

Town of Blowing Rock

Planning Board

Minutes

July 11th, 2024

The Blowing Rock Planning and Zoning Board met on Thursday, July 11th, 2024 for a specially scheduled meeting. Members present were Chairman Bill McCarter, Tom Barrett, Chris Squires, Brooks Mayson, Lindsay Cook, Gregg Bergstrom, Steven Cohen and Woody Hubbard.

Meeting called to order at 5:30 pm.

APPROVAL OF MINUTES

Chairman Bill McCarter asked for approval of minutes from January 18th, 2024 and April 18th, 2024.

Motion made by member Tom Barrett, seconded by Steven Cohen. All members in favor. None opposed.

1. Conditional Zoning Permit # 2024 – 01 – Green Hill Communications Pole

Planning Director Kevin Rothrock presented the staff report of the Green Hill Communications Pole. The Town of Blowing Rock is proposing to re-zone the property on Green Hill from R-15 to CZ R-15 to replace the current 57-foot pole with an 80-foot galvanized steel pole. It is the same property that houses the Town's water tank and one other shorter utility pole as well as two small buildings with equipment. The Land Use Code states the erection of non-commercial utility pole or tower greater than 20-feet requires a special Use Permit or the property can be re-zoned to allow for the pole. The Town has chosen to pursue re-zoning.

The Town is proposing 5 conditions for the Conditional Re-zoning proposal.

- 1) The pole will be no taller than 80-feet above grade.
- 2) The communications antennas can extend above the pole but no more than 10-feet above the pole.
- 3) No commercial telecommunications antennas will be placed on the pole.
- 4) No healthy trees will be removed from the property unless those trees could potentially damage the pole, existing buildings or the water tank.
- 5) Any gaps in the vegetation will be filled in to at least 10 feet above grade.

An aerial site plan was provided in the staff report. The site plan shows the water tank, the new communications building and the proposed location of the new pole. The site plan also shows the fall zone for the surrounding houses and how far the closest point of the structure is from the pole location.

Town Manager, Shane Fox, began his presentation. He mentioned this pole will be used for internal communications only. It is for Fire, Police and Public works which are essential for town services and protection. There will be no outside agencies, no cellular companies and zero changes to the current VHF system that is already on the pole.

Mr. Fox noted why we chose the Conditional Zoning route versus the Special Use Permit route. Conditional zoning allows for a more public process, to gain more transparency and allows dialogue with the public. He said it is also complicated to be the applicant, judge and jury. The Special Use Permit process is quasi-judicial and does not work in this situation.

Mr. Fox provided some background information on the site. It is Town-owned and has been utilized for water and communication for over 50 years. The site houses the Town's 3-million gallon water tank. We are currently using the 57-foot pole that is already there for Town VHF radios – police, fire and public works radios. He noted we use this location for water and communications because it is the highest point in town – 3,925 feet.

Referencing the site plan completed by McGill & Associates, he pointed out the water tank, the new communications building and the two current poles location. The smaller pole houses communications for our water meter system. The taller pole houses the current VHF technology. There is a 10-foot whip (antenna) on top of the pole which only extends about 7-feet past the top of the 50-foot pole.

Mr. Fox touched on the VHF Technology for the town communications system. Town Police, Fire and Public Works utilize VHF RF radios for internal communications with peers and dispatch, no external use. That is their lifeline. VHF means Very High Frequency. The technology is not changing at all. The VHF waves work by line-of-sight, meaning the waves can be blocked by hills and mountains and can be hindered by trees. They do not follow the contours of the earth. Meaning, the higher the antenna, the better it can receive and remit signals which makes communication more effective.

Mr. Fox stated our current system has been in a slow decline in signal strength for several years. Something as small as leaves on the trees can change the signal strength. The town has invested monies to upgrade new repeaters to assist in boosting the signals. However, the canopy around the current antenna continues to grow and hinder the signal strength. Mr. Fox noted that the town has allowed that canopy to grow to try and be good neighbors. The canopy helps conceal the large water tank and current utility poles and buildings that are there now. Scientifically speaking, trees are filled with water and absorb the signals which weakens the strength of the signals. The town wants to go above the trees, not remove them. The town is asking for consideration to increase the pole height by 23-feet (57-feet to 80-feet) to allow for better signal.

The pole will be a 100-foot galvanized pole. It will be direct buried 20-feet deep so the height of the pole will not exceed 80-feet above grade.

Mr. Fox made a point to say what this pole will not be. It is not for any other purpose than internal communications. There are no cellular companies involved in this. Conditional Zoning does not allow for Short-term Rentals – this does not change any zoning of the properties around it. The pole will not fall on any of the residences around it. House Bill 310 does not apply. The town attorney has helped interpret this. Mr. Fox referenced 160D-937, 160D-935 and 160D-936 and stated the town and the town attorney feel that these do not apply to this situation.

Mr. Fox acknowledged that the Town of Blowing Rock's VHF radios are the lifeline of the officers, firefighters and public works employees. We consider our radio communications as "Mission Critical". A communications system is mission critical if operations cannot continue without it. In the commercial world, when operations stop, business is lost, but in public safety, if operations stop or are not operable, it means someone gets injured or worse.

We have experienced radio communication failure, and it has resulted in the loss of life already.

Mr. Shane Fox introduced Interim Chief Nathan Kirk to speak.

Interim Chief Kirk told two stories about loss of communication through the radios here in town. One was an incident with Chief William Greene. He was working late at night and encountered 4 subjects coming out of a house and ended up getting involved in a chase. He stopped the car and called on the radio to let the Watauga County know. The call went unanswered. He ended up being shot twice and stabbed multiple times. He managed to get back to his patrol car to call on the radio, but it went unanswered. The radio transmission was picked up by Highway Patrol in Salisbury who ended up calling Watauga to let them know and then they had officers enroute. Had the radios been able to transmit properly, who knows what the outcome would have been, but this lack of communication resulted in the loss of a life. It was reported that the location Chief Greene was in was known to not have great radio service. That was in 1964 and Chief Kirk stated he has made the same comment today and has been here since 2019.

Chief Kirk told another story of his own. He was on Village Drive, the condominiums behind Green Park Inn. A man had a heart attack and Chief Kirk was the first emergency responder on scene. He could hear Watauga and medics transmissions, but he was unable to get out on his radio to let them know where he was. Luckily, another officer arrived on scene with him, and Chief Kirk was able to instruct that officer to go out on the deck of the home to get out on the radio to give Watauga and medics his location.

Mr. Fox ended with asking the board to consider recommendation to the Town Council for Conditional Rezoning to allow for an 80-foot pole to be erected to replace the current 57-foot pole that will be utilized for internal communication purposes for the Town's Police, Fire and Public Works Departments. He stated the Town's first and most important obligation to its citizens and stakeholders is to provide emergency services to those in need. We have an obligation and will continue to uphold that obligation.

Member Gregg Bergstrom asked Mr. Fox if the Town has considered alternative sites. Mr. Fox stated they have not, simply because it is the highest point in town, and it is owned by the town. The town does not own any other property that would be reasonable from a height perspective.

Mr. Bergstrom asked about the possibility of using the tower in Sampson. Mr. Fox stated that property is not owned by the town and would not be possible due to the relationship with the County after declining the VIPER radio agreement. The tower there is still not as high of a point as the Green Hill location. Mr. Bergstrom asked about the tower on 321 near J&M's produce and if we could utilize that. Mr. Fox stated you would not be able to get the signal around Flat Top Mountain.

Mr. Bergstrom asked how much the town pays in property taxes for the Green Hill property. Mr. Fox stated that the Town does not pay property taxes. Mr. Bergstrom asked how much the property was worth. Mr. Fox said he did not know. Mr. Bergstrom asked if he would want to know. Mr. Fox said no, because the cost of trying to re-locate a 3-million-gallon water tank and then remove the current gravity

system that exists wouldn't compare. Our water system relies solely on gravity, there are no other locations in mind as high as the Green Hill location that would allow us to operate our water system the way it does now.

Mr. Bergstrom asked if we have put a diver in the tank to evaluate the integrity of the tank. Mr. Fox stated he wasn't sure if that was relevant, but yes. Town Council just signed a contract with American Tank Company for all the internal and external inspections of the tank and re-surfacing for it.

Member Chris Squires asked about the fifth condition listed by the town for the Conditional Zoning Permit. He asked if the wording could be changed because it could be interpreted in many ways. The fifth condition referenced filling any gaps in the trees around the water tank property. Mr. Squires stated that the driveway could be considered a gap, therefore the wording could be better so there is not any room for misinterpretation. Mr. Rothrock said the wording could be changed to be more specific.

Member Steven Cohen stated he had never noticed the tank up on Green Hill because it is very well camouflaged. He recognized that it is mission critical to do something about this. He asked if the pole could be painted to help camouflage it. He also asked if there had been a site study to see how visible the pole would be. Mr. Fox said they could most likely paint the pole. He also stated that no recent studies have been done on visibility.

Member Tom Barrett asked if any studies were done. He mentioned that before Mr. Fox left, it had been stated that the pole needed to be replaced but no higher and then started talking about a higher pole when he returned. He stated that the attorney that represents our community has asked for information and up until this point, the Town has not provided that through the Freedom of Information Act. He said he would like to see a study that shows what the current problems are and then solutions to help fix those. Mr. Fox first said there has not been a study done. Then he stated it is a mistruth that the information has not been provided regarding the Freedom of Information Act. There have been dozens of emails and dozens of documents that have been sent and testimony from each Council Member and each Department Head. Those emails have been sent to that attorney and it has been stated that we cannot give something that we do not have. We have provided every bit of information and cannot provide any more because there is nothing else. That is simply a rumor and miscommunication.

Chairman McCarter reminded everyone that we can add to the conditions and make suggestions for a recommendation for Town Council. He stated they are willing to take comments and suggestions from the public.

Mr. Bill Perreault of 130 Blackberry Lane stood to speak. He stated that 20 years ago, there was a lightning strike on a house adjacent to the water tank. He said it had a stone chimney and a tall antenna. He said the Fire Marshall came and looked at it and was concerned because the lightning caused the chimney to explode and arc to the water tank. He wanted to know if a study had been done that would show if placing an 80-foot pole next to the water tank, would increase the chance of the tank exploding. Mr. Perreault also said the main reason the neighbors are concerned is because of what has been presented to them versus what they have heard.

Nathan Miller, an attorney in Boone, stood to speak. He is representing Protect Blowing Rock Neighborhoods, LLC (PBRN, LLC) which are members of the Green Hill Community. Mr. Miller stated he takes issue with the request of the public records request and that they have been complied with. He

said he has only received one email from the town on June 24th from Mr. Fox that included the Council Members. Mr. Miller stated he used to be the Chair of the County Commissioners and does not believe you can get to this point unless you've been communicating with multiple people and companies. He says the lack of transparency has been an issue and creates distrust.

Mr. Miller handed out a letter that was prepared by him and his clients.

He states that the re-zoning of the property is not the proper way to go about the process. He says the quasi-judicial process would have been the better way to go based on structure. He said the methods the Town is using circumvents the structure and allows for no record.

Mr. Miller stated that the way the Town is going about this process is very different compared to what would happen if a private company came in and tried to go through this process.

Mr. Miller stated that in the letter, he and his clients state that they want good communication. He said there has been no study that shows the problems everyone has been claiming. It hasn't been brought up or talked about in any meetings or emails and the problem seems to be a whisper campaign. He mentioned a company that could do a study for the Town and find the problem areas in the Town to determine placement for towers.

Mr. Miller stated that he disagrees with our town attorney's view on 160D and its relevance to this situation. He said our town is opening the door for cell companies to try and use this proposed pole. The height now is not enticing for a cell company but if the height is increased, it will be enticing.

Mr. Miller stated he co-counseled with a lawyer out of Charlotte who is on zoom. Their biggest concern with this proposal is the neighborhood restrictions. When the neighborhood was originally built, it was subdivided in August of 1955. He had an old plat that showed the water tank in the middle. The tank was there when the subdivision was created. That lot now is the access road to the tank. The Town bought and paid for lot 1, 2, 3, 4, 14 and 15. He stated there are no restrictive covenants in the Town's deed when they bought it. However, those lots were encumbered by the previous developer. Lot 1 has a restriction stating it could only be used for residential purposes. Lot 2, 3, 4, 14 and 15 all have the same restriction as well as all the neighboring properties. He stated the water tank is a violation but the statute of limitations of violations runs out after 6 years. The towers that are there now, the statute of limitations has run. If the town permits the construction of this new tower, it would be a new violation and inviting lawsuit in which the town would have to pay. Mr. Miller asked the board to deny this proposal for Conditional Zoning.

Mr. Bergstrom asked Mr. Miller the likelihood of him filing a lawsuit if this is approved. Mr. Miller said the likelihood is high.

Mr. Cohen asked Mr. Miller about the Limited Liability Company he is representing and wanted to know how many members are in that group. Mr. Miller asked Mr. George Wilcox how many members are in the group. Mr. Wilcox said 20.

Chairman McCarter reminded everyone again that the board is here to make conditions and would appreciate any suggestions if there are any.

Mr. Barry Buxton of 110 Blackberry Lane stood to speak. He is a resident who lives in the area and is concerned. He said he knows the current Council might take a position on what to do with the property

in the future but does not know what a future council will do so they feel vulnerable. He wants the Town to step back, because of the anxiety of the residents, and look at other alternatives. He mentioned a study would be appreciated.

Mr. Bill Bullard of 164 Green Hill Rd stood to speak. He asked if all alternatives had been looked at. He asked if satellite communications had been considered. He thinks towers will become obsolete eventually because of the advancement in satellite communications.

Mr. Jason McDaniel of 574 Green Hill Circle stood to speak. He stated that he wants better fall zone studies done. He said the tower is heavy and will bounce and slide downhill into his house. He would like to see a study that will tell him that is not going to happen.

Mr. Bergstrom asked the Board if they could nix the whole thing or if they are restricted to adding conditions.

Chairman McCarter said they are here to make a recommendation for approval or denial and add conditions if they see they need to.

Mr. George Wilcox of 460 Green Hill Circle. He stated that in 2014 the Town government made a commitment not to put a communications tower on Green Hill. He said they made a commitment to do a study to find out where to put towers. He said in 2016, they wanted to put a VIPER tower up there and was fortunately shot down. He said the State said they don't do those towers on neighborhoods because they are ugly. He said there is no one that would want to see a tower outside their front door. He said the tower will knock his property value down 10%. He wants the town to have a professional organization to do a study and come up with the best solution for this problem.

Mr. Bergstrom said he proposes to table the issue for more consideration. Mr. Tom Barrett said he agrees.

Mr. Brooks Mayson asked Mr. Fox what would happen in the meantime. Mr. Fox stated the town will continue the best they can.

Mr. Bergstrom asked if a repeater or small tower could be put on top of the police station. Mr. Fox stated there already is. Mr. Bergstrom asked about various small repeaters. Mr. Fox stated you can but you need a center point, a nucleus for the technology and communication.

Member Lindsay Cook asked how the 80-foot pole was determined. Mr. Fox stated it is a stock size pole and will put the pole above the trees for better signal.

Member Woody Hubbard asked if the pole could be 60-feet tall if the canopy around the pole was managed. Mr. Fox noted that per our current ordinance, we are not allowed to top trees. We could certainly remove them but that would expose the pole and the water tank. Our town is a part of Tree City USA and we have put certain ordinances in place that have helped us protect the trees that we have.

Mr. Bergstrom asked why the Town can't re-zone the property to allow the topping of trees. Mr. Fox reiterated that they have chosen to go with the option they have selected.

A woman from the crowd asked why a study has not been done. Chairman McCarter stated that is a question for Town Council.

Mr. Bergstrom stated his motion on the floor is to table the request.

Chairman McCarter noted to be weary of tabling this because it does not table the hearing for Town Council. It would only mean the Planning Board did not provide a recommendation for them. Chairman McCarter stated if we table this now, we have 30 days to provide a recommendation to Council.

The Town Attorney, Mr. Tucker Deal, stated Chairman McCarter is correct in stating that Town Council can proceed with action even if the Planning Board does not provide their recommendation. Mr. Deal said he did not want to put words in Mr. Bergstrom's mouth but that the Planning Board could recommend to Town Council to table a decision for their hearing until a study has been done and the board could debate that as a motion.

Mr. Bergstrom stated "what he said" referencing what Mr. Deal just stated.

Chairman McCarter suggest making a study a condition of the Conditional Zoning request.

Mr. Squires asked Mr. Bergstrom to put the motion into his own words instead of using the attorney's words.

Mr. Bergstrom stated again that he wants to see the request tabled and a study done and for the Town Council to not move forward. He asked Mr. Deal if that's what he said.

Mr. Deal stated again, he did not want to put words in anyone's mouth, but it seemed like Mr. Bergstrom's recommendation would be to not approve this zoning request until a study has been done.

Mr. Cohen asked to state the motion another way being that they recommend approval for the request subject to doing a study to see if there is a better alternative.

Mr. Deal stated that would be up to the board to decide on. Whether the recommendation be to approve with conditions or deny without the results of a study. Mr. Deal stated that rather than tabling a decision, he asks that a recommendation be made to Town Council.

Mr. Bergstrom stated to not move forward until a study has been done. He recommended that Town Council not move forward without a study because the town will be subject to a lawsuit.

Mr. Shane Fox asked Mr. Deal if the town were to take these considerations and move forward with a study and the study comes back with something different than the 80-foot pole – maybe multiple poles or 150-foot pole – do we start this whole process over again?

Mr. Deal stated the process would need to start over, things could change so it's hard to answer that in absolute fashion but essentially that would be what happens.

Mr. Steven Cohen stated he proposes an alternative motion to recommend approval with the condition of a study being done.

Chairman McCarter asked Mr. Bergstrom if he was willing to withdraw his initial motion. Mr. Bergstrom asked if that still confines the Board to the 30-day window they talked about earlier. Mr. Rothrock stated the recommendation goes straight to Council and they consider the recommendation. Mr. Bergstrom stated he will not withdraw his motion.

Chairman McCarter asked if everyone was ready to vote on the current motion. Mrs. Lindsay Cook asked for the motion to be repeated.

Chairman McCarter stated the addition of a sixth condition and asked Mr. Bergstrom if his motion was to deny.

Mr. Bergstrom stated they do not have enough information to make a decision tonight without a study.

Chairman McCarter reiterated that they are either voting for the request or against it. He said if you are voting against the request, you don't have conditions. If you are voting for it, you add conditions if any need to be added. The board collectively agreed that Mr. Bergstrom was trying to make a motion to deny the request.

*Mr. Bergstrom made a motion to deny the Conditional Zoning request due to lack of a study showing alternative options, seconded by Mr. Tom Barrett. **Three members voted in favor.** Motion fails.*

*Mr. Steven Cohen made a motion to approve with a sixth condition that the Town secure a study to see if there is a more viable option, seconded by Mr. Woody Hubbard. **Five members in favor, three members opposed.** Motion carries.*

Mr. Bergstrom asked if they were done adding conditions. Chairman McCarter stated they just voted on the additional condition and only one additional condition was added.

Meeting adjourned at 7:04 p.m.

Chairman Bill McCarter

Planning Specialist, Taylor Miller