

**MINUTES OF A
SPECIAL MEETING
OF THE JACKSON COUNTY
BOARD OF COMMISSIONERS
HELD ON
NOVEMBER 27, 2017**

The Jackson County Board of Commissioners met in a Special Meeting on November 27, 2017, 3:05 p.m., Justice and Administration Building, Room A227, 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) **AGENDA**: Commissioner Luker moved to approve the Agenda. Commissioner Elders seconded the Motion. Motion carried.

(2) **WIRELESS COMMUNICATIONS TOWER WAIVER**: Chairman McMahan stated that the Western Carolina University Endowment Fund made a request based out of Section 30-29 of the Wireless Ordinance that allowed the Commissioners to consider waivers or modifications to the ordinance. They requested a waiver from the Board of Commissioners on the following items:

- The Conditional Use Permit process found in Section 30-23.
- Maximum height requirement of 180 (tower was 185 with lightning rod) found in Section 30-22(b)(1).
- Maximum height allowed (20 feet above the average canopy height within 100 feet of the tower site) on a protected ridge found in Section 30-22(b)(3)(a).
- Tower not being visible from a public road within ½ mile of the site found in Section 30-22(b)(3)(b).
- The proposed tower required to be a monopole found in Section 30-22(b)(3)(d).
- The access road having to meet private road standards found in the Subdivision Ordinance found in Section 30-23(8)(j).
- The \$5,000 application fee.

Chairman McMahan stated that there were other items in the Wireless Communications Ordinance that would not be waived and the application would have to go through the process. As stated in the last Work Session, if they went through the formal process and none of the waivers were issued, it would call for a public hearing. Notifications would then go out, citizens would be allowed to make public comment and it would go through a very rigorous policy on a timeline. But given the fact that there was a deadline and the Western Carolina University Endowment Fund requested that the Board consider waiving some of the requirements, the process did not require a public hearing. The Board felt that at least they should send the adjoining property owners a letter to let them know they were considering the waivers and give them the opportunity to share their thoughts. A public hearing was held prior to this meeting with public comment.

Section 30-29 of the ordinance specified the need to for the Western Carolina University Endowment Fund to demonstrate evidence that their request to build a tower was justified and was necessary to prevent unnecessary hardship and the waiver would have no significant effect on the health, safety and welfare of the county, its residents, property owners and other service providers and preserves the intent of the ordinance.

Commissioner Luker stated he felt the Board had discussed the issue and had made those conclusions from their discussions with the Planning Department and Western Carolina University. His district would be one of the districts that would be most vastly be impacted by this. These areas were not being able to have wireless communications, cell phone coverage and most importantly Emergency Services, which was a safety issue.

Motion: *Commissioner Luker moved to waive the requirements of the Wireless Communications Ordinance enumerated below as allowed in Section 30-29 of the ordinance as the Endowment fund of Western Carolina University has demonstrated by clear and convincing evidence that their request to build a tower is justified and is necessary to prevent unnecessary hardship and that the waiver, would have no significant effect on the health, safety and welfare of the county, its residents, property owners and other service providers and preserves the intent of the ordinance. This Motion is contingent upon the Endowment Fund providing the county access for Emergency Communications on the tower at no cost. The specific requirements waived are as follows:*

- *The Conditional Use Permit process found in Section 30-23.*
- *Maximum height requirement of 180 (tower was 185 with lightning rod) found in Section 30-22(b)(1).*
- *Maximum height allowed (20 feet above the average canopy height within 100 feet of the tower site) on a protected ridge found in Section 30-22(b)(3)(a).*
- *Tower not being visible from a public road within ½ mile of the site found in Section 30-22(b)(3)(b).*
- *The proposed tower required to be a monopole found in Section 30-22(b)(3)(d).*
- *The access road having to meet private road standards found in the Subdivision Ordinance found in Section 30-23(8)(j).*
- *The \$5,000 application fee.*

Commissioner Mau seconded the Motion.

Discussion:

Commissioner Deitz stated they had hearings for a reason to hear from the public that brought up issues like radiation. He did not know a lot about radiation, but if that was the case, they had problems all across the county where there were other towers. He was sure there was truth to the property value concerns, but everyone had a cell phone and it was a fact of life that they had to have towers.

Chairman McMahan stated there was a comment made at the public hearing concerning road maintenance fees. He inquired of Vice Chancellor Byers what information he had about that issue.

Vice Chancellor Byers stated the University owned the property for decades and it was totally undeveloped. They had not been a member or participant in that property owner's association that he was aware of. They would build a driveway to the site that would be off of that private road. They would be glad to participate in road maintenance.

Chairman McMahan stated it was important to note that the process of issuing waivers did not require a public hearing. Notifying the adjoining property owners was done to try and be as transparent as possible.

Commissioner Mau stated he wanted to read a statement regarding the radiation issue that came up. This information was from the American Cancer Society’s website regarding cell towers: “Cell phones communicate with nearby cell towers mainly through radiofrequency (RF) waves, a form of energy in the electromagnetic spectrum between FM radio waves and microwaves. Like FM radio waves, microwaves, visible light, and heat, they are forms of non-ionizing radiation. This means they do not directly damage the DNA inside cells, which is how stronger (ionizing) types of radiation such as x-rays, gamma rays, and ultraviolet (UV) light are thought to be able to cause cancer.” So it was not believed that cell towers caused cancer.

Chairman McMahan stated that at that time, they were not guaranteed that a cell tower would even go on the tower.

Motion carried by unanimous vote.

There being no further business, Commissioner Mau moved to adjourn the meeting. Commissioner Elders seconded the Motion. Motion carried and the meeting adjourned at 3:55 p.m.

Attest:

Approved:

Angela M. Winchester, Clerk to Board

Brian Thomas McMahan, Chairman