

**Albemarle County Planning Commission**  
**June 2, 2015**

The Albemarle County Planning Commission held a public hearing on Tuesday, June 2, 2015, at 6:00 p.m., at the County Office Building, Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Bruce Dotson, Karen Firehock, Tim Keller, Mac Lafferty, Vice Chair; Thomas Loach, Cal Morris, Chair; and Richard Randolph. Julia Monteith, AICP, Senior Land Use Planner for the University of Virginia was absent.

Staff present was Bill Fritz, Manager of Special Projects, Sarah Baldwin, Senior Planner, Amelia McCulley, Director of Zoning/Zoning Administrator; Wayne Cilimberg, Director of Planning; Sharon Taylor, Clerk to Planning Commission and Greg Kamptner, Deputy County Attorney.

**Call to Order and Establish Quorum:**

Mr. Morris, Chair, called the regular meeting to order at 6:00 p.m. and established a quorum.

**The Planning Commission recessed at 7:29 p.m. and the meeting reconvened at 7:35 p.m.**

**ZTA 2015-00008 Wireless – Replacement of wooden pole with metal pole.** The Planning Commission will hold a public hearing to receive comments on its intent to recommend adoption of an ordinance that would amend Sec. 18-5.1.40, Personal wireless service facilities; collocation, replacement, and removal of transmission equipment, of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Sec. 18-5.1.40 by requiring a special exception to replace a wooden monopole with a metal monopole if the monopole is located closer in distance than its height to any lot line and the document authorized by Sec. 18-5.1.40(c)(3) does not exist. Currently, such a replacement is allowed by right. A copy of the full text of the ordinance is on file in the office of the Clerk of the Board of Supervisors and in the Department of Community Development, County Office Building, 401 McIntire Road, Charlottesville, Virginia. (Bill Fritz)

Mr. Fritz presented a PowerPoint presentation to summarize the executive summary regarding ZTA 2015-00008 Wireless – Replacement of wooden pole with metal pole.

Currently a wood pole may be replaced with a metal pole by-right and only a building permit is required. Under the current ordinance new poles may be located closer to the property line than the height of the pole if an easement on the adjoining property is obtained or if the Board grants a special exception. Previous ordinances allowed poles to be located closer if a waiver was granted by the Planning Commission. This proposed amendment would require replacement of wood poles approved with a waiver or a special exception to receive a new special exception or obtain an easement on the

adjoining property. This ordinance would not impact the replacement of old wood poles with new wood poles. No ordinance amendment can affect that. The applicant may always rely on the original approval to allow the replacement of a wood pole with a new wood pole.

## **Comparison of wood and metal poles**

### **Wood**

- Limited in size and color by the ordinance.
- Likely cannot be increased in height due to previous approvals. Except to account for tree growth.
- Subject to rot and decay.
- May have less weight bearing capacity than metal

### **Metal**

- Limited in size and color by the ordinance.
- Likely cannot be increased in height due to previous approvals. Except to account for tree growth.
- Less subject to decay than wood.
- May have more weight bearing capacity than wood.

The regulatory differences between wood and metal poles is non-existent. They are subject to the same design requirements except that for metal poles the cabling must be routed inside of the pole while wood poles obviously have the cables visibly mounted on the exterior of the pole. Both poles may be able to be extended in height. Staff is aware of wood poles having extensions mounted on the top which have raised the overall height of the pole to account for tree growth. No metal poles have been extended in height that staff are aware of. Extension may be easier to do with a metal pole than with a wood pole. However, even extension of a metal pole is difficult due to the limitation that the top of the pole is 18 inches in diameter. This makes height extensions difficult.

The issue of capacity has come up during the review of this text amendment. It is not possible to say that metal poles can always hold more antenna than wood poles. However, it is likely that a metal pole can be designed with the structural ability to hold more weight than a wood pole that is not engineered. However, an engineered wood pole (for example one that is laminated) may be as strong or stronger than a metal pole. Staff does not see the use of metal poles as likely to result in increased use of any particular site. This is due to the fact that height, not the weight bearing capacity, is the limiting factor for treetop facilities. As antenna are added they are lower and lower on the pole. As the height decreases the effectiveness of the facility drops to the point that installation no longer makes no sense. The type of pole, wood or metal, makes no difference in that calculation.

The impact caused by a wood and a metal pole are substantially the same. Since a wood pole can be replaced with a wood pole by-right staff is unable to identify a

purpose served by requiring a special exception for replacement with metal. Therefore, staff does not support this amendment.

Mr. Fritz pointed out the information that was passed out by Ms. Baldwin the Commission had before them. It is a lot of it. He would be happy to answer questions about that, but the Commission might want to hear from the public first. (Attachment)

Mr. Morris invited questions for staff.

Mr. Lafferty said he had a question about the email the Commission received today at 4:05 p.m. from Jennifer Greeson. On the first page, third paragraph the provision allowing replacement of a wooden pole with a metal tower by right was adopted in 2013 under direction of the previous Board of Supervisors to simplify the process of cell towers. It seems that they already have the right to do that.

Mr. Fritz noted there were a number of amendments that were begin made in 2013 at the direction of the Board. One of the changes that was in that was a redefinition or an amendment to the definition of what a Tier I facility was. It was added to make replacement of wood with metal as a Tier I meaning that it just got a building permit. So that was done as a means to allow for the replacement. Some of these wood poles are getting old. He did not remember the exact year the first wood pole went in. It was in the mid '90's. He did not know if it was '95, '96 or '97; but, they were talking that sort of timeframe. So these things are getting kind of old. There are four that have been replaced. Two wood poles were replaced with wood poles and two wood poles were replaced with metal poles. Under this proposed ordinance one of those two that was replaced wood with metal would have had to receive a special exception because it did not have the setbacks. He can provide some more information about wood poles and setbacks if the Commission would like. That is some of the information that is contained in the report.

Mr. Morris invited further questions.

Ms. Firehock noted she had a question for the county attorney, but would wait until after the public comments.

There being no further questions, Mr. Morris opened the public hearing and invited public comment.

Maynard Sipe, land use attorney in Charlottesville Virginia representing Mr. Van Der Werf and Ms. Greeson, said he would be as concise as possible, but he knows because of the complexity of the Wireless Ordinance that they need to address details he would like to ask for an extra minute or so.

Mr. Morris replied that was fine.

Mr. Sipe said he would like to try to boil this down to two point. First, they have the ordinance amendment as proposed that is right before you. There are a couple of

purposes served by this proposed ordinance change which he would like to high light just to make clear that he thinks there are purposes served. The first is that these wooden poles structurally are different from the metal poles and other towers that are built. He believes there is a safety issue involved with the setback. When a wooden pole does not meet a setback of its height from the property the wooden poles obviously could be snapped in something like an event, deration or a storm and they are going to fall in one piece generally. So he thinks that there is an issue where they have poles in place that were approved under schemes predating the Wireless Ordinance or even perhaps in waivers after the Wireless Ordinance was adopted where those poles were allowed to be put in place that did not meet the general standards for setbacks by a waiver process. Currently when those applications come in you usually see an easement granted by the adjacent owner who has been informed and is agreeable to that. So there are probably very few in that circumstance. As Mr. Fritz has pointed out he believed he mentioned there have been four and only one that has been affected by the circumstance you are talking about with the propose language. He thinks that is important.

Mr. Sipe explained the second point aside from safety that he thinks is important for you to understand which has not been really brought forward, is that prior to 2013 a new metal tower would have required construction as a Tier II application. That changed in 2013 to remove those towers from the review that any other treetop metal tower would have gotten. They allow this replacement straight forward by right, which means if you take the wooden pole down and put the new metal pole up by right under the current provisions you are going to get a tower that may not meet the design guidelines in terms of visibility, tree screening and other factors that impacts adjacent owners. He thinks that is the important purpose served as well.

Mr. Sipe said he would quickly run through a little bit of history. He thinks Mr. Fritz pointed out the issue about 2013 and why it was changed in that year. It was an attempt to ease the application process. It was done perhaps without some foresight about this impact that he just described. He also thinks it was done at a time when you did not have the federal preemption that has happened with the new role making. He thinks the preemption does have a bearing that limits your ability to regulate collocations. That is a change of circumstance that he thinks is applicable to this situation with wooden poles and replacement. As Mr. Fritz mentioned this is not about maintenance because you can still replace a wooden pole with a wooden pole. If the wooden pole has rot or some issue they can replace it one for one with a building permit, and they are not touching that.

Mr. Sipe pointed out his applicants have asked the Commission to consider an additional provision to require all wooden poles to go back through that Tier II process because there are wooden poles near homeowners lots or adjacent owners that probably to be replaced by right now with a metal pole without scrutiny under the Tier II review they probably would not meet the circumstance or get the approval. But, they would have had to go through this Tier II. He thinks that is an important point to consider. He thinks that it is an administrative process and it is not a significant change to consider the additional request. It is not changing the process to one like a special

use permit. It is still an administrative process as a Tier II, although as the Commission knows comes before them. He would ask that you regardless move forward the proposal as they have before them and recommend approval of the Board of Supervisors. He knows the Board has expressed interest in this not only to resolve the particular issue his client has but to also put into place protections for other homeowners and adjacent property owners to these sites. He would ask the Commission to move that through, and also ask that you recommend approval of their alternative by requiring all wooden poles to be treated as Tier II's.

Mr. Morris invited questions.

Mr. Randolph said he wanted to make sure that he heard Mr. Sipe correctly that he thought there was a problem with wooden poles that were installed with improper setbacks. He asked is that correct.

Mr. Sipe replied that was what this proposal would address.

Mr. Randolph requested to ask a question about sequencing. This is a little bit like the chicken and the egg. He asked which happened first here. Did the pole go in first and then the client built the house or did your client build the house and the pole went in subsequently.

Mr. Sipe replied that he would answer that question, but he also wanted to answer it a little more broadly just because of the circumstance. Prior to the adoption of the Wireless Ordinance a lot of poles were approved and waivers given not necessarily with a lot of input as to the impact of those waivers. In this case the applicant got approval of a pole. Subsequently the adjacent lot was built on. So my clients did build after the pole was in place. But, it was not any mechanism for them to know that pole was present because it was a wooden pole and was partially screened. The screening had to be removed for their construction for requirements for septic and the house foundation for the site. If there had been more setback and the screening had to be done on the property of the applicant with the pole, which the Wireless Ordinance now does, the circumstance that they are under would not have occurred. The current ordinance requires tree preservation around the current Tier II poles and that is permanently in place as part of the plan for them. That was not done on this circumstance that faces my clients. He asked did that answer the question.

Mr. Randolph asked if he established the sequence.

Mr. Sipe replied the sequence is right, but he was just saying that the pole that was put in the person that built that pole on their property they were not having that imposition of maintaining tree screening.

Ms. Jennifer Greeson said she was here because it turns out that they do live next to two wooden poles on our neighbor's lot. One is operated by AT&T and one by Ntelos. These poles have a visual impact on our property and the operation and maintenance of them has been disruptive to our neighborhood and will continue to be disruptive to our

neighborhood. Neither of these towers would meet the Tier II requirements for screening today as Mr. Sipe explained. Both of them are closer to the property line than their setback and therefore create a safety issue for adjoining lots as well as the visual encroachment. Indeed both of them violate the basic customary setbacks for any tower structure in Virginia. There is no easement allowing that encroachment. They have come before the Board of Supervisors a couple of times on variance of this matter. So she knows they are more familiar with it. She was sorry for all the emails. What they have heard a number of times that staff will say these towers would never be approved today. They have learned a lot since then. These were approved in the early days. But, yet they are still here. They are not going anywhere. In fact, they were approved and the setback waiver was granted by this body. This body also worked very carefully to put conditions in place to prohibit any future expansion of these towers at all. Of course, the FCC has taken away a lot of that legislative authority. The towers are still here and she feels that even in the face of the FCC's encroachment it is imperative that our County Code provide oversight of any future expansion of such badly sited accident towers as these. Wherever you can find a means to maintain your rights of review, decision making and balancing the needs of industry with the primary residential use of the site in our neighborhood, which she would remind is the primary use. So they have identified here a place where our County Code gives away something that the FCC does not make you give away. It gives away a piece of the oversight that the FCC does not require you to give away and they would like you to close that loophole. It does not take anything away from the industry, but just says if you want to put a new metal structure here let us make sure that it meets our design standards or our criteria for a new metal tower structure. She thinks it is fair and good policy. She strongly encourage the Commission to support this amendment.

Dade Van Der Werf said he may reiterate some of the things my wife and Mr. Sipe said, but wanted speak briefly about why it is so important to regulate the replacement of wooden poles with metal poles. As they have all referred to the FCC has usurped a lot of local control that has been assumed in a lot of the original approvals for these structures which exist today. As his wife and Mr. Sipe indicated as restrictive as that rule is it does not remove your authority to regulate the replacement of poles. Despite what some have said about the strength of metal versus wood he was an architect and works with structural engineers all the time and can tell you that for the same cross section a metal pole is stronger. It is in the light of the uncertainty about how the FCC law will be applied. He supports strongly the work staff in the county has done to create a new ordinance that focuses on methods of concealment. It is not yet clear as a matter of law whether that will stand challenged from the industry. If it does not there are a lot of changes that can happen to these poles as of right. They can go up or out 20' and who knows what comes next in the FCC rules. So allowing an instrumental structural change that could physically support other changes as a metal pole could. It gives away a whole lot of control that you can retain if you retain the wooden pole in the existing structures on these sites. As folks have referred, wooden poles are a legacy of the early approvals in the county. They do not represent the majority of structures. There is a limited number. So it is not an onerous demand to ask staff and the county to review these instances closely. As folks have referred, both of the poles that exists near us were created through a process that happened before the county had really

developed the uniform standards it has today and before it applied them uniformly. In the case of the tower closest to us your predecessors on the Planning Commission granted a waiver really of our future property rights in a motion that is not allowed any longer under Virginia law. He thinks it is very important to restrict this replacement as a way to retain the original ministerial and legislative approval, which was so clearly written into the original special use permits that allowed these poles, so that these geometric and transformative changes that could come with a metal pole replacement given the new FCC rules can't come to pass. He thanked the Commission for their time.

Valerie Long, representing Ntelos Wireless and AT&T, said there are a couple of broader concerns. She had strong concerns about a zoning text amendment that purports to apply county wide to certain wood poles under certain circumstances when it has become very clear from statements on the record and correspondence that the actual intent of this ordinance is to apply to a single property owner or at more two poles on the same property. So from a procedural aspect she thinks that is a little concerning, and again is an issue of changing the rules for the entire county based on one set of facts that is not necessarily applicable. She would be happy to respond more to that.

Ms. Long pointed out on the broader issue of replacing wood versus steel and the merits of both she has been working with the Wireless Ordinance and even before it even existed. The site at the Bellair neighborhood was actually one of the first two sites she ever worked on. That was back in 1999 when they started the process, and it was approved in 2000. At the time the strong preference was for wood poles. There were those who thought that they were less visible. Over the years more and more wood poles were built. Ntelos estimates they have 30 or 40 in Albemarle County. She worked on at least 20 for AT&T. Ms. Schweller can probably give an estimate of how many Verizon has. But, it is a lot more than has been estimated by some of the comments. It quickly became clear that the merits of steel poles far outweighed the merits of wood poles even if they did agree that there was a slight visual difference between wood versus steel. She has a handout which she will pass out in a minute. But, they made a list and she will run through them. The biggest is safety. Some of the comments from the public have noted this as well. You can engineer a steel pole to handle heavier and heavier weights absolutely, and that is a good thing. You cannot engineer a wood pole. You can engineer them to meet the diameter requirements that the ordinance requires. You can engineer a steel pole unlike a tree or a wood pole which is going to fall over like a tree in a single piece. You can engineer them to have a break point at certain areas so that in the highly unlikely instance of a failure it can collapse within a very small radius. If this is really about safety and that is what the resolution of intent said was the purpose, it is almost a no brainer in terms of steel. One of the biggest issues that they noticed in Albemarle County when they started was when AT&T in particular started trying to build the wood poles that have been approved on Route 53. Where the roads are so curvy they had to shut down Route 53 because the wood poles were over 100' tall in some instances. It had to be transported on a flatbed trailer. They literally could not navigate the curves on Route 53 without impacting the traffic in the opposite direction. As you can imagine that created a nightmare for everyone. They had to shut down exit ramps off the interstates in order to navigate the radius. Those are just a

handful of reasons. She would pass around a sheet showing the comparative advantages of steel versus wood pole construction. (Attachment) Ntelos has had termite damage and woodpecker damage. If it is really about safety allow wooden poles to be replaced with steel poles. That makes sense. If this is about trying to prevent equipment from being added to an existing pole she thinks that is a real questionable approach to go about it. She would be happy to respond further.

Mr. Morris closed the public hearing to bring the matter before the Planning Commission for discussion and action.

Ms. Firehock said she had a question for the County Attorney. Even though she knew the answer she still wanted him to state it so that they can all be on the same page. In reading some of the comments she received today and this was stated this evening that they should not allow conversion of a wood pole to a metal pole to happen easily because they should have it come back before the Planning Commission so that they could deliberate on that. But, the implication was that they might somehow change the location or what is allowed. She asked under what standards would the consideration of wood versus metal change the ability to relocate the pole or to change what is on the pole. She did not think they would be able to consider any of that because it is an existing pole. She asked if all they would be considering is metal versus wood.

Mr. Kamptner replied yes, the essence of the discussion would be wood versus metal recognizing that the applicant has the right to replace wood with wood. It would be a discussion regarding that conversion. In an individual case there may be no impact on visibility and certainly the wood monopoles that are located within the trees. In the case of the Bellair parcel visibility issues have already been addressed by the removal of trees. So then they are talking about back to the wood versus metal.

Ms. Firehock said that aesthetics is really the only thing that they would be deliberating about on metal versus wood.

Mr. Kamptner noted Mr. Sipe raised the safety issue. He thinks at one time that was a consideration. As Mr. Fritz explained wood can be replaced with wood that is just as strong or stronger than metal.

Ms. Firehock said she did not completely agree with Ms. Long. She worked with the forestry industry and their woods have different tensile strengths and density. So not all woods is equal.

Mr. Kamptner noted they also recognize, as the staff report indicated, that at least the early monopoles that were erected are now rotting and some of them are being replaced.

Mr. Loach asked does the lack of easement convey as well. It seemed there was a question about the lack of having the original easement.

Ms. Firehock pointed out it was poles that were maybe not in the right place by today's standards.

Mr. Kamptner pointed out they were allowed to be closer to the property line than otherwise. But, in the 40 poles that are out there they may be monopoles that are 80' tall and 50' from the property line, but they are 500' or 1,000' feet from any structure. There are all those variables that come into play.

Mr. Loach asked if it comes before us is that an issue that can be considered then.

Ms. Firehock noted that the question was would they be allowed to look at anything besides metal versus wood, aesthetics and safety.

Mr. Kamptner replied let's say we have a situation where there is a structure that was 10' from the setback on the other side and if the pole fell it could land on the structure.

Ms. Firehock asked would they be able to say that actually they were not going to approve it because the pole is not in the right place.

Mr. Kamptner replied if safety is a concern they would want the pole to be replaced with a metal pole across the board if it is properly designed. He asked do we get the certification that the metal pole if it falls will collapse upon itself.

Mr. Fritz replied that he did not believe so. If there is an easement and it is within the easement area they would.

Ms. Firehock said her read of this is if somebody was to come before them and wanted to switch from wood to metal she would really be considering the aesthetic and the safety. She would not be able to say things like she did not think the pole was in the right place so she was not going to let them make this change because they might be able in the future to upgrade the equipment on that pole. She thinks that is part of the challenge with the comments she received today. Whenever they deny something they must have a legal reason for why they are denying that. She certainly has had to hold my nose and vote for things she does not like because she does not have a legal basis for denial. She was trying to imagine the scenario in which she would get greater discretion by simply requiring all of these questions of changing to metal to have to come before the Planning Commission. She did not see any greater discretion afforded to me. So that is just her take and she just wanted to have him weigh in on that so thanks.

Mr. Loach said so essentially then the vendor's fallback position though even in that consideration would be alright we will replace it with wood, which they don't need any governmental approval.

Mr. Kamptner agreed.

Ms. Firehock said they would just keep it wood.

Mr. Randolph said it has been brought up already, but he has a real issue with a single case study as a basis for a zoning ordinance change. He worries about that and in essence it is not the best way to conduct public policy. Secondly, he has a concern here about penalizing the telecommunication industry for approving the durability of poles by moving into metal poles. They are going to create a standard where they are saying they are going backwards in time in terms of use of wood when clearly the tensile strength of metal and the ability of metal to collapse far exceeds the capability of wood. Thirdly, three arguments have been raised here. One is about safety. In the communications concerns were expressed about the technology. Technology was referred to in the future as obtrusive and powerful equipment vastly more transmission equipment. Thirdly, another objection was the visual impact. The only major concern that he has is about safety with this pole. He thinks the safety of this pole can easily be addressed by having additional cables attached to it to reduce the likelihood that this pole would ever fall down. It is a wood pole, it can stay put, and they could have urged that there be additional cabling to secure that pole. But, he was not concerned about the safety once it is really even further secured. Fourthly, none of us likes federal pre-emption here. But, it is understandable because of the potential for local mischief in opposing new technology because of health concerns which may not be justified. Aesthetics and technophobia where people worry about technology and how it is threatening their lives. So he thinks there is a solution here. The only argument he is persuaded by is the safety argument and he thinks that is an easy solution. But, to undertake a change with the zoning ordinance to address a single case study safety concern is not something he can support.

Mr. Fritz said he just wanted to clarify in case the Board has questions. When he was talking about cabling he just wanted to make clear that guidewires are not permitted by the ordinance.

Mr. Randolph asked what other mechanism would be available to ensure that this pole is secure beyond a reasonable doubt.

Mr. Fritz replied replacement with a new pole.

Mr. Randolph reiterated replacing the pole, then that is fine.

Mr. Fritz said he just wants to make that clear.

Mr. Dotson said focusing on the situation with the two towers in Bellair, and this is in the form of a question, if they are closer to the property line than it would be allowed if they were to be built today. He asked if that is a fact.

Mr. Fritz replied without either a special exception being granted by the Board of Supervisors or an easement on the adjoining property.

Mr. Dotson said he was going to interpret that they are a nonconforming use. He asked if that was correct.

Mr. Kamptner replied no, this is a legal use because they obtained what was then called a waiver to allow them to be closer to the property line than was otherwise allowed.

Mr. Dotson noted often the term legal is paired with this is a legal nonconforming use. However, it seems to me that it is an illegal nonconforming use.

Mr. Kamptner replied no, it was just a legal use because of the waiver. If they had been established prior to setback regulations being adopted that would be a legal nonconforming use. But, they obtained an approval that allows them.

Mr. Dotson said to continue what they are doing.

Mr. Kamptner agreed, that the analogy would be any use that is allowed in a district by a special use permit they get that permit that allows them to engage in a use that is not allowed by right. This is the setback equivalent to that.

Mr. Dotson pointed out the thing that he is getting at, and maybe his vocabulary is not exactly right, is that the normal doctrine as he understands it with legal nonconforming uses is that they can be replaced if damaged, they can be repaired, but not expanded. My question, therefore, is would the owners of these towers be able to simply to for one for one replace wood with metal; but, not in any way add to them because that would be an expansion.

Mr. Fritz said if they wanted to add 20' onto the tower, they cannot do that because of the conditions of the previous approval and even under the new FCC rule because that would defeat the concealment element. So that is a nonstarter, and so they can't do that. But, under our current and prior ordinances they would be able to add new equipment to the antenna. For example, if they had an array at the top and there was enough room to add another array 10' below the first array they could do that and keep doing that. So that is permitted. He did not know if that answered the question.

Mr. Dotson said they could add to a structurally sound wooden pole.

Mr. Fritz replied yes. What they have seen, which is a general statement for all sites, is the treetop towers tend not to have multiple arrays on them, generally not more than two arrays on them, not because of the capacity of the tower, but because these things are only 10' above trees. The first array is above the trees. The second array is at and below the tree level. The third array is below the tree level. Now they are getting down to not only where they are getting interference from the vegetation, but also from the topography. So that is why they tend not to see more than two arrays on a treetop tower due to the effectiveness of it. It does not make any sense. It could be as strong as you wanted it to be and it would be able to support massive amounts of equipment. But, the coverage is so insignificant that it does not justify the expense of putting the equipment in.

Mr. Dotson asked what would be the worst case scenario from the abutting property owner standpoint if the steel towers replaced the two wooden poles. Would it be just

that it is now steel and not wood? Or, does that then open the door to other things that might not have happened otherwise.

Mr. Fritz replied our opinion is that the visual impact from going to wood to metal is insignificant. Under our current ordinance they would not be able to increase the height of the tower or have increased offset. He is always hesitate to speak for a member of the public, but the way he hears what they are saying is their concern is not necessarily what the existing regulations are, but what future regulations might permit. Because of the structural differences between a wood and a metal pole a metal pole if the FCC were to come along and remove the county's authority to do anything the metal pole might potentially be more readily accessible for expansion or alteration in some way. He thinks that is what the public is saying. That is the way he is hearing it, and if wrong he is sorry.

Ms. Firehock noted that was what she understood as well. She said her earlier point was she did not see how to use that as a basis for denying a request to switch from wood to metal because there would be no legal standing to say they might expand in the future.

Mr. Kamptner said the issue become moot because if the feds step in and pre-exempt our authority it does not matter what we are doing now.

Mr. Fritz noted one of the questions was what is likely to occur, which was a million dollar question that he wished he had the answer. The answer is he does not know. He was working with NACCO on this also and they do not know. The options range anywhere from a total pre-exemption to partial pre-exemption to nothing. They don't know and not only that they have no idea what timeframe the discussions might even occur. So he is trying to be as blunt as he can. They do not know if and when anything will be done.

Mr. Loach said given the history of the government's handling of it he can understand the neighbors' concerns as far as the future. He asked if they go from wood to metal does the vendor then also have the ability to upgrade the surrounding ground equipment.

Mr. Fritz replied that they already do. Whether it is wood or metal they can upgrade the equipment.

Mr. Dotson asked would they be able to remove trees that are not defining the reference tree, but some of the understory trees.

Mr. Fritz replied no, the conditions prohibit the removal of trees. So they would not be able to remove any trees. They would not be able to expand the lease area. The access road would need to stay the same. They can't do any ground clearing outside of the lease area. If they replace a tower wood for wood or wood for metal the new tower cannot be any closer to the property line than the existing one. It could be located farther away. They can retain the setback.

There being no further questions, Mr. Morris asked for a motion.

**Motion:** Mr. Randolph moved and Ms. Firehock seconded to recommend denial of ZTA-2015-00008 Wireless – Replacement of wooden pole with metal pole.

The motion passed by a vote of (5:2). (Loach and Morris – nay)

Mr. Morris said the motion was approved to deny this particular item. He asked if there was any further questions.

Mr. Kamptner said for the benefit of the Board of Supervisors since the Planning Commission has had a pretty lengthy discussion about your concerns about the zoning text amendment; they have the staff's analysis; and also most Commissioners have articulated some additional reasons, he asked if there was enough to capture that in how staff presents that to the Board.

Mr. Fritz replied yes, and pointed out the Board will have the Planning Commission's minutes. In our new system staff will provide a cover with some brief description and the conversations. He thinks staff can do that, but might have to go back and listen to it.

Mr. Cilimberg said as always with the action memo Ms. Taylor includes as an attachment of the points raised, which staff reviews. The Commission will have a chance to see that. If they see anything that might have gotten missed, please let staff know.

Mr. Fritz noted that was the primary thing staff relies upon to create the record that goes before the Board of Supervisors.

Mr. Kamptner pointed out the Board also has the Commission's minutes, and Mr. Cilimberg agreed that was correct.

Mr. Morris noted that ZTA-2015-00008 Wireless – Replacement of wooden pole with metal pole would be forwarded to the Board of Supervisors on July 8<sup>th</sup> with a recommendation for denial.

(Recorded and transcribed by Sharon C. Taylor, Clerk to Planning Commission & Planning