

Sublette County, Wyoming
Planning and Zoning Commission
Official Minutes

September. 15th, 2022

A meeting of the Sublette County Planning and Zoning Commission was held in the Commissioners Room of the Sublette County Court House on this date. Present were Sublette County Planner Dennis Fornstrom & Associate Planner Tess Soll, Deputy County Attorney Clayton Melinkovich, and Commissioners, Blake Greenhalgh, Ken Marincic, Pat Burroughs, Maiké Tan, and Comm. Lacinak.

Comm. Greenhalgh called the meeting to order at 6:13 pm. A large body of the public was present with approximately 45 signatures on the sign-in sheet. The actual number of members of the public was likely 60-65 in attendance. Comm. Greenhalgh spoke to the rules governing public input and proper procedure and decorum at a public hearing.

First Order of Business:

Approval of minutes from the 8/18/22 meeting. Comm. Tan states some grammatical errors and another issue.

Comm. Burroughs has a comment on the 8/18 minutes and feels the minutes from 8/18 were not completely accurate compared to the audio recording.

Comm. Tan seconds what Comm. Burroughs had stated. Reiterates the misspelling of her name and felt the minutes did not clearly define some things Mr. Bailey said at the August meeting.

No other board comment at this time. Comm. Greenhalgh states, to correct the minutes and approve the 8/18 meeting minutes at the next meeting scheduled meeting.

Items on the agenda were introduced by Chairman Greenhalgh as follows:

Agenda Item #1 The Sublette County Planning & Zoning Dept. Amendments to the Sublette County Zoning and Development Regulations.

Action #1

A motion is made by Comm. Burroughs to move agenda item 1 to the next regular meeting and the motion is seconded by Comm. Lacinak. Motion carries 5/0 in favor.

Agenda Item 2 An application by Visionary Communications LLC, requesting Conditional Use Permits for 5 Broad Band Communication Towers to be located within Sublette County. Barger Tower - Variance, increase tower height to 50 feet. Bondurant School - Conditional Use and Building Permit. Black Butte - Conditional Use and Building Permit. Big Sandy / Elkhorn - Conditional Use and Building Permit. Fisk / Bondurant - Conditional Use and Building Permit

Mr. Fornstrom describes the agenda item and application to the board. Four broadband towers have been installed and are now seeking CUP's. The fifth tower in Barger is a proposal for an amendment to a CUP already in place for that tower. Visionary is requesting additional height from 30ft to 50ft. **For clarification; 4 towers were erected without a CUP in place, the fifth tower in Barger has a CUP already in place prior to this meeting and, is seeking a height amendment to the existing CUP.** Mr. Fornstrom states the reason for the amendment to the fifth tower in Badger is to improve the service coverage in that area. Comm. Greenhalgh suggests focusing on the first four towers that have been erected and do not have CUPs

Board comment;

Comm Burroughs asks for clarification on all five towers presented in the agenda item. Mr. Greenough representing Visionary states, that the four towers were constructed in the fall of 2020 with CARES ACT money. They were awarded the money in October and had a build deadline of 12/31/2020. Mr. Greenough states because of the timeline which was put on Visionary from receiving the CARES ACT money and

the deadline of 12/31/2020, and a staffing change, obtaining the permits for the towers fell through the cracks and was not done. Mr. Greenough was only made aware of this compliance issue 4 months ago and then proceeded to contact the P&Z office to remedy the compliance situation. Mr. Greenough reiterates the factors at play for not obtaining the permits, and ultimately if Visionary did not meet the 12/31/2020 deadline they would not be paid by the State of Wyoming via the CARES ACT. Mr. Greenough acknowledges the oversight in the permitting process and tells the board this will not happen again, as he will be taking care of these matters himself, and Visionary values the working relationship with Sublette County and the community. Mr. Greenough states all zoning regs were adhered to when the towers were being constructed.

Comm. Tan asks if the towers can piggyback off other towers. Mr. Greenough states that Visionary will not share. Mr. Greenough gives a brief history of Visionary towers and locations in the county and compares them to other tower companies. The state of Wyoming dictated the placement of these towers in identified underserved areas. Mr. Greenough reiterates the time constraint factor for not obtaining the CUPs. Mr. Greenough states he is attempting to remedy the situation at this meeting because he anticipates bringing more towers to Sublette County.

Comm. Burroughs comments that she brought this to Dennis' attention in April about these towers and was told nothing. Comm. Burroughs states she spoke with Mr. Greenough several times in Nov/Dec. There is a discrepancy as to whether Comm. Burroughs spoke with Mr. Greenough or his predecessor Greg Worthen. Comm. Burroughs asks what the fine structure is for this non-compliance issue. The regulation is twice the application fee. Mr. Fornstrom states that he was unaware of the tower in Bondurant in April.

Comm. Lacinak comments that he appreciates Mr. Greenough's frankness by saying he's able to collocate Visionary's equipment on towers but is simply not willing to do it. Every other person representing towers has made up excuses. Comm. Lacinak stated that there is a negative impact of this on citizens and wildlife and by approving this request the Commission would be prioritizing corporate interest over the citizens of Sublette County.

Comm Marincic wants clarification on who decided the locations for the towers. Mr. Greenough provides an explanation of how the process with the state directive location unfolds. Mr. Greenough states that some towers were not built in this county because the landowner was not on board.

Public Comment: During this time approximately 10 people from the public had comments, and those issues consisted of the following:

- Fiber Optic
- Camouflaging the towers
- Slight confusion about cell towers vs broadband towers
- Why so rushed to erect the towers
- (Comm. Greenhalgh addressed the public standing outside for a comment opportunity)
- The appearance of circumventing the process
- Wildlife corridors
- CARES Act money
- Comp plan
- Property values
- No valid permits
- Are the towers coming down
- How close is adjacent

Additional board comment

Comm. Burroughs ask Mr. Greenough regarding places that have restrictions as far as how close to other structures in case there was a failure and having a tower that is sitting within 30ft of the Bondurant School. Is there a difference in that tower or maintained differently? Mr. Greenough indicated that is where the landowner wanted it.

Comm. Lacinak asks why the landowners are not here. P&Z has copies of the landowner contracts, and Visionary is representing the landowners on this issue.

Closing public comment

Dan Bailey is upset that some of the public is standing and asked if anyone had an idea of how many people would be attending the meeting.

Comm Greenhalgh addresses the people in the hallway for the second time if they have a comment. No comment.

Public comment closed

Comm. Burroughs and Mr. Fornstrom discuss fees and penalties for this non-compliance issue.

ACTION #2a Comm. Marincic makes a motion to approve the CUPS for a public facility for the four broadband towers with the understanding of a one hundred fifty-dollar (150.00) penalty fee per tower. Comm. Lacinak makes a friendly amendment stating that if at any time Visionary wishes to amend the CUP, they must return to the P&Z board. Comm. Marincic signifies that he agrees to the friendly amendment. Comm. Lacinak seconds the motion.

Comm. Lacinak made note of the fact that Planning and Zoning had required Chauncy Goodrich to take down a sign that did not comply with the Zoning Regulations and noted that he had heard stories on the P&Z office requiring individuals to deconstruct or move structures before his time on the Commission. He noted that failing to hold Visionary to the same account is an unequitable treatment that favors corporations over individuals and small businesses. He further noted that he was tired of companies putting up towers without agreeing to colocate at the sacrifice of Sublette County citizens and said that he will not vote yay on any tower until there is an agreement about collocating.

The motion fails 3/2 opposed.

The board now moves to discuss the fifth tower in Barger and Visionary's request for a height increase. Mr. Fornstrom describes the information presented in the proposal for the height increase. This tower was permitted and has an existing CUP, and the condition on the CUP is the height may not be increased except upon the approval of the BOCC. Visionary is requesting to increase the tower from 30 ft to 50ft to provide additional service in the area.

Board comment:

Comm Burroughs asks for clarification that this tower was not among the towers built without a permit.

Comm Lacinak asks for what reason is there an additional need indicated. Mr. Greenough states the topography is the main barrier of service.

Comm. Tan asks how tall LR's tower is in the same vicinity.

Comm. Marincic asks if it was foreseen that this tower would need to be extended. Mr. Greenough states that the height increase is being driven by potential customer feedback in that area.

Comm Lacinak states a precedent will be set and other companies will ask for an increase as well.

Public Comment: This period consisted of one in-person comment and one written comment. Both comments were in opposition to the extension.

Additional board comment:

Comm Lacinak states it would be nice to have actual data for the claim Mr. Greenough is making as to the need. Mr. Greenough states that he does not have any data and instead states that from time-to-time people call and ask about service availability and they make note of it. He noted that they do not know if the need persists or whether people may have decided to use another service.

Comm Tan is concerned about the need vs the competitiveness of this and is not convinced.

ACTION #2b Comm Marincic makes a motion to approve the extension of the Barger tower to 50ft as requested. Comm Lacinak makes a friendly amendment to the motion that if there are future requests for height changes it comes back to the P&Z board. Comm. Marincic signifies he agrees with the friendly amendment. The motion is seconded by Comm. Lacinak.

Comm. Lacinak noted that there is a negative impact to the public and before the P&Z Commission approves something that has a negative impact on the public that he would like to see quantitative data that proves that the benefit justifies the negative impact before the board recommends approval.

The motion fails 3/2 opposed

Agenda Item 3 An application by Jason and Melinda Moyes requesting a Conditional Use Permit for a Public Facility, (Sanctuary Lodge / Trauma Therapy Center) to be located within Agricultural Zoned lands, pursuant to Chapter V, Conditional Uses, and established in accordance with Chapter II, Section 3.b.(6)(g) of the Sublette County Zoning and Development Regulations. This 614-acre Agricultural parcel lies on the westerly side of US. HWY. 189/191 and being part of T36N, R112W, SEC 2 & 3, of the 6th PM of Sublette County, Wyo.

Mr. Fornstrom describes the information provided to the board. This application is coming as a CUP as a Public Facility in the A-1 zoning district. A public facility is listed in the regs in almost all districts as a CUP. Mr. Fornstrom explains the reason why this application is a CUP vs rezone. The CUP allows for the parcel to retain its A-1 designation, CUP only addresses the use, and through the CUP agricultural activities can still occur such as livestock grazing. The county zoning regulations define public facilities. Mr. Fornstrom reads the definition from the zoning regulations. Mr. Fornstrom states that by definition, this facility and the use falls under public facility.

Before moving on to Rio Verde Engineering and Mr. Moye's presentation, Mr. Melinkovich addresses the room regarding how definitions work regarding administrative law. He explains the county is an administrative agency within the state that sets its own rules and regulations and creates its own definitions. Mr. Melinkovich references the Supreme Court and WY Supreme court decisions for context in this matter and recites the language from the Chevron Deference to the room. Mr. Melinkovich fields a question asking if he will read the comp plan in regards to the public facility. His response is, that is the part of what this board and the BOCC does, determines whether the definition fits or not and later can be challenged. The P&Z board will make a recommendation to BOCC and the BOCC will make the final determination. Mr. Melinkovich closes with a reiteration of his summary as to how definitions work and the lens through which they are viewed.

Mike Jackson addresses the board with his application presentation. Mr. Jackson touches on the importance of public facility definition. Mr. Jackson gives a summary of the front-end process in the ultimate decision to bring the CUP application. Clarifies that this application is on use, not a business management plan. Mr. Jackson points the board's attention to maps on the overhead that provide overlay maps of the migration corridor, highlighting the main structure being out of the corridor. Mr. Jackson hits on keeping the open space and not taking ag land out of production. Mr. Jackson states he feels that he has provided the information necessary to complete the CUP application. The application is utilizing minimal space on the parcel and the rest remains open space. Mr. Jackson summarizes what the facility could use as far as water and the facility could utilize water storage using a slower flow rate, and this water facility would be regulated by WY DEQ. He concludes that this facility shouldn't affect neighboring landowners concerning proposed water usage.

Mr. Moyes addresses the board and opens with a correction to the application in reference to the task force organization and the true nature of the relationship with them, being none at this point in time. Mr. Moyes hopes to work with them in the future. Mr. Moyes would like to address common themes among the comments and concerns with his proposal. Those consisted of:

Personal attacks

CUP will execute best what they would like to do

Has no plans of changing their minds about use, however, a CUP would force them to go back to the county if they changed the use.

Beauty of the land and wildlife.

Visibility, lighting, and noise

Screened area

Mule Deer Corridor

Density

Fencing

Diminish the beauty of the property

Mr. Moyes describes the facility as a residential treatment center for young girls and women of sexual trauma. Mr. Moyes provides stats on sexual abuse. Touches on the oppositional letter-writing campaign, and states the general lack of awareness that was expressed in the community letters. Mr. Moyes describes in detail how trauma therapy will work for the clients at the facility to the board. Mr. Moyes would like to provide clarification as to the clientele they will have at the facility as there has been some confusion. Mr. Moyes describes the type of staff-to-client ratios there will be and the educational backgrounds the professionals are required to have. Next, Mr. Moyes describes what he anticipates for seasonal vs year-round operation at the facility.

Board Comment:

Comm. Tan comments that she appreciates the mission of the development and felt like the presentation goal came across clearly. Asks Mr. Moyes what age range of women he will be targeting. The demographic will be approximately 12-26 years. Comm. Tan addresses the rumor of trafficking victims at the facility. What is the step-down process upon leaving the facility? Where will the clients be coming from? Mr. Moyes provides detailed answers to Comm Tan's questions. Comm Tan questions Mr. Moyes on possible funding streams. Comm Tan states the job of a board member is not to get into the business end of the operation but to evaluate the application on the applicable criteria.

Comm Lacinak states to Mr. Moyes that this evening is not a moral referendum on the need or seriousness in which the proposal is centered around. Comm. Lacinak asks Moyes what method was used to calculate traffic. Mr. Jackson responded that it was estimates put together by the applicant team. Comm. Lacinak asked if the applicant used the widely adopted and nationally recognized ITE standard or if it was 'back of the napkin'. Mr. Jackson responded that it was 'back of the napkin'. Comm. Lacinak asked why the nationally and widely adopted ITE standard wasn't used to calculate traffic. Mr. Jackson replied that they just didn't choose to use it. Comm. Lacinak asked Mr. Jackson if he was aware that his report incorrectly used the term 'trip', reporting the number of trips as 50% of the actual number. Trip, as defined in the ITE trip generation manual is a single or one-direction vehicle movement with either the origin or destination (exiting or entering) inside the study site. Using this definition, the number of trips offered in the report by the applicant would be up to 140 trips per day. Mr. Jackson responded that they chose to use a different definition for the word "trip" in their report.

Comm Burroughs states to Mr. Jackson that it came to her attention that WYDOT issued the access permit with a commercial approach. Mr. Jackson attempts to provide clarity on how WYDOT makes those designations.

Comm Marincic asks Moyes about the safety of the clients and if the facility would diversify to other genders.

Comm Lacinak asks Brandon Scurlock to provide comments on this development. He states that EO from the governor does not apply to private lands. The area is high pronghorn area, addresses the buck rail fence, outside sage grouse core, and is in crucial moose habitat. Recommend construction timeframes. Is suitable grizzly habitat and would make limited recommendations, forest service identified suitable habitats for Lynxes, however, have not been documented in the Wyoming range for quite some time. Mr. Scurlock explains direct and indirect disturbance as including building footprints and all of the traffic from autos, people, horses, dogs. Comm Lacinak asked Mr. Scurlock his expert opinion on whether an operation such as this would have a negative, neutral or positive impact on wildlife. Mr. Scurlock responded that, generally speaking, greater disturbance is worse than less disturbance.

Comm Tan would like to view the maps again and asks Brandon Scurlock to explain how corridors are delineated.

Comm Marincic notes the surrounding subdivisions of the parcel concerning disturbance and future development.

Short recess min 2:22.40

***Back in session min 2:29.30**

Public Comment portion consisted of approximately 27 people commenting on the following comment topics:

SAVF Task Force retraction

How CUP applications/process work

Location of facility
How will the development be financed
Opposed to location
Public vs private
Faith-based
Will the facility be utilizing state regs and oversight
Wildlife assessment
Couples therapy
Cost
Employee housing
Taxes
Wildlife
Water
Security
Viewshed
Need of facility
Viability
Skeptical of qualified professionals in Sublette County
In favor of the project
Age group
Concern regarding the developer's land holdings
Out of character with the location
Hoback Ranch water issues
Representing survivors of abuse
In opposition
Comp Plan
Not a public facility
Phony and fake
Letter read aloud
Letter read aloud
Letter read aloud
Special need
CUP criteria
Rehab industry
Statement of support
Statement of support
Ducks
Change
Emergency Service concerns
State certification

Jason Moyes speaks to the above-mentioned topics and concerns

Number of residential facilities in the state

Comm. Lacinak asked if the applicant was aware that they had designed a building height for their principal building that exceeded the allowable height for their zoning district. Mr. Moyes and Mr. Jackson said that they were not aware of that and speculated that this was part of the CUP request. Comm Lacinak noted that it was definitely not noted as part of the CUP request and this height would not be allowed according to the regulations and this application.

Comm. Burroughs clarifies the criteria for CUP

***Public comment ends minute 4:45.14**

Final Board Comment:

Comm. Lacinak commented that much of what the public comment had offered up for consideration was not applicable to the zoning regulations one way or the other and noted the importance of making a decision based on the zoning regulations and comprehensive plan. He noted that commentary focused on the need for these services spoke to only 1 of the 8 criteria noted in the zoning regulations and 1 of the 174 policies noted in the comprehensive plan, and that it was important to keep this in mind.

Comm. Lacinak noted Mr. Melinkovich's comment at the beginning of the meeting that the P&Z Commission and Commissioners are the only ones with the ability to interpret terms and their definitions within the regulations and comprehensive plan. He then pointed out issues with the applicant's interpretation of the term "public facility", referencing the applicant's application, multiple Wyoming state

statutes, Sublette County Zoning Regulations, and Sublette County Comprehensive Plan, providing rationale for why the applicant's definition of public facility was faulty and did not apply here.

Comm. Lacinak went on to discuss the inappropriate use of a CUP within an A-1 zoning district for this application and operation. He cited multiple excerpts of the Sublette County Zoning Regulations as supporting this stance, proposing that the applicant should be asking for a change of zoning district and not a CUP.

Comm. Lacinak responded to Mr. Moyes' comments regarding the P&Z Commission taking away his rights if the application was not approved, stating that Mr. Moyes did not have the right to be approved for a CUP. He further noted that Mr. Moyes was fully exercising his rights by requesting the CUP and being heard in a public meeting before the Planning and Zoning Commission.

Comm. Lacinak went on to provide the outcomes of his analysis of the applicant's application relative to the Sublette County Zoning Regulations and Comprehensive Plan. Comm. Lacinak found that of the 174 policies found in the Comprehensive Plan that 9 were favorable, 44 were unfavorable, 22 were unknown, and 99 were not applicable with regard to this application.

Of the 8 criteria for consideration identified within the Zoning Regulations, Comm. Lacinak found that 1 was favorable, 5 were unfavorable, 1 was unknown, and 1 was not applicable with regard to this application.

Finally, for the 2 findings that the P&Z Commissioners are asked to make with regard to the application, Comm. Lacinak found that both were unfavorable with regard to this application.

Comm Tan gives a final comment and states her main concerns are the migration corridor that needs to be respected and water.

Comm Burroughs gives final comments regarding rules of the application evaluation, ultimately following the zoning regs and comp plan and does not see how it fits as a public facility, and provides comments on other factors.

Comm Marincic gives a final comment and states he doesn't feel the impact will be as significant compared to the surrounding residential development that could occur. Comments on water and migration corridor and see both sides of the issue.

Comm Greenhalgh gives final thought and states he does not agree with the public facility definition and believes rezoning is the correct path to follow, comp plan issues, and CUP criteria.

ACTION #3 A motion is made by Comm Lacinak to deny the application for CUP as presented and the motion is seconded by Comm Tan with no further board discussion.


Motion carries 5/0 to deny

Old Business

None

Comm. Greenhalgh calls the Planning and Zoning meeting to adjournment at approximately 11:15 pm.

PLANNING AND ZONING COMMISSION
SUBLETTE COUNTY, WYOMING


Chris Lacinak, Chairman

Attest:


Dennis Fornstrom, Sublette County Planner

***** Please note that a digital audio recording of the meeting is available at the Planning and Zoning Office and online by going to the Sublette County Website. These minutes are a written summation of the meeting.**