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Benton County Planning Board  
Public Hearing  
Technical Advisory Committee Meeting

BETSY HARRELL  
COUNTY PROBATE CLERK  
BENTON COUNTY, AR

June 19, 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, Ron Homeyer, Terry Maienschein, Stephen Torrez and Ashley Tucker were present. Rick Williams was absent.

**Staff present:** Taylor Reamer – Director of Planning, Tracy Backs – County Planner

**Public Present:** 20 people signed the Sign In sheet

**Disposition of Minutes:** June 5, 2019

Mr. Tucker motioned to approve the June 5, 2019, Planning Board Meeting minutes. The motion was seconded by Mr. Maienschein

Motion approved: 6 – 0

**General Public Comment:** None

**Old Business:**

**New Business:**

- I. Jones Major Subdivision, #19-098, 9850 South Morning Star Road, Bentonville; 18-09182-007
  - Jones Major Subdivision – Preliminary Plat Waiver, #19-111, 9850 South Morning Star Road, Bentonville; 18-09182-007

Representative: Victor Lugo, 5410 SW Cherry Creek Road, Bentonville

Staff gave a presentation on the Jones Major Subdivision, #19-098, 9850 South Morning Star Road, Bentonville; 18-09182-007

- Jones Major Subdivision – Preliminary Plat Waiver, #19-111, 9850 South Morning Star Road, Bentonville; 18-09182-007

Applicant had nothing additional to add.

Mr. Reamer explained that the waiver was needed here due to the fact that the applicant is not interested in installing roadways, drainage and other infrastructure improvements.

Public comment: None

Mr. Tucker made a motion to approve the waiver. Mr. Maienschein seconded the motion. Motion approved: 6 – 0

Mr. Tucker made a motion to approve the Major Subdivision. Mr. Maienschein seconded the motion. Motion approved: 6 - 0

**II. Humane Society for Animals Site Plan Review, #19-103, 407 East Nursery Road, Rogers; 18-03578-000**

Representatives: William Platz, WR Consulting, P. O. Box 223, Bentonville, Patsy Simmons, Vice President of the Humane Society for Animals, 1129 West Lilac, Rogers and Don Spann, architect, 1108 West Poplar Street, Rogers

Staff gave a presentation on the Humane Society for Animals Site Plan Review, #19-103, 407 East Nursery Road, Rogers; 18-03578-000

Mr. Platz added that the ADEQ permit will be time consuming to get and is hopeful to get approval and a grading permit to at least complete the dirt work while waiting weeks or months to get an ADEQ permit.

Mr. Tucker asked if the septic disposal was within 300' of the sewer line. Mr. Platz stated that it was not. Mr. Tucker asked if a waiver was received from Rogers Water. Mr. Platz stated that Rogers Water wouldn't service this project unless the property owners annexed into Rogers. The property owners were not willing to do that. Rogers Water is not going to force the property owners to connect to their water supply. Septic is already existing for the existing facility. A new septic will be installed for the new facility.

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Mr. Tucker inquired about storage and disposal of animal waste. Platz stated that it would be bagged daily and put in the trash. There will not be any going into the septic system. A pressure washer will be used to wash out the facility occasionally. No additional dumpsters will be needed per Mr. Platz.

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The applicant is not planning to double the number of animals on site. New facility is more of a show place for the adoption of the animals they already have.

Mr. Tucker inquired about hours of operation. Ms. Simmons stated that the hours will not change, Wednesday through Sunday, closing at 4:30 p.m. Wednesday through Saturday and open 1 - 3 p.m. on Sunday.

Public Comment:

Camille Aguilar, 2206 South B Street, Rogers  
*Focus of comments: compatibility with area residents; construction issues for residents living near the facility*

Contracted builder for the facility, Quinton (*last name unknown*) stated that the facility was far west, close to the existing dog park. Facility will be made of foam, concrete block. Hours of construction will be normal hours.

Mr. Tucker motioned to approve the Site Plan Review, subject to the six stipulations. Mr. Maienschein seconded the motion.

Motion approved: 6 - 0

III. **Hendren Site Plan Review, #19-107, 10927 North AR 59 Highway, Gravette; 18-15191-022**

*Mr. Homeyer recused himself as Planning Board Chair to represent this project.*

Representative: Ron Homeyer, Civil Engineering, Inc., Siloam Springs

Staff gave a presentation on the Hendren Site Plan Review, #19-107, 10927 North AR 59 Highway, Gravette; 18-15191-022

Public Comment:

Darryl Hodge, 18650 Hodge Road, Gravette

*Focus of comments: flooding on his property adjoining the property specified for this project. Had conversations with the Benton County Road Department and representatives from the state of Arkansas*

Mr. Tucker mentioned that Mr. Hodge could discuss the flooding issue with his Quorum Court representative from his area or the County Judge

Mr. Homeyer stated that there is a detention basin shown on the site plan with a 5' berm and a culvert installed to handle the excess water. Post construction water discharge will be reduced slightly.

Mr. Tucker motioned to approved this Site Plan Review with the stipulations as stated. Mr. Collyge seconded the motion.

Motion approved: 5 – 0 – 1 (Mr. Homeyer abstained)

- IV. **Diamond Communications, McGarrah Telecommunications Tower, #19-108, 15114 East Highway 264, Lowell; 18-02745-001**  
- **Diamond Communications, McGarrah Telecommunications Tower Setback Variance, #19-108, 15114 East Highway 264, Lowell; 18-02745-001**

Representatives: Randy Frazier, attorney representing Diamond Communications, Kutakrock Attorneys at Law, 124 West Capitol Avenue, Suite #2000, Little Rock, AR; Ms. Kelly Gottsponer with FirstNet Public Safety Solutions, 14818 Cedar Heights Road, North Little Rock, AR; Pete Melnicki, Lowell Fire Chief, 16194 Pin Oak Road, Fayetteville; Honorable Chris Moore, Mayor of Lowell, 111 Devonshire Avenue, Lowell; state representative, Grant Hodges, 8605 Apple Glen, Rogers and with the city of Lowell, Economic Department; Dustin Christall, 1001 Technology Drive, Little Rock, AR, a radio frequency engineer from ATT, Jim Curley, a site acquisition representative, 13115 National Steps Drive, Roland, AR; Ms. Cathy Forager (*correct spelling unknown*), ATT external affairs representative; and Matt Ashley, Senior Real Estate and Construction Manager for ATT, 1001 Technology Drive, Little Rock, AR

Mr. Frazier stated that there is an existing, 195' tower on this site approved about five years ago with no tenants currently on the tower. ATT could not meet its coverage needs for the area at 195'. Additionally, the emergency needs of this area of the County can be

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satisfied by FirstNet (with ATT), but not at 195'. The hardship that ATT and Diamond Communications has is that ATT is required to provide optimal coverage according to its FCC license. 255' will provide the coverage needed. 195', will not. There are existing topographic factors as well. The slope and terrain of the land makes it virtually impossible to meet the 50' from the roadway setback. It's the same property and the same location. We call this a 'drop and swap.' Drop one tower that isn't meeting the coverage needs and swap it with the new tower. Also, we want FirstNet to have emergency coverage for First Responders. In essence, our hardship is the ATT and FirstNet need the higher altitude to provide needed coverage. The slope of the property won't allow this at the existing tower site. The site is an optimal spot for coverage and safety of the community. This is a benefit that the community receives with this small variance. No adjacent property will be significantly or adversely affected and the tower won't change the character of the area.

Ms. Kelly Gottsponer, from FirstNet Public Safety Solutions

Addresses the safety concerns of the community. FirstNet 25-year contract awarded to ATT to build their network. Currently they are in year 2. *Handouts provided regarding FirstNet.* Emergency service must be provided to First Responders and the general public. 98 percent of 911 calls originate from cellular phones versus land lines. First Responders need access to data (i.e. EKG information, photos of accidents, etc.)

Dustin Christall, radio frequency engineer for ATT

Need additional tower height to cover all residential communities in the area as well as the adjacent park.

Mr. Maienschein asked if that particular area was covered by another carrier.

Mr. Christall couldn't comment on that question. He is only familiar with what ATT covers.

Mr. Frazier discusses the propagation map provided showing existing coverage and additional coverage if the tower is heightened.

Mr. Torrez asked if a Sprint or T-Mobile, for example, user would be able to make a cellular call in this area.

Per Ms. Gottsponer the tower will not use other carriers unless there is a 'roaming' agreement between the two providers.

Mr. Bracy stated that this tower is only for ATT service.

Ms. Gottsponer agreed that currently the tower will only service ATT customers.

Mr. Bracy asked what service provider the First Responders in this particular area use.

Ms. Gottsponer stated that the area First Responders are not all currently on ATT. ATT won the FirstNet contract because ATT gave First Responders priority (over the general public) access to all their LTE spectrum. Use of FirstNet via ATT is not federally mandated. Currently, FirstNet coverage is spotty across the entire nation.

Pete Melnicki, city of Lowell, Fire Chief

Can provide the Planning Board with a short of list areas where First Responders cannot communicate in or communication is very poor (i.e. Hickory Creek Park, Pleasure Heights, Green Valley Bible Camp, Monte Ne Chicken, Canal Street, Monte Ne RV park, etc.)

Ms. Gottsponer stated that the towers will provide service to the general public (through ATT and perhaps through other carriers) as well as the First Responders. The most expensive plan for FirstNet service is \$45 per month.

Mr. Bracy asked for clarity in describing the hardship in moving the tower 50' back on another site.

Per Mr. Frazier, the topography on the current site is the slope and topography of the land.

Mr. Torrez also asked why this particular piece of property was chosen if it was too small for the heightened tower.

Mr. Frazier stated that the ATT engineers narrow down possible sites. It takes a willing lawn owner as well. ATT wants to use their existing site rather than start fresh at a new location.

Mr. Bracy asked if the applicant has looked at other sites not requiring a variance.

Matt Ashley, Senior Real Estate and Construction Manager for ATT and site acquisition manager

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We did have a search ring and other candidates were ruled out at that time. There are three other towers within the general area, two of which ATT is located on. The other one is too far to potentially service this particular area. We also looked at any existing sites within a five-mile radius to see what towers were available. There were three available but two of them ATT was already on.

Mr. Reamer stated that the proposed tower site would be just below 1330. I believe Mr. Bracy's point is, why cannot ATT move the tower 50' along the same contour, without losing any elevation and be 50' further away from the road?

Per Mr. Ashley, starting fresh with a new site acquisition would delay the project 12 to 18 months.

Mr. Bracy clarified that ATT is saying that there would be a significant financial and timing penalty.

Mr. Torrez asked the applicants to explain their timeline.

Mr. Ashley stated that the project would start with Dustin Christall. He would have to review the area again to verify that sites would cover the area ATT is trying to cover. ATT would have to work with the land owners to obtain a lease. Then an FAA, FCC permit process.

Mr. Torrez asked if ATT's plans would change if another carrier built a tower in the area.

Mr. Ashley stated that ATT needed this particular area. There really is no other alternative for the area.

Mr. Torrez asked what has changed over the years to make the existing tower, built in 2014, unusable.

Mr. Ashley stated that technology has changed to LTE technology requiring a higher tower to reach over the second ridge in the topography.

Mr. Tucker stated that it may be advantageous to use an existing, previously developed, site rather than moving the site 50' west and disturbing additional land and creating additional environmental impact. Additionally, the fall radius extends over the adjacent property even at the reduced fall line. Has ATT talked to the adjacent property owner about an easement or do they find it acceptable for ATT to make a portion of their property unusable?

Mr. Frazier stated that he was not aware that that communication has taken place. I don't believe there is anything that requires ATT to have to do that in order to get a variance for a tower.

Mr. Tucker stated that it could result in a 'taking' if the Planning Board approves something that would render another person's property unusable.

Mr. Frazier stated that the adjoining property is currently unimproved and questions whether 'taking' the adjoining land applies. ATT is asking for the least intrusive option in the area rather than leaving the existing tower. We are moving the new tower further away from the road than the existing tower. The tower will provide a benefit to Diamond Communications, ATT, FirstNet, to other carriers as well as the First Responders and the local community.

Mr. Bracy stated that if the Planning Board grants this variance, it will set a precedence that the Board has never approved before. Everyone of the other carriers, in the future, will appear before the Planning Board with the same variance request.

Mr. Torrez discussed the interest in Arkansas tourism and the desire to make the area a world-class bicycling hub.

Ms. Gottsponer mentioned that the FirstNet towers have to meet public-grade standards. ATT can't expect the same standards to be placed on ever tower carrier. A 911 Address Point map was shown on the monitors. To delay this tower causes more than sixty, 911 address points to receive poor coverage. Additionally, the local park has about 62 campsites in it. Those campsites are not being covered as they should be. The death of a citizen in the area is not worth 50' of variance.

Mr. Homeyer mentioned that ATT is asking for 60' of additional height and asked how far ATT has moved the tower from its current location. Is it 60 additional feet? Mr. Homeyer is trying to determine if ATT is asking for a bigger variance than was already previously granted. How far is ATT proposing to move the tower? I don't see a dimension on any of the ATT plans.

Ms. Gottsponer stated that the new tower would be 255.1' verses 305' required.

Mr. Homeyer asked how much variance was granted previously versus how much ATT is asking for now.



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Mr. Reamer stated that there was a 13 percent variance approved in 2014 and a 16 percent variance today or a 3 percent increase in requested variance.

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Mr. Homeyer stated that the variance is the same footage.

Mr. Reamer stated that within 3 percentage points, the current variance is 3 percent more than it was in 2014.

Mr. Homeyer stated that as far as precedence being set, the Planning Board has already granted a fairly large variance.

Mr. Maienschein requested that Staff visit this area to determine what kind of service is actually there by other carriers. I would like to know if another service provider is covering that area and we just have a competition issue.

Mr. Reamer stated that there are consumer-grade coverage maps available.

Mr. Tucker commends the applicant on their due diligence in support of their variance request.

Honorable Chris Moore, Mayor of Lowell

The ATT cell service is lacking in the area. I am trying to improve the quality of life for those in my community and protect the men and woman who serve in this area. We back up Benton County in this area as well. Our radios do not work in this area.

**Public Comment:**

Grant Hodges, 8605 Apple Glen, Rogers and state representative for District 96 which covers eastern Benton County  
*Focus of comments: representative for the citizens in this specific area; one of the top three issues (lack of/poor cellular service) that he receives comments from his citizens about; dangerous roads, boating and other safety concerns; benefits of the new tower outweigh the small variance requested*

Mr. Bracy asked if the other carriers will have the benefit of the FirstNet network.

Ms. Gottsponer stated that the other carriers will not have the opportunity to have FirstNet. These other carriers will have the

opportunity to co-locate on the towers, as with any other tower. So, the new tower does benefit other carriers in that respect. Mr. Bracy asked if all the area First Responders will have access to FirstNet.

Ms. Gottsponer stated that the more towers that are built, the wider FirstNet will spread and the more access the First Responders will have. This network will continue to improve and grow under the FirstNet authority. The First Responders are not required to have FirstNet. They have the option because not all locations have ATT coverage currently. FirstNet is not a federal mandate.

Mr. Collyge asked if the First Responders can have access to FirstNet if they don't have ATT as their service provider.

Ms. Gottsponer responded that no, you cannot have FirstNet without ATT.

Mr. Bracy asked if our First Responders have ATT.

Ms. Gottsponer mentioned that many do but not every single one. Rogers Fire Department does. FirstNet has just started in the past year and a half. In Arkansas we have approximately 9,000 First Responders on FirstNet and growing daily throughout the country. FirstNet users get an invoice from FirstNet which comes with a higher level of security than a consumer-grade cellular service.

Mr. Frazier reviews the previously viewed propagation maps showing improved coverage with the new, higher tower at 255'. The further the new tower goes in elevation, the higher the tower needs to be built. I believe that one, existing tower, that will handle all the carriers, is better than two or three additional towers in the area.

Mr. Tucker made a motion to approve the Variance. Mr. Collyge seconded the motion.

Motion failed: 2 - 4

Mr. Homeyer asked the applicant if they would like to have the Planning Board vote on the Telecommunications Tower Site Plan Review or would the applicant like a few weeks to re-evaluate.

Mr. Frazier requested to have the Planning Board proceed with a vote on the tower itself.

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BENTON COUNTY, AR

Mr. Tucker made a motion to approve the tower. Mr. Torrez seconded the motion.

Mr. Maienschein requested that the motion be amended to a suitable location.

Mr. Homeyer stated that no, the vote needs to be for what is presented.

Mr. Tucker asked to be allowed to amend his motion.

Mr. Tucker motioned to approve the tower with a variance of the same height that was previously approved. Mr. Torrez seconded the amended motion.

Mr. Reamer requested that the Board clarify what they are voting on. In 2014, there was a 13.06 percent variance, or 32', on the required 305' setback.

Mr. Homeyer asked if Mr. Reamer was speaking of percentage or actual footage.

Mr. Tucker stated that it was a percentage.

Mr. Reamer stated that the applicant will receive a 39' variance, meaning the height of the tower will be 265' plus 50'. Is that correct?

Mr. Homeyer stating that the applicant is requesting a 255' tower so felt that something was incorrect. The tower would be 251.1 to the road right of way and 255' to the edge of the pavement.

Mr. Reamer stated that there was an option between the applicant and the Planning Board to either consider the application as currently amended with a 13 percent variance or to be tabled to determine the engineering on having a tower at...

Mr. Frazier: We are not requesting that the application be tabled. The Planning Board has amended the Diamond Communications application and I wanted to be sure that Diamond Communications accepted that amendment. If the application is amended, it needs to be amended properly. Diamond Communications approves the amendment.

Mr. Homeyer stated that a variance still needs to be approved at the lower height. Does the variance run with the property or with the project? My understanding is that a variance runs with the land.

Mr. Tucker stated that once a variance is granted on the land, it's granted. It doesn't matter if the project is built.

Mr. Homeyer stated that it wasn't a percentage variance but a specific footage variance. If the tower is approved, it has to be within the footage variance.

Mr. Reamer agreed and stated that the height of the tower needs to be determined.

Mr. Homeyer stated that the height of the tower would be 9' shorter.

Mr. Tucker stated the procedurally, the motion is dead and could not be granted as stated.

Mr. Homeyer stated that since the variance was denied, if the tower is approved, the maximum they can vary is by the 32' the applicant was granted originally. The variance would have to be put back on the agenda again to be heard a second time by a super majority of 5 out of the 6 present here tonight.

Mr. Reamer clarified that there is a motion to approve the tower as is.

Mr. Homeyer stated that the motion could be subject to the variance. Otherwise, we have a request for a 255' tower.

Mr. Reamer stated that the maximum height can only vary 32' because that what the original variance was for.

Mr. Homeyer agreed. It was a 32' reduction of the setback.

Mr. Reamer stated that the applicant would gain 28' from the original monopole to the new tower.

Mr. Tucker made a motion to withdraw his previous motion. Mr. Torrez agrees to withdraw his second. Mr. Tucker made a motion to put the variance back on the table. Mr. Collyge seconded the motion to reconsider the variance.

Motion approved: 6 – 0

Mr. Tucker made a motion to approve the tower with an amended height of 246'. Mr. Collyge seconded the motion.

Mr. Reamer stated that the setback was to be 246', not a 246' high tower.

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Mr. Tucker stated that Mr. Reamer was correct. 246' from the highway in lieu of the required setback.

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CO & PROBATE CLERK  
DEWITT COUNTY, AR

Mr. Homeyer does not agree with the 246' setback as the correct number.

Mr. Reamer feels that the application needs to be revised or tabled to be reconsidered.

Mr. Tucker stated that the proposed tower would need to be 255.1' from Highway 264 in lieu of the 297.35' required.

Mr. Homeyer stated that that would be a 42' reduction in the setback requirement, instead of the 32' that the Planning Board granted five years ago.

Mr. Tucker stated that the variance was the same percentage as previously.

Mr. Frazier asked if that would put the height of the tower at 247.32'. Would that be another vote on the variance and then also on the tower itself?

Mr. Reamer clarified that the tower would be 247' high.

Mr. Torrez clarified that the setback would be 255' which would be consistent with the 13 percent variance that was granted in 2014.

Mr. Homeyer clarified that the set back reduction that the Planning Board is considering is 42'. There was a 32' reduction in 2014. The applicant would have to reverse the math to get the maximum tower height.

Mr. Frazier requested the tower height be specified also so that there will be no future discrepancy.

Mr. Homeyer stated that the 42' setback reduction allows for a 247' tower, instead of the 255' requested. So, the tower would be 8' shorter than what the applicant initially requested. The tower has to stay in the location the applicant proposed.

Mr. Frazier agreed to amend the Diamond Communication application using the numbers provided by the Planning Board (42' setback reduction and a 247' high tower).

Mr. Reamer clarified that the height of the tower is 247'.

Mr. Tucker proposed that the new tower be located 255.1' from Highway 264 in lieu of the 297' required, a 42' variance. Seconded by Mr. Collyge.

Motion for variance approved: 6 – 0

Mr. Tucker made a motion to approve the tower with items a – e, which included the 247' tower change. Mr. Torrez seconded the motion.

Motion for the tower approved, with the five conditions: 6 - 0

**TECHNICAL ADVISORY COMMITTEE**

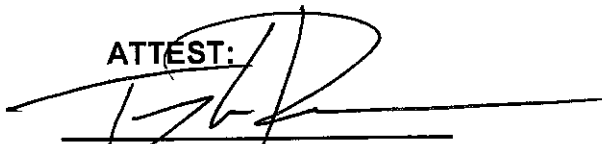
1. **Call to Order**
2. **Old Business / Ongoing Applications: None**
3. **New Business: None**
4. **Other Business: None**
5. **Staff Updates - Administrative Approvals:**
  - I. Holland Minor Subdivision, #19-052, 12808 Frisco Cemetery Road, Lowell; 18-04084-000
  - II. Slaymaker 2 Minor Subdivision, #19-118, Armadillo Road, Garfield; 18-00239-000
  - III. Brown Property Line Adjustment, #19-120, 14838 Esculapia Hollow Road, Rogers; 18-03749-008
6. **Discussion Item:** Quorum for July 3, 2019, Planning Board meeting. It was determined that there will be a quorum for the July 3, 2019, Planning Board meeting.

Meeting Adjourned: 8:50 p.m.

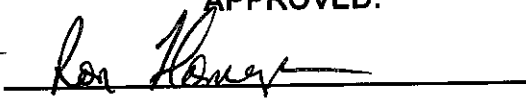
Next Meeting: July 3, 2019

APPROVED THIS 3rd DAY OF July, 2019.

ATTEST:

  
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PLANNING DIRECTOR

APPROVED:

  
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PLANNING BOARD CHAIR or  
PLANNING BOARD VICE CHAIR