

**MINUTES OF A  
SPECIAL PUBLIC MEETING  
OF THE JACKSON COUNTY  
BOARD OF COMMISSIONERS  
HELD ON  
OCTOBER 17, 2017**

The Jackson County Board of Commissioners met in a Quasi-Judicial Hearing on October 17, 2017, 1:30 p.m., Justice & Administration Building, Room A201, 401 Grindstaff Cove Road, Sylva, North Carolina.

Present: Brian McMahan, Chairman  
Charles Elders, Vice Chair  
Boyce Deitz, Commissioner  
Mickey Luker, Commissioner  
Ron Mau, Commissioner

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

Chairman McMahan called the meeting to order.

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

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

(a) Project: Wireless Communication Tower - Qualla Township.

(b) Applicant: SBA Communications Corporation (SBA), Jonathan Yates, Legal Counsel.

(c) Service Provider: Verizon Wireless.

(d) Location: 617 Worley Farm Road, Whittier, NC 28789; PIN #7613-15-4610; property owner: William D. Hyatt.

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

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

(a) *Commissioner Deitz stated he had none.*

(b) *Commissioner Elders stated he had none.*

(c) *Commissioner Luker stated he had none.*

(d) *Commissioner Mau stated he had none.*

(e) *Chairman McMahan stated he had none.*

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

*There were none.*

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

(6) **EVIDENCE:**

(6A) **STAFF PRESENTATION OF REPORT:** John Jeleniewski, Senior Planner, presented the staff report: SBA was proposing to construct a wireless communication tower 180' in height (175' tower structure, 5' lightning rod) on the referenced property owned by William D. Hyatt. The property was located in the zoned jurisdiction of U.S. 441 Gateway Development Ordinance and in the Rural Living district, which allowed for telecommunications towers. The tower and supporting facilities would be located in the southeast portion of the property and would be contained within a 100'x100' leased area. Within the leased area, a 35'x60' compound was proposed, which would contain the 180' monopole tower and a 288 square foot Verizon equipment shelter; all of which would be surrounded by chain-link fence, 8' in height. The area within the 35'x60' compound would also accommodate three additional equipment shelters for future communication providers to collocate. The area immediately beyond the 35'x60' compound would be landscaped with approximately 20 evergreen trees (Carolina Sapphire, min. 2" caliper), 10' on-center, in a 10' wide mulched bufferyard. The proposed facility (leased area) would be served by a minimum 12' wide paved access driveway, approximately 150' in length, averaging 20% in slope and would be a created access from the existing private drive serving the Hyatt residence. The Hyatt property was accessed from a public roadway, Worley Farm Road (S.R. 1405), which was immediately adjacent to U.S. Highway 74. The proposed site construction plans showed grading in the immediate area of the tower compound (35'x60') and a retaining wall 11' in height would be necessary due to the extent of the cut grade northeast of the compound area. The retaining wall would need to be engineered by an appropriate design professional and would require building permits. The submitted site construction plans included measures for erosion control/stormwater compliance; erosion control best management practices (BMP's) would be applied to the site. The power service for the proposed facility would be supplied by Duke Energy and any required utility easements will be provided by the property owner. The required balloon test was conducted March 19, 2017; notice for this balloon test was published in the Sylva Herald on February 2<sup>nd</sup> and 9<sup>th</sup> 2017 and formal notifications were mailed to adjacent property owners on March 1, 2017. County Staff and the applicant met in a required pre-application meeting on November 16, 2015 and again on March 14, 2017 (application resubmittal). The official Wireless Communication Application was resubmitted and received by the Planning Department on July 24, 2017. The Planning Department completed its administrative review of the submitted application on August 10, 2017. The applicant was notified via email verifying the completeness of the submitted application package August 11, 2017. This proposed tower, supporting accessory structures, site construction and erosion control/stormwater measures would be required to obtain all necessary permits prior to commencement of construction. Advertising and posting for the Quasi-Judicial hearing was as follows:

- At a scheduled meeting on September 18, 2017, the Board of County Commissioners called for a Quasi-Judicial hearing to be heard on October 17, 2017 at 1:30 p.m.
- The Quasi-Judicial hearing was advertised in the Sylva Herald on October 5<sup>th</sup> and 12<sup>th</sup> of 2017.
- Adjacent property owners were mailed notices of the Quasi-Judicial hearing on October 3, 2017.
- The property was posted with notice of the Quasi-Judicial hearing on October 3, 2017.

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

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

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

**Ordinance Section 30-22. Standards for Wireless Communication Facilities:**

A. Location of Wireless Communication Facilities

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

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

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

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

- *The applicant has submitted an “Inability to Collocate” graphic which is provided for review in “Attachment 11” of the application and was prepared by SBA.*

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

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

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

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

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

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

- a. The Wireless Support Structure does not extend more than 20 feet above the average height of the tree canopy within 100 feet of the tower site. If any antenna extends more than two feet from the side of the support structure, the portion of the tower extending above the vegetative canopy shall be camouflaged to appear like the top of a coniferous tree with all antennas concealed within simulated foliage
- b. The Wireless Support Structure or tower is not visible from a public road within one half mile of the proposed site.
- c. There is no other Wireless Support Structure or tower located on a ridge within one (1) mile of the proposed site.
- d. The proposed Wireless Support Structure or tower is a monopole.
- e. The proposed Wireless Support Structure or tower is not visible from and within two (2) miles of the Blue Ridge Parkway.
- f. There are no other structures, including electrical transmission towers, within the search area capable of accommodating the wireless communications equipment.
  - *The proposed Wireless Communication Tower is not located on a Protected Mountain Ridge.*

C. Section Reserved in the current ordinance.

D. Visibility and noise of Wireless Communication Facilities.

1. Lighting. Wireless Communication Facilities shall not be artificially lighted or marked, except as required by federal regulations. If lighting is legally required, the applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under state and federal regulations. For any Wireless Communication Facilities for which lighting is required under the FAA's regulations, or that for any reason has lights attached, all such lighting shall be affixed with technology that enables the light to be seen as intended from the air, but that prevents the ground scatter effect so that it is not able to be seen from the ground to a height of at least 12 degrees vertical for a distance of at least one mile in a level-terrain situation. Such device must be compliant with or not in conflict with FAA regulations. A physical shield may be used, as long as the light is able to be seen from the air, as intended by the FAA. If lighting is required by the FAA or other government agency, then such lighting shall be installed pursuant to the FAA or other government agency standards. The applicant shall present the options for selection by the county, being mindful of the impacts of the proposed lighting upon people whose residences are located at higher elevations.
  - *No tower lighting is required per FAA standards. The proposed site construction plans do not indicate the location of any proposed outdoor "yard" lighting; state building code may require building lighting.*
2. Retrofitting. In the event a Wireless Communication Facilities that is lighted is modified, at the time of the modification the county may require that the tower be retrofitted with the technology set forth in the preceding subsection.
  - *Not Applicable*
3. Camouflage/Concealment. All new Wireless Communication Facilities are encouraged to utilize camouflage and/or concealment techniques to the maximum extent feasible. Wireless Communications Facilities to be located within residential areas, rural areas, and scenic areas are encouraged to employ camouflage or concealment techniques.
  - *This proposed Wireless Communication Tower will be unpainted, galvanized steel.*

4. Wireless Communication Facilities finish/color. Structures shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this section and subject to FAA requirements.
  - *The design of this proposed Wireless Communications Tower will be manufactured of galvanized material.*
5. Noise. All facilities at a Wireless Communication Facilities, regardless of the owner of the facilities, shall comply with the county's noise control regulations, without exception.
  - *The applicant has submitted a "Generator Specification Sheet" which is provided in "Appendix A" of the application.*

E. Security of Wireless Communication Facilities.

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

1. All Wireless Communication Facilities, including antennas, towers and other supporting structures, including guy anchor points and wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and
2. Transmitters and communications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.
  - *The proposed site construction plans specify a minimum 8' in height, chain-link security fencing with a barbed-wire cap. It appears that all compound equipment and accessories are accessible to service personal.*

F. Signage.

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

- *Site signage at the access gate is proposed and shown on the submitted plan sheet "C-7".*

G. Setbacks.

1. Unless otherwise stated herein, each wireless support structure shall be set back from all property lines a distance equal to its engineered fall zone plus ten percent. The setback shall be measured from the nearest portion of the right-of-way of any public road or thoroughfare and any occupied building or domicile. Further, the nearest portion of any new access road leading to a wireless communication facilities shall be no closer than 15 feet to the nearest property line.
2. Accessory structures shall be located within the footprint of the approved facility and meet the minimum property line setbacks for the district or 30 feet from adjacent property lines whichever is more restrictive.
3. There shall be no development of habitable buildings within the wireless support structure setback set forth in the preceding subsection.
  - *Setback dimensions are provided on sheet "C-1 – Site Plan". For this project, the engineered fall zone is 90' plus 10% for a total of a 99' fall zone setback. The fall zone has been designed by a licensed engineer and supporting documentation can be found in "Attachment 8" of submitted application. There are no habitable buildings within the fall zone area.*

#### H. Accessory Structures.

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

- *The proposed accessory building will be pre-fabricated and finished with wood siding or other high quality material that blends with the surrounding environment.*

#### I. Utilities.

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

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

#### J. Site Access.

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

- *The proposed site plans indicate a minimum 12' wide, paved access drive which will connect to an existing paved driveway all of which is on the property of the owned William D. Hyatt. There will be a 14'x30' "turn around" area located at the compound entrance which will serve emergency vehicles.*

#### K. Code Compliance.

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

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

#### L. Facilities Permit.

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

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

M. Building Permit.

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

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

**Additional Application Requirements:**

The applicant has provided the following required documents.

- *Site Plans and drawings*
- *Lease Agreement*
- *Verizon Intent Documentation*
- *Compliance Letter*
- *Tower Removal Letter*
- *FCC Licenses*
- *Collocation Policy Letter*
- *Fall Zone Letter*
- *Structural Analysis Report*
- *FAA Analysis*
- *Lack of Collocate Document*
- *Balloon Test Report and Photo Simulation*
- *Removal/Performance Security Bond*
- *Certificate of Liability Insurance*
- *Generator Specifications*
- *Balloon Test Notice and Mailing Information*

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

(6B) **APPLICANT PRESENTATION OF EVIDENCE AND WITNESSES:** Wyatt Stephens, Attorney stated he practiced law in Asheville with Roberts Stephens. He was there with Jonathan Yates, an Attorney from Charleston, South Carolina and had represented cell tower companies and providers for more than 25 years and had represented SBA for 20 years. He worked with him. He had worked with him on North Carolina related towers and he was knowledgeable on these matters. He offered into evidence for the record, as the First Exhibit the original application and as the Second Exhibit was a letter dated August 29, 2017, which provided additional documents and the updated application, signed and notarized and the balloon test.

Jonathan Yates, Attorney, stated he had worked all over the Carolinas and Western North Carolina, but one thing he rarely encountered was an incredible staff that he had to work with in Jackson County. He was glad he got to meet the new county manager, and that the County Attorney, Michael Poston and John Jeleniewski had been invaluable. Jackson County had really good staff that had shown professionalism and kindness throughout the process.

Also with them today, was William D. Hyatt, who was the property owner. The Qualla area did not have the same infrastructure that the rest of the state had. This property was a perfect place for them to place a tower and he felt strongly that they had met the requirements of Chapter 30.

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

**(6C) OTHER PARTIES PRESENTATION OF EVIDENCE AND WITNESSES:**

*None.*

**(6D) REBUTTAL:** *None.*

**(6E) CLOSING STATEMENTS:** *None.*

**(7) BOARD DISCUSSION:** Chairman McMahan stated that this ended the evidentiary portion of the Hearing and that there would be no further input from parties though they may answer questions if asked by the Board during discussion. The applicable ordinance for this hearing was the Jackson County Wireless Communications Ordinance approved August 18, 2015 and the requirements were set forth in Section 30-23(b)(3).

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

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

**Consensus:** *The Board determined this statement to be true.*

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

**Consensus:** *The Board determined this statement to be true.*

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

**Consensus:** *The Board determined this statement to be true.*

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

**Consensus:** *The Board determined this statement to be true.*

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

**Consensus:** *The Board determined this statement to be true.*

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

**Consensus:** *The Board determined this statement to be true.*

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

**Consensus:** *The Board determined this statement to be true.*



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

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

- *That there will be no additional cutting of trees within the leased area after the initial construction of the tower which shall be constructed in accordance with the plans set forth in the application*

**(i)** Decision:

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

Chairman McMahan stated the hearing was concluded.

There being no further business, Commissioner Elders moved to adjourn the meeting. Commissioner Mau seconded the Motion. Motion carried and the meeting adjourned at 2:22 p.m.

Attest:

Approved:

\_\_\_\_\_  
Angela M. Winchester, Clerk to Board

\_\_\_\_\_  
Brian Thomas McMahan, Chairman