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2019 APR 29 PM 2:32



**Benton County Planning Board  
Public Hearing  
Technical Advisory Committee Meeting**

BETSY HARNELL  
CLERK & PROBATE CLERK  
BENTON COUNTY, AR

April 3, 2019  
6:00 p.m.

Quorum Court Room  
215 East Central Avenue  
Bentonville, AR 72712

**Meeting Minutes**

**PUBLIC HEARING:**

**Call to Order:** The meeting was convened at 6:00 p.m. by the Planning Board Chair, Ron Homeyer

**Roll Call:** Bob Bracy, Sean Collyge, Ron Homeyer, Terry Maienschein, Stephen Torrez, Ashley Tucker and Rick Williams were present.

**Staff present:** Taylor Reamer – Director of Planning, Tracy Backs – County Planner, and Joshua Bryant, Planning Board Liaison were present

**Public Present:** 11 people signed the Sign In sheet

**Disposition of Minutes:** March 20, 2019

Mr. Williams motioned to approve the March 20, 2019, Planning Board Meeting minutes. The motion was seconded by Mr. Maienschein.

Motion approved: 7 – 0

**General Public Comment:** None

**Old Business:** None

**New Business:**

- I. **BRT Group / Vang Telecommunications Tower, #19-039, 9383 Coker Road, Gentry; 18-11500-005**

Representative: Tom Holiman, 978 NC 1845, Huntsville, AR and Cliff McKinney, attorney with Quattlebaum, Grooms & Tull, 111 Center Street, Suite 1900, Little Rock, AR

Staff gave a presentation on the BRT Group / Vang Telecommunications Tower, #19-039, 9383 Coker Road, Gentry; 18-11500-005

Mr. Homeyer: Do you have anything else you want to add at this point?

Mr. Holiman: Only to say that this is very similar to the other two prior applications that we brought before the Planning Board last year that were approved. I would rather just wait and answer any questions that the Board may have after the Public Comments.

Mr. McKinney: If we could reserve time for that, I know that there is a competitor that will be approaching us here tonight and I am not sure what their basis for that is. I would like to be able to respond at that time.

Public Comment:

Andrew Curry, attorney with Watkins, Boyer, Gray & Curry, PLLC, 1106 West Poplar Street, Rogers, representing SBA Communications Corporation, LLC  
*Focus of comments: representing to tower owner approximately 1,300' away from the tower in this tower proposal, #19-039, not the land owner*  
*Issues of co-location; T-Mobile already on existing tower; new tower will not provide new coverage of close coverage gaps; significance interference between the two towers*

Bruce (and Kathy) McCutchen, 16227 Bethel Heights Road, Gentry  
*Focus of comments: lives right across from the proposed tower; radio waves cause health problems; unsightly; change tower location*

Mr. McKinney: Thank you. I would like to address the points that were made and I think we can address those pretty easily. The first point that I heard made by SBA, our competitor on this, is the co-location issue. That's pretty well addressed in regulation 7.2 H1. Co-location only applies where feasible. They are a company that builds towers and leases space. We are a company that builds towers and leases space. We can't put our tower on top of them. It is not feasible. Also, in this case, co-location does not apply according to the regulations if our desire is to construct a tower for the primary purpose of attracting other persons to co-locate on the tower which is our stated purpose. So, I don't believe the co-location regulation applies in this case in any event.

I also heard them mention the issue of interference and RF propagation. With all due respect, that's not an issue that should be of concern, that's the FCC. They take care of that. That's part of our permitting process through the FCC. The FCC is not going to approve this if we were going to interfere. We have done plenty of studies.

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There isn't going to be any interference. But there is a federal agency that makes that determination.

Lastly, regarding the gentleman that lives nearby, addressing the fear of the waves or other emissions that may be coming from the tower, these towers have been thoroughly studied. They exist all across the nation. The federal government has determined that that is not a basis for rejection of an application. So, under the Federal Communication Act, they have been deemed safe by Congress.

Mr. Tucker: Can you talk about where you are in your FCC application process?

Mr. Holiman: Yes. We have made application with the Federal Communication Commission. You have a copy of the application. We should be receiving that within two to three weeks from now. We have to finish our environmental due diligence which all cell towers have to do. Once we finish that, which should be first week or two in May (2019), then we will get the ASR. That's the official FCC registration (Antenna Site Registration). I would say mid-May at the latest.

Mr. Tucker: Do they do their propagation analysis before you construct the tower or do they do it after?

Mr. Holiman: To elaborate a little bit on that issue, all cell towers have multiple tenants. Well, not all. And they can be 10' apart. So, they are all on different frequencies. Each carrier is licensed under a different frequency. If you are operating properly, there is no interference. The issue of being interference to another tower, a quarter mile away is ludicrous. There is no interference from tower to tower. When the FCC reviews and approves an application, what they approve is the frequencies that these licensees are supposed to operate under. That's part of their approval. If everyone is operating under their license like they are supposed to, under their frequency bands, there is no interference. So, yes. That's a long answer to say, yes.

Mr. Tucker: We are fairly familiar with the Federal Telecommunications Act. It prohibits us from taking the FCC's jurisdiction. We are not allowed to make a determination based on competition. Are you currently located on this tower that is 1,340' away?

Mr. Holiman: We, being BRT Group, no. We are a tower developer. One of our clients, does have equipment on that tower. We are operating under their mandate. Of course, we have other clients too. The proposed equipment that they want to evolve to, they are telling us that the other tower won't hold it. The structural

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capability of it with all the 5G technology. This is quite common around the country. Somebody may have equipment on another tower; but with all the evolution of the 5G,..... A lot of this is generated by the fact that the radios used to be on the ground. Now, they are making them smaller and putting them up there which is good from one standpoint but making the weight different because there is more weight up there. That's what causes a lot of towers to fail structurally because of the new equipment that everybody is going to. In our case, yes. They have told me that they have analyzed that other tower and they just can't put what they want to put. It's a brand-new engineered tower with all the latest standards. I don't know how long that other tower has been there, probably ten years at least. So, it's able to handle a lot heavier equipment.

Mr. Bracy: Are they going to discontinue using the signal support from the other tower?

Mr. Holiman: Probably so, yes.

Mr. Bracy: So, is the coverage going to increase or decrease?

Mr. Holiman: It will get better for the better equipment. They don't need two towers for the two pieces of equipment. They'll just remove that and put it on this tower. It will be better than what it is now.

Mr. Bracy: But better doesn't necessarily mean more coverage.

Mr. Holiman: It means more capacity which is really what is driving most of the growth in the country right now. No one dreamed they would be using smart phones like they are using. So, the capacity is more of an issue than the actual coverage. With 5G, the latest technology coming on the scene, it's able to handle more capacity with different kinds of equipment.

Mr. Torrez: So, as things get bigger and better and we build a new tower, the old tower becomes outdated and obsolete. What responsibilities to land owners and developers have for dismantling a tower? Say, you build this tower and three to five years from now, there's now another tower 1,350' away. Now your tower is kind of obsolete. What happens with all these empty towers at some point? Who is responsible for cleaning this up?

Mr. Holiman: Well, I'm not going to speak of the other company, I can speak for this company. I've been in this business for 25 years all over the country. It doesn't happen often but I think we are going to start seeing more of it now a days. I've seen

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it recently in another state. If a tower owner like us loses all their tenants, they are not going to keep that tower standing. They could, but why would they? I've seen them take them down. Right now, there are only four carriers in the United States. There may be only three within six months to a year, if T-Mobile merges with Sprint. So, you are worried about all these towers. There won't be a quantum number of towers going up everywhere because there aren't enough tenants to go around. If a tower owner finds himself losing their tenants for some reason, they are not going to keep that tower standing there. Most of the lease agreements with the land owners that you find have a provision for termination and taking the tower down. It's up to the tower owner to do that.

Mr. Torrez: It sounds like this needs to be worked out on the front end between the tower developer and the land owner. I wish that was addressed here on the front part of these meetings. We have a 25-year lease or a 10-year lease and here's the end clause of it... We don't hear that part of it. I think it's kind of interesting.

Mr. Holiman: It really hasn't happened that much in recent years. I think you'll see more of that because there are only so many tenants to go around now. I do know of a case in Louisiana where another competitive tower developer took the tower down because everybody left. So, it does happen.

Mr. Maienschein: Was your notice of this delivered to the local land owners? Did it go to the land owner of the existing tower?

Mr. Holiman: Yes, it did but I don't know that the existing tower company ever got it. I don't know that.

Mr. Maienschein: It went to the land owner. Then it would be his responsibility to pass it on.

Mr. Holiman: Well, you would think. Except in their case, they might have sold an easement to this tower company. If they sold a little piece of ground to them, or they negotiated a permanent easement, I don't know if they get notices or not. The land owner got it around the tower. I know that because I talked to her. She's a good friend of the land owner who owns the land where we want to put a tower, Mr. Wang. I couldn't speak for the other tower.

Mr. McKinney: Let me clarify that we did send notices to everybody within the zone.

Mr. Holiman: Oh, yes.

Mr. Maienschein: You didn't intentionally leave this guy off because he is your competition?

Mr. Holiman: Oh, no. The list was provided to us. I looked at the list and recognize some of the names on it; but I don't know that one of those may have been the other tower owner.

Mr. Homeyer: In his defense, regulations only require the property owner to be notified, not leasees.

Mr. Maienschein: But if the property owner got it, then he should have notified his tower owner.

Mr. Homeyer: That's correct.

Mr. Tucker made a motion to approve the BRT Group's application with the conditions as stated. Mr. Torrez seconded the motion.

Motion approved: 7 - 0

#### **TECHNICAL ADVISORY COMMITTEE**

- 1. Call to Order:**
- 2. Old Business / Ongoing Applications:** None
- 3. New Business:**

~~I. Arrowhead Boat Sales Site Plan Review, #19-045; 14555 Highway 12 East, Rogers; 18-03229-011 + 18-03210-000  
Postponed to a later date to be determined.~~

II. **Bolin Storage Site Plan Review, #19-047; 414 East Nursery Road, Rogers; 18-03580-003**

Representative: Bill Platz, WR Consulting, P.O. Box 223, Bentonville

Staff gave a presentation on the Bolin Storage Site Plan Review, #19-047; 414 East Nursery Road, Rogers; 18-03580-003

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Mr. Homeyer: Do you have anything else you want to add now? 2019 APR 29 PM 2:32

Mr. Platz: The only thing I am curious about is parking. I have 204 units and 204 parking spaces. This is just a facility that people call to make reservations. They show up, get a key and a unit. There is no business transaction on site. There is no office on site. We really don't need any parking other than what we have on site. We could put some on the gravel. I don't quite understand what you want there. BETSY HADSON  
SOLICITOR & PROBATE CLERK  
APR 29 2019

Mr. Tucker: You could stripe it on the plan.

Mr. Platz: Okay. We'll get it on there.

Mr. Reamer: I would think marking the ADA compliant parking space may be integral to compliance with that provision.

Mr. Tucker: One of the Department of Justice rulings recently within the past year when we were looking at changing the parking, we that they require a certain number of the units to be ADA accessible.

Mr. Platz: You can open the door. They are flat to go in.

Mr. Tucker: Well, the route from the vehicle to the door, is what they are concerned about.

Mr. Platz: That's a new one.

Mr. Tucker: This one is pretty steeply graded. So, I was trying to figure out how you would accomplish that. You might want to look into that. It looks like you could do it.

Mr. Platz: All the south units could be just roll in. They are basically flat. The drain is front is only deep enough not to flood the units if we get a gully washer. 6" and 30'

Mr. Tucker: Where's your discharge point go as it leaves the site?

Mr. Platz: In the far southwest corner (on page 3). That's where all the drainage is existing.

Mr. Tucker: When it leaves the site, where does it go from there?

Mr. Platz: The school bus barn has a drainage swell on their east property line.

Mr. Tucker: Does it go back toward the bus barn?

Mr. Platz: Yes, it goes right into the bus barn where their fence is. They have a ditch that it goes down.

Mr. Tucker: So, it goes back to the west and then it goes south?

Mr. Platz: Well, it just goes straight south basically. There is a ditch dug on the school property and then it goes into a drain to a culvert under First Street. I'll pick that up. We are basically reducing about 20 percent of the flow that gets there now. I haven't heard of any problem there now from the bus barn; but you never know.

Mr. Tucker: I know that corner gets pretty soggy from time to time.

Mr. Platz: Yes.

Mr. Homeyer: I noticed you had a detail for your retaining wall design.

Mr. Platz: I expect it to be about 6' tall at the far northeast corner just because of the grade. I am going to have a fence on top of it. I didn't realize that I had to stay out of the set back area. That's something new, I guess. What's your reason for that?

Mr. Torrez: It's considered a structure.

Mr. Reamer: By the International Code Council, building code.

Mr. Tucker: According to building code, it needs a building permit and an engineered-stamped design.

Mr. Platz: That's fine; but you need for me to move it, correct?

Mr. Torrez: That's correct.

Mr. Platz: We have the whole road right of way on our property; so, we will see what we can do. We'll just tighten that 35' up a little bit. I may have to remove a unit or move south to keep your fire truck from hitting the wall when it moves around.



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III. **Zehnder Major Subdivision and Preliminary Plat Waiver #19-053;  
South Morning Star Road, Bentonville; 18-09182-008**

Representatives: Cathy Zehnder, 1806 Southwest 18<sup>th</sup> Street, Bentonville with daughters, Jayme Shaver, 4301 Southwest Beech Lane, Bentonville and April Berkshire, 3 Sidebottom Lane, Bella Vista

Staff gave a presentation on the Zehnder Major Subdivision and Preliminary Plat Waiver, #19-053; South Morning Star Road, Bentonville; 18-09182-008

Mr. Homeyer: Do you have anything you want to add?

Ms. Zehnder: No, just a family tract. Getting us all together.

Mr. Tucker: The accesses along the southern border turning north, is just a gravel drive?

Mr. Zehnder: Right. Up to close to the house. Then it will be concreted into the garages.

Mr. Torrez: How does that work, Taylor (*Reamer*) to that point? If the main access is from Morning Star, then do we have to provide an easement to get to Tracts 2 and 3?

Ms. Zehnder: Yes, we have a 30' easement on that plan.

Mr. Tucker: And that meets our minimum requirement?

Mr. Reamer: Yes, 30' is the minimum width. As far as private drives, essentially, it's not maintained by the County.

Mr. Tucker: Usually, the Fire Marshal requests a hammer head for anything that is dead ended.

Mr. Reamer: I received a 'no comment.'

Ms. Shaver: Just for clarification on our part, just for some way for them to get turned around if they need to?

Mr. Tucker: Usually it's a 'T' that is 130' long.

Ms. Shaver: We considered doing a round about thing at the end of that 30' easement. Then, that way there would be a turn around if that is required.

Mr. Homeyer: One of the approved options.

Mr. Tucker: One of the approved options: hammer head, turning roundabout, or just drive through your yard over your septic system.

Mr. Reamer: No.

**IV. Benton Washington Regional Public Water Authority Site Plan Review, #19-055; 14524 Blueberry Lane, Garfield; 18-02146-013**

Representatives: Scott Borman, General Manager, Benton Washington Regional Public Water Authority and Matt Dunn, project engineer, Crist Engineers, Little Rock

Mr. Borman: Basically, we are building a two-million-gallon storage tank adjacent to where we have an existing 880,000-gallon storage tank. The problem is, we have to put the water up in the air. It was a bad engineering design on the 880,000-gallon storage tank as basically a stand pipe. Right now, this time of year, we are averaging about 750,000 gallons a day through it. During summer, we will push 1.5 million gallons a day through it. It serves Gateway, Garfield, Lost Bridge Village and part of Benton County Water District 1. We are regional wholesalers but we don't have individual customers. This tank is a necessity for us to do. Once the new tank is up and in place, the old tank will be de-commissioned and taken down. So, there will only be one tank up on the hill when we are done.

*Mr. Dunn handed out site plans to the Planning Board members.*

Staff gave a presentation on the Benton Washington Regional Public Water Authority Site Plan Review, #19-055; 14524 Blueberry Lane, Garfield; 18-02146-013

Mr. Borman: With regard to loading and unloading at the door, it is a roll up door that just allows us in and out access. Nobody is going to be up there rather than Authority staff. This is a water storage tank. You saw one similar to it when Centerton brought theirs in. A three million-gallon tank. Ours is a two million-gallon tank, same basic concrete pedestal, steel bowl design. We will have security inside the tank where the access ladders are located as well as outside on the property too. As far as showing detail for a loading/unloading area, there isn't anything going to be loaded and unloaded. We don't plan on using it for storage. We are doing this type of tank design because we like this style of tank and it serves our purposes up on that hill.

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BETSY HADDILL  
CLERK  
BENTON COUNTY, AR

We cannot cut off our security light at night.

Mr. Homeyer: We are not asking you to do that. We are simply asking you....

Mr. Borman: I understand a lot of this is for large-scale development, but that is one we cannot do.

Mr. Tucker: Full-cut off lighting means that there will be zero lumens beyond your property.

Mr. Borman: There will be just a security light outside on the deal.

Mr. Torrez: So, you have to have a light study done.

Mr. Borman: We have to have that, yes.

Mr. Torrez: And then you can show us.

Mr. Tucker: Cut off doesn't mean shut the light off. It means zero lumens beyond the property.

Mr. Torrez: Certain heads will create that affect.

Mr. Borman: I will just tell the engineer to do that please.

Mr. Reamer: It's just a specific fixture. It's not saying you can or can't have lights.

Mr. Borman: It will be a Carroll Electric security light just like the one that is up there on the existing tank.

Mr. Homeyer: As long as it is a full-cut-off and meets the requirements.

Mr. Reamer: It shouldn't be an issue.

Mr. Borman: Yes, it shouldn't be an issue. And there will be no waste disposal at the site. We don't use it other than to store water with.

Mr. Homeyer: Just make a note on the plans. You can show the loading area on the plan but you don't have to stripe it.

Mr. Dunn: Just show it on the plan. We have a concrete pad outside that door. Just show that on the plan?

Mr. Homeyer: As long as you label it on the plan as being a loading area, you don't have to stripe it on the ground.

Mr. Borman: I also sent a memorandum to Taylor (*Reamer*) today. I asked him to share it with you. Garfield's mayor had submitted some comments back on March 26, 2019, unbeknownst to be at all. Apparently, Garfield passed an ordinance on March 26, 2019, changing the weight limits of trucks within the city limits of Garfield. We did not know about that until Monday, (*April 1, 2019*). So, I've been dealing with that since then. We will be at the Garfield City Council meeting on April 9, 2019. I will have a resolution to this by the time we walk out of that Council meeting. The mayor who submitted this actually sits on our Board of Directors and voted to move the project in. Our problem is, the project was bid and moving forward and then we got sideways with this. We have offered several mitigation items for Blueberry Lane. It's the one-half mile we have to go through the City of Garfield to get up to the tank site. It is a paved road. We have offered to put steel plating. They have one water line that crosses the road. We have offered to plate that to protect it. Mayor Blackburn has said that the truck traffic will be continual. No, it won't. It will be busy during three periods of construction and we know when to tell them that that is going to occur: during the foundation pour, when the pedestal is being poured and when steel is delivered for the tank. That's when there will be increased truck traffic. The rest of the time, there won't be. We have also offered to put some DOT signs up there in the Garfield right of way if they agree. We have worked with the Benton County Sheriff's Department and Arkansas State Patrol. They know that additional trucks will be coming through up there.

My grandkids go to Garfield Elementary. There are no young kids that walk Blueberry Lane going home. Garfield Elementary requires that all kids either ride the bus or be picked up after school because of the proximity to Highway 62. So, that's kind of a non-issue. We are trying to do everything we can to work with Garfield to do this. I've offered to put up a \$100,000 surety bond which would repave that road twice over in case there is any damage that we don't fix when the project is done. Obviously, we are going to fix any damage that may occur due to contractors delivering stuff up Blueberry Lane. Hopefully, after Tuesday, April 9, 2019, I can send the information to Taylor (*Reamer*) saying that we've got some resolution to this, preferably a waiver to Ordinance 180 which they passed with none of us knowing about it and get moving forward. We stopped everything up there right now. We were in the process of installing a geocam, getting ready to install our silt fence and staking out the site. We were going to move it heavy equipment; but obviously since this ordinance was passed, we are not doing anything right now because all the trucks and weights they have requested are non-standard. Needless to say, our tank contractor is telling us this will cost us a lot of money to change this out. So, I will get that resolved next week with

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Garfield. Then we can hopefully be clear on everything and Matt (*Dunn*) can do whatever changes we need to have done to the site plans to meet your needs.

Mr. Reamer: Just so everyone is aware, the property is not within the city limits of Garfield but it is in close proximity, in their planning area. This allows them to review for sub-division of land. But, being in their planning area, by state statute, I notified that jurisdiction of what was happening with this project. The mayor issued comments to me. I forwarded them to the applicant and this is the response that we are getting. This is part of a courtesy review that has now stemmed to this conversation, just to be transparent.

Mr. Borman: That is why I included Taylor (*Reamer*) on everything that I've communicated back and forth. We want to be open and honest about it. The plans for this tank have been in process for a year. Garfield has been well aware that we were moving forward with this project because it is needed. At the last minute, we got hit sideways.

Mr. Bracy: So, what is going to be the alternative here if they don't give approval? You can still build the tank. You will just have to reduce the weight of the vehicles going through there?

Mr. Borman: Yes, it will cost a lot of money to do that.

Mr. Bracy: Does that mean that the mayor of Garfield is against this project?

Mr. Reamer: I couldn't proprot either way if the city or the mayor is against or for the project.

Mr. Torrez: We will hear about it in two weeks.

Mr. Reamer: I believe the issues that have been raised previously by the city of Garfield, will be remedied by the Public Hearing.

Mr. Borman: Yes, what really got me was the whole logic of that. If you lower the weight limits and I have to cut the concrete loads from 8 yards to 4 yards, we will have double the amount of trucks going up there. So, what are you helping out other than costing the Authority, which you sit on the Board of, a whole lot of money? That's kind of where we are at with all of that right now.

**4. Other Business: None**

**5. Staff Updates - Administrative Approvals:**

- I. Odom Minor Subdivision, #18-278, 9860 South Morningstar Road, Bentonville; 18-09182-005
- II. Koenig Lot Combination, #18-293, 10107 Bordeaux Road, Rogers; 15-06450-000
- III. Mims Lot Combination, #19-022, Cathedral Lane, Gravette; 15-07376-000
- IV. Berryman Minor Subdivision, #19-026, 11979 Tyson Road, Lowell; 18-02266-000

**6. Discussion Items: None**

**Meeting Adjourned:** 7:15 p.m.


**Next Meeting:** April 17, 2019

APPROVED THIS 17<sup>th</sup> DAY OF April, 2019.

**ATTEST:**

  
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**PLANNING DIRECTOR or  
SENIOR COUNTY PLANNER**

**APPROVED:**

  
\_\_\_\_\_  
**PLANNING BOARD CHAIR or  
PLANNING BOARD VICE CHAIR**