

Bill Fritz

From: Greg Kamptner
Sent: Tuesday, June 02, 2015 4:31 PM
To: Bill Fritz; Sarah Baldwin
Subject: FW: ZTAs to Wireless Ordinance

Greg Kamptner
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County of Albemarle
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(434) 972-4067

From: Karen Firehock
Sent: Tuesday, June 02, 2015 3:17 PM
To: Planning Commission
Subject: FW: ZTAs to Wireless Ordinance

I suggested that Ms. Greenson send this to everyone but I don't know if she has -- so here this is. I just got it.
Best, Karen

Karen Firehock, Planning Commissioner
Samuel Miller District
Albemarle County, VA
mobile: 434-249-2492

From: Jennifer Greeson [jennifer.rae.greeson@gmail.com]
Sent: Tuesday, June 02, 2015 2:17 PM
To: Karen Firehock
Subject: Re: ZTAs to Wireless Ordinance

Dear Karen,

Thanks so much for your message, and apologies for my slow reply--I have been teaching a long summer seminar today.

Would you have a moment to connect by telephone? I have a feeling it might be more useful for us to be able to have a conversation with more back-and-forth than on e-mail. If you are amenable to a call, is the 249-number on the County website correct for you?

In case I can't reach you:

Ishort, changing the material of a pole from wood to metal is an instrumental change that enables geometric intensification of the use of a site.

* Most important, vastly more transmission equipment, at much broader projections, can be supported by a metal pole rather than a wooden one.

* Under the current Ordinance, the breadth of the pole in a pole replacement can by-right be expanded to the maximum allowed girth for a monopole--a very large increase in girth for most of these wooden poles--providing still more support for more obtrusive and powerful equipment.

* Staff will say right now that the height of the pole will not be able to be changed, but that is far from a "done deal," as this new Ordinance will face myriad challenges from industry--and a metal pole structurally can be expanded in height in the future in ways that a wooden pole cannot.

(As an illustration: One of the towers next to our backyard in Bellair is essentially a narrow telephone pole with a single flush-mounted array attached to it and no room or structural support for anything else--can you imagine how a pole replacement to a metal tower of the maximum allowable girth would transform the intensity of that tower site, even with no height increase?)

I think it is imperative for the County to retain its powers of evaluation and approval for such requests for major expansion of existing towers. If this amendment was a "do-nothing" change that would make no difference in future expansions of existing towers, I do not believe that the lawyer for AT&T and nTelos (the operator of the two towers in Bellair) would have stated her formal opposition to this ZTA and would be planning to argue against it tonight.

Again, I'd be very happy to speak on the phone briefly if you are available.
With thanks for your consideration,
Jennifer

On Tuesday, June 2, 2015, Karen Firehock <kfirehock@albemarle.org> wrote:

Hi Jennifer and thanks for taking the trouble to send all of this. I have read your letter and all seems to make sense but I have one question which I am putting back to you and to our PC attorney so that he can tell everyone the answer this evening.

If a cellular company comes before the PC to request we change an existing wood pole to a metal pole, we would only say yes or no to a material choice. We not be able to rule on anything else. It seems that the public wants to have more discretion over existing poles - but I don't believe we would then be able to do a host of other unrelated actions such as change the height, dimensions, location etc. So what would this material review get us, beyond a lot of frustrated people asking us why we don't get rid of the pole or move it? That is the question I have for you and Greg. If Greg does not reply by email before tonight I will let you know what he says .

Thank you.
Best, Karen

Karen Firehock, Planning Commissioner
Samuel Miller District
Albemarle County, VA
mobile: [434-249-2492](tel:434-249-2492)

From: Jennifer Greeson [jennifer.rae.greeson@gmail.com]
Sent: Monday, June 01, 2015 9:32 PM
To: Karen Firehock; Liz Palmer; dadev@comcast.net; Maynard Sipe
Subject: ZTAs to Wireless Ordinance

Dear Karen,

Liz Palmer has been so kind to work with my husband and me, and on behalf of many of our neighbors in Bellair, and concerned citizens in other County subdivisions, on two of the Wireless ZTAs that come before the PC for public hearing tomorrow evening. I am attaching a document that attempts to lay out some of the thinking--contributed to and vetted by Maynard Sipe, a local land-use lawyer with extensive experience in both the wireless industry and AC code--behind these amendments.

Unfortunately Staff do not support either of these amendments in their official recommendations, though they offer no clear alternative paths to deal with the weaknesses in the current Ordinance we have identified. Wireless industry lawyers for AT&T will also be on hand to oppose these amendments. The

discussion may be contentious and as members of the public, we will have only two or three minutes to address the Commission at the hearing, so we are sending this additional material in advance.

With many thanks for your patience, time, and service,
Jennifer Greeson and Dade Van Der Werf

Bill Fritz

From: Karen Firehock
Sent: Tuesday, June 02, 2015 9:47 AM
To: Greg Kamptner
Subject: FW: ZTAs to Wireless Ordinance
Attachments: Wireless_ZTA_letter_Jun01.pdf

I am going to request a comment from you on this -- see my email in a minute...

Karen Firehock, Planning Commissioner
Samuel Miller District
Albemarle County, VA
mobile: 434-249-2492

From: Jennifer Greeson [jennifer.rae.greeson@gmail.com]
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With many thanks for your patience, time, and service,
Jennifer Greeson and Dade Van Der Werf

June 1, 2015

Dear Karen Firehock,

We write to encourage you and your fellow Commissioners to vote in favor of the ZTA 2015-00007 Wireless on Public Notice, and the ZTA 2015-00008 Wireless on Replacement of Wooden Poles.

We further encourage you to expand the scope of ZTA 2015-00008 to apply to more than a very few wooden poles (probably fewer than five) currently extant in the County.

These two amendments have been spurred by community involvement, including input from land use lawyers, with the objective of maintaining some County control over future development of existing tower sites throughout Albemarle, in the face of sweeping FCC usurpation of local authority on these matters. Both amendments were requested by the Board of Supervisors.

It is unfortunate that of three wireless ZTAs before you on June 2, Staff support only the one generated by the wireless industry, while they decline to support the ones generated by citizen involvement and BoS direction.

We append some rationales for these three requests below:

- 1) to vote in favor of the ZTA 2015-00007 on Public Notice;
- 2) to vote in favor of the ZTA 2015-00008 on Replacement of wooden poles;
- 3) to expand ZTA 2015-00008 to retain the County's right to require ministerial approval of any applications for future replacement of existing wood poles.

Sincerely yours,

Dade Van Der Werf and Jennifer Greeson
16 Deer Path

1. Please vote in favor of the ZTA 2015-00007 on Public Notice, to require notice to abutting property owners in ALL cases of application for wireless facility changes, including collocations and replacements (“C/R” applications). This amendment was requested by the Board of Supervisors.

Rationale:

- Notice of all potentially disruptive and intrusive work on neighboring tower sites is a matter of courtesy to County residents. (The residents of Bellair can attest that work on existing towers, which is generally performed by out-of-state subcontractors who do not identify themselves as related to any wireless company, is presently pursued in surprisingly discourteous and disruptive fashion in residential neighborhoods.)
- The FCC Order sets a 60-day clock on all applications for approvals of tower expansions. Requiring industry notice to abutting property owners at the time of application involves additional interested parties to ensure that timely action is taken.
- The new Wireless Ordinance places more actions exclusively in the hands of County Staff. Yet definitions of concealment, visual impact, and substantial changes are in flux. These definitions also rely at least to some extent upon subjective judgments. The public should not be shut out of this evolving process, particularly those County property owners most directly impacted by each application. (Again, the residents of Bellair can attest that improper action was taken by Staff on an application to intensify use of a tower in our neighborhood—even before the FCC order came into effect—with detrimental effect to the surrounding property owners. Public notice makes possible an additional level of oversight on such changes.)s

2. Please vote in favor of the ZTA 2015-00008 on Replacement of Wooden Poles, to require that any application to replace an existing wooden pole tower with a metal pole be treated as a special exception—*in the case that the tower violates the fall zone setback customary for all tower structures throughout Virginia, without an easement permitting the fall zone encroachment onto the abutting property.* This amendment was requested by the Board of Supervisors.

Rationale:

- The County should preserve rather than cede its legislative authority over previously-approved towers in its own Ordinance. The FCC Order takes away County authority on most matters of collocation and other forms of expansion for previously-approved towers. However, tower pole replacement is expressly NOT required by the FCC Order—it is left entirely to the discretion of the locality. (FCC Order 14-153 Section 5--Paragraph 180.)
- The situation addressed by this amendment is extremely rare and narrow. Staff assert in their presentation that “approximately three dozen” sites are “potentially affected” by this amendment, but this is a disingenuous claim. The “three dozen” is a generous estimate of the total number of wood pole towers that may possibly exist in the County today. Surely the majority of these are in rural districts, where the customary fall zone setback is not at issue. This amendment addresses only those towers that were allowed, via a Planning Commission “waiver” of setback (which action is no longer legal in Virginia), to violate customary state zoning setbacks for tower structures. Those setbacks are customary for matters of safety and public welfare.
- This amendment prohibits nothing to the wireless industry. It does not remove any previously-approved tower site; and it does not prohibit an expansion of an existing site. It simply requires that any application for a replacement of the entire tower structure, and only in this rare situation where an abutting lot is encroached upon without the owner’s permission, be subjected to review as a special exception, rather than being allowed by-right with no review—as is the present case in the ordinance.

3) Please expand ZTA 2015-00008 to retain the County's right to require ministerial approval of any applications for future replacement of existing wood poles. (See attachment below for proposed Ordinance change.)

Rationale:

- Tower pole replacement is expressly left to the discretion of the locality in the FCC Order. It is a weakness of the new Albemarle Wireless policy that wooden poles—and wooden poles alone—are allowed to be replaced with metal structures *by right*. This is Albemarle's voluntary cession of a right to regulate extant towers that is expressly reserved to us by the FCC.
- It is particularly problematic for the County Ordinance to make wooden pole replacements by-right. Generally wooden pole towers were approved early in the days of wireless policy, via Special Use Permit and prior to uniform design standards. The Planning Commission and the BoS imposed strict prohibitions on any future developments of these wooden pole towers. That assumption of continued legislative authority on the part of the PC and BoS has been usurped by the FCC order.
- This expanded amendment would simply have all wooden pole replacements (beyond those not meeting the setback/easement requirement already addressed) be treated as a "Tier II" application rather than a "Tier I." Thus they would go back through the Tier II administrative review which does require that they be sited to minimize visibility (see 5.1.40(b)6).
- A pole that made it through PC review in 2000 or so, subject to SPU conditions, might no longer meet the current Tier II criteria to minimize visibility (due to changes in circumstances such as development, change in available tree screening, etc). Even if in nine out of ten cases the replacement is approved, the County should reserve its rightful authority to confirm that any new tower structure would meet the County's current design criteria.
- As Staff explains in the current ZTA 2015-00008 document, there are at most 36 wooden pole towers in the entire County, and there have only been two pole replacements thus far in the entire history of wireless industry in the County. Thus reviewing occasional Tier II applications—one every several years?—for wooden pole replacements will not make onerous demands upon Staff time.

Attachment: Proposed Ordinance change:

ALTERNATIVE - REQUIRE "TIER II" REVIEW OF REPLACEMENT

Draft: 05/18/15

Development Requirements	Type of Application			
	I	II	III	C/R
any resources specifically identified for protection in the deed of easement.				
7. <i>Open space plan resources.</i> The facility shall not adversely impact resources identified in the natural resources chapter of the county's comprehensive plan and the parks and green systems chapters in any county master plan.		X	X	
8. <i>Horizontal separation of multiple facilities.</i> The facility shall not be located so that it and three (3) or more existing or approved personal wireless service facilities would be within an area comprised of a circle centered anywhere on the ground having a radius of two hundred (200) feet.		X		
9. <i>Diameter of monopole.</i> The maximum base diameter of the monopole shall be thirty (30) inches and the maximum diameter at the top of the monopole shall be eighteen (18) inches.		X		
10. <i>Height of monopole.</i> The top of the monopole, measured in elevation above mean sea level, shall not be more than ten (10) feet taller than the tallest tree within twenty-five (25) feet of the monopole, and shall include any base, foundation or grading that raises the monopole above the pre-existing natural ground elevation.		X		
11. <i>Color of monopole, antennas, and equipment.</i> Each monopole shall be a dark brown natural or painted wood color that blends into the surrounding trees. The antennas, supporting brackets, and all other equipment attached to the monopole shall be a color that closely matches that of the monopole. The ground equipment, the ground equipment shelter, and the concrete pad shall also be a color that closely matches that of the monopole, provided that the ground equipment and the concrete pad need not closely match the color of the monopole if they are enclosed within a ground equipment shelter or within or behind an approved structure, façade or fencing that: (i) is a color that closely matches that of the monopole; (ii) is consistent with the character of the area; and (iii) makes the ground equipment, ground equipment shelter, and the concrete pad invisible at any time of year from any other parcel or a public or private street.		X	X	
12. <i>Placement of cables, wiring, and similar attachments.</i> Each wood or concrete monopole shall be constructed so that all cables, wiring, and similar attachments that run vertically from the ground equipment to the antennas are placed on the monopole to face the interior of the site and away from public view, as determined by the agent. Metal monopoles shall be constructed so that vertical cables, wiring and similar attachments are contained within the monopole's structure.		X		
13. <i>Special use permit conditions.</i> All conditions of approval of a special use permit.			X	
14. <i>No substantial change.</i> The collocation or replacement shall not result in a substantial change to the physical dimensions of an eligible support structure.				X
15. <u>Replacement of wooden monopole with metal monopole.</u> The replacement of a wooden monopole with a metal monopole:				
(a) <u>The monopole is setback farther in distance than its height to any lot line or is located closer in distance than its height to any lot line and the document authorized by section 5.1.40(c)(3) exists.</u>	X	X		
(b) <u>The monopole is located closer in distance than its height to any lot line and the document authorized by section 5.1.40(c)(3) does not exist.</u>		X		

The following abbreviations are used in this table:

Comparative Advantages of Steel Versus Wood Pole Construction

- **Superior Safety Characteristics:**
 - Stronger, more durable construction material;
 - Facilitates compliance with County diameter requirements (30" base, 18" top)
 - No susceptibility to wood destroying organisms
 - Low susceptibility to climate and weather
 - Consistent quality versus natural variation
 - Engineered to reduce fall zone to a fraction of tower height
 - Transported in pieces to reduce risks and inconvenience to adjacent landowners and reduce traffic congestion

- **Mitigated Visual Impacts:**
 - Permits required concealment of cabling;
 - Facilitates compliance with diameter requirements (30" base, 18" top)
 - Satisfies color requirements

- **Lesser Environmental Impacts:**
 - Requires less energy to transport;
 - Requires no chemical pest or weather treatment;
 - Provides a longer life span;
 - Allows for recyclability at end of product life.

- **Permits Technological Improvements and Upgrades**
 - Supports heavier equipment more safely