mr. Kahly stated that there are no easements set up for sidewalks.

Bonnie Orthmeyer, Stonewall Path resident, was sworn in by Mr. Perkins. She expressed concern about parking and one-car garages, as parking is at a premium now with two-car garages. Mr. Kahly pointed out the shared parking. Ms. Orthmeyer stated that she lives next to one of the spaces, and it is not a full size space and not paved. Mr. Kahly stated that the space next to her unit is not a shared parking space, but one of the slabs for more garages, and they will be removed. Ms. Orthmeyer stated that many people use those slabs, so if they are removed, the parking problem will worsen.

Paul Haddix, applicant, stated that the townhome design with one-car garages was approved by the board of the HOA. Ms. Orthmeyer stated that she was surprised that they were approved because of the parking problem.

Another area resident and former HOA board member, expressed concern about residents not belonging to the HOA. He stated that when the original builder left the development, he did not install the final course of asphalt on the road. Hence, each homeowner was assessed \$1050 in order to pave the road. He asked that no more issues like that arise that will be left to the homeowners to resolve. Mr. Kane stated that there is a new City ordinance that requires each homeowner to belong to the HOA, but these 27 townhome lots were already incorporated into the existing HOA.

Mr. Haddix stated that his email from Ms. Oliver of the HOA indicated that they have as part of their budget to finish paving Stone Wall Path. The only paving left would be Tiburon Path, and he'll work out with the HOA whether he does the paving, or they do a special assessment on the lots he will be purchasing along with the existing lots.

Mary Howard, Stone Wall Path resident, expressed concern about sidewalks. She stated that there are many residents who walk. She stated that there is a bus stop at the roundabout, and there is concern for the safety of the kids who walk there in the mornings.

Commissioner Smith asked if the shared parking areas could be increased from five spaces to eight or ten spaces. Mr. Kahly responded that they would have to look at the storm sewer system running along Mission Path to make sure the inlets or swales are not covered. He noted that the requirement has been met.

Commissioner Shirley suggested that the HOA amend their restrictions to require residents to park in their garage. Ms. Howard stated that she has a truck that will not fit in her garage.

Commissioner Holland asked if a solution could be reached if the application was postponed until the February meeting. Mr. Kahly stated that if four additional parking

spaces can be added with a minor amendment to the plan, Mr. Haddix could move forward. Mr. Perkins suggested adding a condition of approval requiring the applicant to work with staff to add the four additional spaces where reasonable, and to also include representatives of the HOA in the process. Mr. Haddix agreed to Mr. Perkins suggestion.

The sidewalk issue was discussed further. Commissioner Sulski felt that the sidewalks should be required. Commissioner Shirley stated that there are other issues involved. The infrastructure has been completed as approved. Storm sewers are complicated, involving elevation changes, etc., and these are private, uncurbed streets, which makes it very difficult to install sidewalks after all other infrastructure has been completed. He felt that the practical solution would be to stripe the edge of the road to provide a pedestrian lane, making an attempt to provide a safer environment.

Commissioner Smith noted that a large truck like Ms. Howard's may not fit in the shared parking spaces.

Commissioner Smith suggested amending condition #11 to state that the applicant will work with staff on the sidewalk issue. Mr. Perkins stated that it is difficult to require someone to install sidewalks on property that is not his.

After further discussion, motion by Sulski, second by Wiseman, to postpone the application to the February meeting so that the applicant can work with the HOA to address safety concerns and the shared parking. Motion denied 3-4 with Moran, Shirley, Holland, and Caldwell dissenting.

After further discussion, motion by Shirley, second by Holland, to approve the Amended Preliminary Development Plan, subject to the ten (10) conditions of approval, with the words "if needed" added to conditions #7 and #8, and replacing condition #11 with the requirement that the applicant work with staff to add four additional shared parking spaces where reasonable. Motion carried 6-1 with Sulski dissenting.

PDP-2015-32 Georgetown East – Wireless Communications Facility – Preliminary Development Plan for a 195' monopole cell tower with a 5' lightning arrestor, located on a 98' x 98' fenced area within a 100' x 100' lease area, located on the north side of Crumbaugh Road, east of Glen Creek Road.

Mr. Summers reviewed the staff report. He stated that the tower will have four antennae sites available for other carriers, which will reduce the need for additional towers in the area in the future. He reviewed the 10,000 sq. ft. lease area in detail, showing the generator, co-location sites, required buffer area, fencing, and landscaping.

Mr. Summers stated that approval is based on: 1) whether it agrees with the Comprehensive Plan, 2) whether it meets the *Zoning Ordinance*, and 3) whether it meets the *Subdivision and Development Regulations*. He then reviewed the requirements of the *Zoning Ordinance* and stated how this application complies, which is outlined in the staff report.

Regarding the Comprehensive Plan, he read the fundamental guiding principal for rural land use, which states "that the actions taken and decisions made should result in a proper balance between the needs of development associated with community growth, and the continuing need to preserve and protect Scott County's rural, agricultural, and historical assets for the benefit of the community as a whole." He stated that it is up to the Commission to determine whether the application meets that principal.

He noted that environmental effects of radio frequency emissions are handled solely by the FCC, as stated in local, state, and federal law. He presented a map created by the GIS Department that showed the roughly two-mile radius impacted by the cell tower, which includes approximately 2,663 parcels of land in Scott County.

Mr. Summers stated that numerous letters and communications were received from the public and area property owners about this application. He stated that the tower will not have lights on it unless they are required by the FAA. The noise produced by the generators will be roughly 63 decibels at 23 feet, which is roughly speaking volume in a normal conversation. Over the distance of 282 feet between the tower site and the neighboring property owner, the diesel generators will unlikely be heard.

He then reviewed each concern of the neighbors. Briefly, the tower is not located in an environmentally sensitive area. Regarding the scenic view, another cell tower is in view, albeit further away, and the proposed landscaping will buffer the lease area. Property values will not be negatively impacted as shown by a study submitted by the applicant. Sufficient effort to co-locate was made as documented by the applicant. The tower height is under 200 feet. Since the tower is outside of environmentally sensitive areas and the floodplain of the North Elkhorn Creek, it will have no adverse effect on the creek. The existing trees and vegetation between the proposed tower and the creek will remain, and new trees will be planted.

He presented a map showing the location of area residents who submitted letters of opposition to the proposed tower.

He recommended that if the application were approved, three standard conditions of approval be attached.

Commissioner Wiseman asked why the location was in a low area. Mr. Summers replied that the applicant will address that issue; however, it has to do with finding a suitable location in the search area, as well as an agreeable landowner.

David Pike, representing the applicant, distributed hearing binders to the Commission, Mr. Perkins, and any member of the public who desired one. He proceeded to review the case, which he stated is completely different from every other type of zoning case that the Commission has considered. He stated there are a different set of rules regarding what can and cannot be considered.

Mr. Pike stated that all exhibits required by local ordinance and by KRS have been submitted, and all have been appropriately verified. All local procedural guidelines and KRS guidelines have been satisfied.

He noted several issues in the staff report, including the fact that no variances are being requested, and its compliance with current building and wind loading standards at the national and state level. He failed to see how the application can be denied on the grounds that it does not comply with the Comprehensive Plan when cell towers are not dealt with in the Plan. He stated that it complies with the landscaping ordinance and addresses the portion of the Comprehensive Plan relating to rural and urban landscapes and natural habitats. It appears to meet the conditions of the *Zoning Ordinance* and the *Subdivision and Development Regulations*.

He reiterated that the application is not located in the floodplain or any other environmentally sensitive areas as defined by the Comprehensive Plan, that there are other cell towers visible from the site, and that there are no existing structures available to co-locate on to fill their gap in coverage.

Mr. Pike then reviewed his written presentation. He stated that the monopole tower (which has no guy wires) is being built extra strong to support additional antennas, thereby reducing tower proliferation. It also makes it much easier for other carriers to improve their service in this vicinity. He discussed the search area at length, property values, structural requirements and design, foundation stability, floodplain and environmentally sensitive areas, height, compliance with local regulations, and his view of the law, including claims that towers are unsightly or unwanted are not grounds for denial. He continued reviewing federal law and KRS regulations regarding utility provision and radio frequency emissions, both of which cannot be considered by the Commission.

He stated that approximately 70% of all emergency calls are made from cell phones, and that over 55% of all children live in households with only a cell phone.

He asked that the experts who are present be able to adopt their previously adopted reports as their sworn testimony. No objection was heard from the Chairman Jones.

Commissioner Wiseman asked why the tower is located in a low rather than high area. Mr. Pike replied that being on a high area is important for transmitting radio signals, but not for cell towers. Cell towers are located to serve increasingly smaller areas because

the increasing number of wireless devices can overwhelm a tower servicing too large an area.

Chairman Jones asked why the 300' Verizon tower that was recently approved in Stamping Ground had to be so much taller than this tower. Jalil Arbabshirani, engineer for the applicant, stated that the 300' was needed to serve a larger area. Sites are carefully studied so that coverage does not overlap too much and create interference. Cell towers can only handle a certain capacity, and the higher density area east of Georgetown prevents the tower from serving a larger geographic area.

Chairman Jones asked why, if the 911 issue is a major concern, why a permit has never been issued for the tower in Stamping Ground. Mr. Pike stated that it was strictly budgeting requirements. He stated that there are many approvals that are needed beyond Planning Commission approval, and sites do not get put into the pool to be scheduled for funding until all the approvals are obtained. Once all those approvals are obtained, then the tower is put into a queue to be built. In the case of the Stamping Ground tower, it may still be built at a later date.

Curtis Woodson, Glen Creek Drive resident, distributed a map to clarify his presentation. He stated that the land surrounding the cell tower site is prime farmland with some of the richest soil in the state. It is almost completely surrounded by the North Elkhorn Creek. He described the land in detail, including the historically significant stone fences and several historic homes. He stated that the neighbors have studied the Comprehensive Plan, met with Planning staff, and educated themselves on what is important and dear to the residents of Scott County. They are aware of the carefully worded description of how residents wish to achieve and maintain a balance between the protection of the cherished resources of Scott County and the pursuit of healthy development that is necessary for livelihoods and cultural growth.

Mr. Woodson stated that they have studied the applicant's voluminous application which contains not only required information, but also extraneous material meant to persuade reviewers of an apparent dire need for the neighbors to tolerate construction of a cell tower within the boundaries of one of the County's most prized, scenic, and historic landscapes. He felt that the attempts of persuasion are uncompromising and border on intimidation.

He stated that the neighbors have familiarized themselves with the local regulations and fully understand the technical concerns of the developer and his investment, while the concerns for the aesthetics, location, and community impact must rest solely with the residents and public servants of the County. With regard to growth and development, the neighbors understand that all of those concerns must be given equal consideration in order to determine and achieve a necessary balance. The needs of the entire County and its residents are equally as important as those of an individual landowner and the corporate developer.

Mr. Woodson continued, stating that the cell tower is proposed to be placed on a prominent bank of the Elkhorn Creek within a peninsula that is effectively a nature preserve in the middle of land that has been designated as a proposed rural historic planning area by the Comprehensive Plan. He described the tower's immensity and the antennas that will protrude horizontally on all sides at the top 50' feet, which will further exaggerate the imposing, obstructive view of the tower.

Ruth Rowles, Crumbaugh Road resident, addressed the monetary advantage to the property owner. She described how lease terms are often accepted as they are initially offered because many landowners are not aware of the true market value of their leases. As a result, it is the tower companies themselves who may benefit the most when a new lease is signed. It may even be an incentive for a tower company to favor one site over another when technical reasons may dictate otherwise. She stated that the lease signed by Mr. Burke, landowner of the lease area for this proposed cell tower, signed a lease that is to be automatically renew every five years at the exact same terms and conditions that are in effect initially.

Ms. Rowles continued that a tower with a favorable lease agreement such as this one represents a lucrative though somewhat speculative potential for attracting additional income from co-locators. This potential for income, when compared to the less desirable expense of renting space on an existing tower, may be the main reason why required co-location attempts often seem to be evasively ignored by applicants. She stated that current regulations do not require disclosure of the agreement between PI Telecom and Verizon.

Ms. Rowles described the different types of towers and optimal versus acceptable cell coverage. She stated that the community's slogan "Where tradition and progress meet" does not mean "Where tradition and progress mix, merge, overlap, and become indistinguishable."

Commissioner Holland expressed concern about Mr. Woodson's assertion that barbed wire would be used on the perimeter of the lease area. Mr. Woodson stated that the plan shows a chain link fence, and does not show a barbed wire deterrent above the fence. However, the applicant has not specifically stated that they will not use a barbed wire deterrent.

Chris Irwin, Glen Creek Road resident, stated that Mr. Burke's financial gain is at the entire County's expense of being forced to tolerate construction of an industrial structure in close proximity to our nationally registered historic homes and districts. The County is being asked to lay aside our hope to protect and enhance one of the proposed rural historic planning areas, for the neighbors to accept a likely decrease in the value of their property, to sacrifice aspirations of creating scenic byways near our major urban areas, and to compromise and potentially jeopardize and pristine, environmentally sensitive area within the creek conservation corridor.

Mr. Irwin stated that it is the job of the Planning Commissioners, as public servants, representatives of the residents, and neighbors themselves, to decide what development is in the best interest of Scott County. The Comprehensive Plan is the detailed plan that guides them in making those decisions.

Tim Tillotson, Glen Creek Drive resident, referring to the fact that other towers can be seen from the area, stated that that does not make it appropriate. He then cited subsections of the *Zoning Ordinance* which grant the Commission authority to deny the application. The subsections addressed:

- 1) Furthering public health, safety, and general welfare, to which Mr. Tillotson felt that the applicant may be more interested in profits and competitiveness in that their Lease Agreement with the landowner requires that no other competing cell towers be hosted by the landowner within a 5 mile radius of the proposed tower site. He stated that that is an effort to sub-regulate facilities in our county and is in conflict with the tower's supposedly effective communication radius of 2 miles.

He noted that there are probably no members of the public present in favor of the application in order to help their health, safe, and welfare or to improve their unacceptable Verizon cell phone service.

He provided a handout that that states the applicant's claim that there is a woeful deficiency of the service to the east and southeast of Georgetown. However, Verizon's own Coverage Locator indicates otherwise.

- 2) Agreement with the adopted Comprehensive Plan. Mr. Tillotson stated that that issue will be addressed later in his presentation.
- 3) The dismantling plans provided in the land lease agreement. Considering the tower's location next to the Elkhorn Creek, the terms of the agreement regarding dismantling, as listed in Mr. Tillotson's written presentation which is part of the record, may not be acceptable to the Commission.
- 4) Whether the community's need for a tower would balance the community's required concessions and sacrifices. Mr. Tillotson stated that the applicant provided a written statement that said " . . . Applicants have considered the likely effects of the installation of the proposed [facility] on nearby land uses and values and have concluded that there is no more suitable location . . . " He felt that the sincerity and adequacy of that effort is a matter of interpretation.
- 5) Efforts to co-locate on an existing tower. Mr. Tillotson stated that no required documentation was submitted regarding three co-location requirements that are listed in his written presentation. He provided a handout addressing that issue in detail.

Mr. Tillotson then addressed the Comprehensive Plan, including issues regarding balance between development and rural and historic preservation, protection of environmentally sensitive areas and scenic and historic character. He noted the benefit to tourism provided by scenic and historic character. He provided a map of historic resources, and noted that there is an 80' drop from the proposed site to the creek, making it on high ground, not low ground. He addressed the Proposed Rural Historic Planning Area, stating that the proposed tower would likely jeopardize future plans for enhancing, protecting, and showcasing the area's historic significance. He listed the nationally registered homes in the vicinity, and noted that the Comprehensive Plan states that *"Scott County's historic buildings and landscapes face many threats . . . [including] changes to a building's historic setting."*

He then provided a handout regarding the Environmental Element of the Comprehensive Plan. He reviewed its references to the Creek Conservation Corridors and Riparian Habitats that support denial of the proposed tower, including the statement that such areas are *"natural [and] cultural characteristics of the land that have value to Scott County and need special treatment to protect that value."*

He addressed the lack of an Erosion Control Plan and the presence of Hazardous Material (diesel generator) adjacent to the Elkhorn Creek. He summarized the most recent Goals and Objectives that support denial of the tower.

Mr. King Offutt, Paris Pike resident and owner of land directly across the creek from the proposed location, stated that he is a licensed geologist, an attorney, and is studying environmental law at Tulane University. He addressed the background and history of the corridor with the federal, state and local government. He stated that over the years, various federal, state, and local agencies have asked his family to spend money to protect the Elkhorn Creek Corridor, the Miller's Run Historic District, and the Miller's Run Corridor. They've asked them to plant native grasses, to plant indigenous trees, to remove their cattle from the creek, to run fence lines to keep cattle out of the creek, and to run thousands of feet of water lines to protect this most precious resource of Scott County.

He stated that they have spent hundreds of thousands of dollars, and been reimbursed 40% of that money from various organizations. They have been agreeable to make this investment in the creek and land as good stewards of the land. He stated with the reimbursements, the tax dollars of this community have helped pay to conserve this resource.

Mr. Offutt disagreed, as a lawyer, with Mr. Pike's assertion that wildlife cannot be discussed. He stated that there can be no discussion of radio waves, or radio wave impact on wildlife, but other impacts on wildlife can be discussed. He stated that the tower is being located next to the creek is because that area is wasteland to the property owner. There are old washers, dryers and refrigerators there. The remainder of the property is tilled for farming. Locating the tower next to the creek is a 1950's way of

thinking about natural resources, and the Comprehensive Plan says the Commission has the right to deny the application.

He quoted from a guidance document from the U.S. Fish & Wildlife Service called *Revised Volunteer Guidelines for Communication Tower Siting, Construction, Operation, Retrofitting, and Decommissioning*. Paraphrasing, he stated that the document recommends co-location or placed within antenna farms, and if that is not possible, recommends that they should be located in degraded areas such as quarries, strip mines, environmental hazard areas, or other areas where migratory bird habitat is poor or marginal. Further, that surrounding habitats should be noted, with towers not placed near, amongst other things, ridgelines, hills, rivers, other waterways, wetlands, or areas used by migratory water fowl or raptors.

Mr. Offutt stated that the applicant paid for a report that said that the proposed site could not conform to that U.S. Fish and Wildlife Service recommendation, but somehow concluded that this site will not have a significant effect on migratory birds; however, the presence of migratory birds cannot be ruled out. He stated that there are Canada geese, ducks, hundreds of Sandhill cranes, hawks, pileated woodpeckers, and herons flying the Elkhorn Creek corridor every day. In the case of the Sandhill cranes and pileated woodpeckers, they appear seasonally as they migrate. Blue herons nest in the sycamores by the creek and wild turkeys and deer travel the corridor.

He noted the 20+ acres of floodplain on their land and the 15 acres of native grasses they planted adjacent to the Elkhorn Creek and Miller's Run, which are also to be avoided by development according to the U.S. Fish and Wildlife Service. He stated that he does not want the tower in the area, but an alternative would be to move it 1500' to higher ground on the same landowner's property.

Mr. Offutt concluded saying that the application violates the Comprehensive Plan and is an offense to the concept of continuing to preserve and protect Scott County's rural, agricultural, and historic assets.

Grover Hibberd, Glen Creek Dr. resident, stated that Martin Brown, the applicant's witness who stated that nearby property values are not impacted, did not provide the study or elaborate on the actual number of studies done. He stated that "numerous" studies have been performed, but "numerous" could mean an insignificant or irrelevant number like two or three. He felt it is irresponsible to suggest that studies performed in the Louisville area would apply to all other areas in the state, and that to claim that the presence of a cell tower does not affect the value of property is an absurdity.

Mr. Hibberd discussed property values on Crumbaugh, Glen Creek, Amy Lane, and Johnson Mill, which total approximately \$36 million dollars. He asked the Commission for consideration for the area residents.

Mark Davis, Crumbaugh Road resident, stated that he receives emergency calls at all hours in his job, and his Verizon cell phone service has been sufficient. He has chosen to give up faster internet for the beauty of living on Crumbaugh Road. He stated that he was not aware of any calls for better service due to not being able to make emergency calls.

Zack Land, Crumbaugh Road resident adjacent to the site, stated that the proposed tower will be 344' from his house. He chose to build his home on the back of the farm to enjoy the views and wildlife and to be somewhat secluded. He described the property, access to the tower site, size of the crane to install the tower, and the width and curves of Crumbaugh Road for large trucks accessing the site. He stated that there are sinkholes and springs on the property. He expressed concern about pylon driving or other means that could affect his basement, or disrupt the natural flow of the spring water into the creek.

Mr. Land stated that according to the Pennsylvania Association of Homebuyers, 94% of homebuyers are less interested and would pay less for a property located near a cell tower. Seventy-nine percent stated that under no circumstances would they purchase or rent within a few blocks of a cell tower. He stated that a cell tower has a 100% chance of being struck by lightning once a year. He addressed the fiber optic line that will be run through the neighbors' properties to the tower.

Katie Land, Crumbaugh Road resident adjacent to the site, stated that their farm has been in the family for generations, and they plan to keep it that way. She stated that the radio frequency waves have not been proven to cause cancer, but they also have not been proven to not cause cancer. Chairman Jones asked Mr. Perkins if this testimony can be heard. Mr. Perkins stated that it can be heard, but not considered in their decision. Ms. Land continued to cite studies which indicate that living near a cell tower causes increased rates of cancer.

John Bell, Elmwood Stock Farm across the creek from Mr. Land, stated that they provide 500 families with the majority of their fruit and vegetable needs from May to October every year, as they come to the farm and other pick-up locations on a weekly basis. He expressed concern about the pollination of their crops because they require bees and insects. He stated that there is documented evidence that there can be a detrimental effect on the habitat for not only birds of hunting size, but small birds that consume insects, and on the insects and bees in an environment such as the Elkhorn Creek Corridor. His farm is certified organic, which means that the first line of defense against disease or other problems is prevention. Since 2000, they have built buffer zones around the farm to foster a habitat for predatory insects and small birds that eat insects. He stated that the U.S. Fish and Wildlife Service has stated that there is documented effect from the cell tower on bees and small birds.

Dr. William Offutt, Crumbaugh Pike resident, asked that the fiber optic cable noted by Mr. Land be examined. He pointed out the fully developed woods that will be cleared in

order for the cell tower to be constructed, and stated that that will have an impact on drainage.

Ruth Rowles stated that she has a doctorate in geography with an area of expertise in GIS and has worked for many years in State government. She stated that when this issue arose, she compiled a GIS database of all the cell towers in Scott County. She addressed the Crown Castle tower which is substantially higher than the proposed tower. She stated that it appears to have only one antenna array, and was excluded from consideration for co-location.

She expressed concern about and discussed a radio line that appears to end at her property and the telecommunication right-of-way that is on her property. She stated that the fence line between her property and Mr. Burke's property has mature trees which serve as a visual buffer. She urged the Commission to require that those trees be preserved during construction if the tower is approved. She expressed concern that KU and other utilities did not submit comments on the application at the Technical Review Committee meeting. She urged the Commission to deny the application based on the lack of evidence of a thorough attempt at co-location.

Mr. Pike commended the opponents for their presentation, but stated that in the final analysis, the cell tower is within the law. He stated that the application is supported by the *Zoning Ordinance*, and the following items are not substantial evidence: lay opinion, unsupported opinion, references to the internet, and generalized expression of concern with aesthetics. He stated that the public has no authority to inquire about how a utility is going to provide service at a location. He stated that when those issues are disregarded, nothing is left.

He stipulated that no barbed wire will be placed on the site. Regarding abandonment, he stated that our own regulations do not require the removal of a foundation, just the tower. He stated that the configuration of a search area in one location cannot be compared to a search area in another location. Regarding historic properties, there is no authority in the regulations for the Commission to consider that issue in connection with a cell tower case. He stated that many of the concerns come back to aesthetics, which cannot be considered by the Commission. He stated that even though the Commission may want to be responsive to the neighbors' concerns, it is against the law.

He stated that all the generators that will be deployed will meet all state and federal requirements, which are fully enforceable. He stated that there is nothing in the Comprehensive Plan that addresses endangered species, and that the tower cannot be built legally until approval is received from Fish and Wildlife, which he expected within the next month or two months.

Mr. Pike stated that whether people can see the tower or not is irrelevant to the Commission. While regulations remain as they are, he stated that the applicant expects an approval.

Mr. Offutt stated the Commission can absolutely deny the application because 1) if it finds that it does not continue the need to preserve and protect Scott County's rural and historical assets; and 2) *Res ipsa loquitur*, Latin for "the things speaks for itself," which is, why has this hearing been held if the Commission can't deny it?

Mr. Tillotson stated that despite the length of his presentation, there were two issues on which the Commission can deny the application: 1) disagreement with the Comprehensive Plan, and 2) omission of required documentation regarding co-location attempts.

Katie Land stated that she knew before her presentation that the Commission cannot consider the healthy issues of radio frequency emission, but the Commission can move a cell tower, but cannot fix cancer.

John Mullholland, who was sworn in by Mr. Perkins, resides on Crumbaugh Road. He stated that a Verizon representative visited his farm and stated that they could possibly piggyback off the tower on East Main Extended. He asked Mr. Pike if he had evidence that they tried to locate off of the East Main Extended tower.

Mr. Land asked who signed off on the entrance. He stated that it does not comply with sight distance regulations. Brent Combs, Planning Commission Engineer, stated that it has not been approved yet. It is a preliminary approval and the entrance will be approved with the final plan. If it is not an acceptable entrance, it will be moved. Mr. Land stated that regardless of where it is moved to, there is not enough sight distance to meet the regulations. Mr. Combs stated that it will be placed in the best place possible, because a tract of land has to have access.

Mr. Pike reminded the Commission that lay testimony cannot be considered, and under federal law, expert opinion trumps any lay opinion in the case of cell towers. He briefly reviewed their co-location reports which indicated that no other towers could fill their service gap. Mr. Tillotson stated that the addition to the application that includes these reports was submitted after the deadline for the application changes. The neighbors did not have the opportunity to review the reports, and reminded the Commission that there were critical errors, including the location of the tower, in their expert's opinion in the report.

Commissioner Holland commended the neighbors on their presentation.

Mr. Perkins stated that the Commission needs to consider facts, possible factual errors such as Mr. Tillotson asserted, and possibly flawed reports such as the property valuation report that was done long distance. He stated that aesthetics cannot be considered; the district being a "proposed" historic district is irrelevant because it is not an historic district; and the lease agreement is irrelevant. He stated that the issues that concern him are the errors in the map showing the co-location studies, a property valuation report done by someone who has not seen the properties, and whether the

area is an environmentally sensitive area. He stated expert opinion outweighs lay opinion; however, if a lay witness points out errors in the expert opinion, then that should be considered. If it is clear that there is a gap in coverage, this location satisfies that gap in a way that complies with regulations, and the opposing information is "not in my backyard," then if the Commission denies the application, the applicant will win in court. But if supporting documentation and testimony is in error, then that needs to be considered. To offset substantial evidence, the Commission has to have substantial evidence that refutes it.

Commissioner Holland asked the neighbors to get involved in the Comprehensive Plan update.

Commissioner Smith asked Mr. Summers if it is correct that some of the reports were submitted after the deadline. Mr. Summers replied that it is not unusual for applicants and opposition to submit supporting documents after the corrections deadline.

Mr. Perkins stated that KRS requires the Commission to make a decision within 60 days or the application is approved. The only way to extend the 60 days is for the applicant to sign an extension. The applicant has signed an extension which expires tomorrow (Friday, January 15).

Jeannie Greynolds Stevens, Crumbaugh Road resident, was sworn in by Mr. Perkins. She stated that she is a descendent of the Crumbaughs. She stated that the location of the cell tower on one of the maps is shown on her family's property.

Mr. Tillotson asked Mr. Perkins to clarify that his testimony on the application's non-compliance with the Comprehensive Plan is not lay opinion, but facts that are clear in the Comprehensive Plan.

Dr. Offutt asked about the 60 day limit. He reminded the Commission that the local, state the federal funds that have been spent to preserve the riparian area, for which they have documentation, was not just to preserve nature, but as recognition of a riparian area for all sorts of insects, birds, and animals.

Commissioner Wiseman stated that Mr. Pike made reference to the fact that there is nothing in our ordinance related to telecommunication facilities, yet later he, and Mr. Woodson, made references to somewhere in the ordinance that related to them. He asked for clarification. Mr. Kane stated that there are regulations in the *Zoning Ordinance*, but the Comprehensive Plan has general statements about historic and environmental areas, not specifically telecommunication towers.

Commissioner Smith asked Mr. Pike if it is possible that Verizon would locate the tower closer to Crumbaugh Road. Commissioner Wiseman asked the neighbors if it would make a difference, and they replied that it would not.

Mr. Tillotson stated that if they moved the location, that would be a new application. The overall concerns that they have expressed in their presentations are environmental, which is justification to deny the application. However, if they move the tower to the higher ground, they would still object because it would still not be in compliance with the Comprehensive Plan.

Mr. Pike stated that the neighbors cannot prohibit service, and if the tower is moved, it will be closer to the property owners on Crumbaugh Road. He stated that if the Commission wishes the tower to be moved 200' closer to Crumbaugh Road, they will agree to that.

Discussion continued on moving the tower. It was clarified that maps from a website cannot be relied upon. Dr. Offutt asked why the tower isn't moved to the top of the hill. Mr. Pike again agreed to move the location to the top of the hill. Mr. Perkins stated that a statutory provision is that the Commission can suggest relocation and the applicant can agree with re-applying.

Commissioner Smith stated that John Bell's farm is one of the largest organic farms in the state, if not the nation, and they have worked long and hard to achieve what they have. Mr. Perkins stated that the Commission would have to specify what damage the proposed tower would do to the farm or why the organic farm is more important than the propose tower.

Commissioner Smith asked if moving the tower 400' is possible. Mr. Pike stated that 200' is as far as they would move it.

Chairman Jones closed the public hearing.

Commissioner Moran how the final approval would proceed. Mr. Kane stated that it would be done in house by staff.

Chairman Jones felt that the Commission should do what the law dictates. Commissioner Smith stated that our regulations should be changed to address telecommunication towers in more detail. Commissioner Holland expressed concern about the concerns of Mr. Perkins. He noted the property valuation and riparian area issues, which he felt could be resolved. The other issue would be non-compliance with the Comprehensive Plan, which brings up the question of why other cell towers are not violating the Comprehensive Plan.

Commissioner Sulski wished to make a motion to deny the Preliminary Development Plan based on the wrong location on the map, lack of proof of co-location attempts, and the use by the applicant of comments like "we have to approve," "we can't deny," and "legally we have no choice but to approve." He felt for Mr. Pike to bully this Commission is unacceptable, and he wished to deny the application and defer to a higher court.

Mr. Perkins stated that the only specific he mentioned was the misplaced pin on the map. He asked that the matter be better thought out if he has to defend it in court.

Motion by Sulski to deny the Preliminary Development Plan based on the wrong location on the map, lack of proof of co-location attempts, and the sloping of the bank.

Commission Shirley stated that he has been a big proponent of establishing historic districts in Georgetown and Scott County. Hopefully the area neighbors will participate in the Comprehensive Plan update to help in this effort so that this situation does not arise again. He agreed with Commissioner Sulski in denying the application even if it goes to court.

The above motion was seconded by Shirley. By roll call vote, motion carried 6-1, with Moran dissenting.

The meeting was then adjourned.

Respectfully,



Rob Jones, Chair

Attest:



Charlie Perkins, Secretary