Minutes of the
Planning and Zoning Commission of the City of Cherry Hills Village, Colorado
Held on Tuesday, February 23, 2010 at 6:30 p.m.
At the Village Center

CALL TO ORDER

Chairman Ira Plotkin called the meeting to order at 6:30 p.m.

ROLL CALL

Present at the meeting were the following Planning and Zoning Commissioners: Chairman Ira Plotkin; Vice Chair Laura Christman; Commissioner Jacque McIntyre and Commissioner Joe Poche.

Absent were Commissioners Ann Kerr, and Jim Rubin.

Also present at the meeting were the following staff members: Mr. Rob Zuccaro, Community Development Director; Ms. Laurel Landsman, Community Development Clerk; and David Foster, Deputy City Attorney for the City of Cherry Hills Village, Colorado.

APPROVAL OF MINUTES

Vice Chair Christman made a motion, seconded by Commissioner Kerr to approve the January 12, 2010 minutes as written. The motion passed unanimously.

AGENDA ITEMS

Request by NewPath Networks, LLC for a Conditional Use Permit to Locate a Wireless Communications Facility at Kent Denver School, 4000 East Quincy (Public Hearing)

Mr. Zuccaro began by saying that the request was to be reviewed at a public hearing and that all public notice requirements were met. The proposal is to install an antenna on a Qwest-owned utility pole adjacent to Meade Lane and install an above ground power pedestal and below ground equipment vault at the base of the pole. This node is part of NewPath's larger network of antennas that was approved by City Council. Because this node is on private property it is necessary for NewPath to apply for a Conditional Use Permit. The proposal is to put the antennas on the pole on the property line. The criteria for review are outlined in the February 23, 2010 staff memorandum.

Mr. Zuccaro stated that NewPath is also requesting a variance to the setback requirements for the facilities. Mr. Zuccaro explained that the setback requirement for a wireless communications facility is either the accessory structure setback for the zone district or a setback equal to the maximum height of the facility. In this instance, the maximum height of the facility is 24'8" and the accessory structure setback is 25'. Because the proposed facilities are located at the property line they are completely encroaching into the required 25' setback.

Mr. Zuccaro explained that staff made a negative finding on several of the review criteria in the staff report related to the setbacks not being met, but that if the variance were approved, staff's finding would be in the affirmative.

Mr. Zuccaro stated that staff also found in the negative on a criterion that requires landscape screening around fencing whenever fencing is used for screening. Only fencing is being proposed due to the constraints of Monroe Lane and the trail. He stated that there have been some discussions with the applicant about moving the equipment to the east side

of the trail where there would be room for landscape screening. This finding would be in the affirmative if the applicant where to make such a proposal, as is expected.

Mr. Zuccaro explained that an additional issue was that the antennas were shown to extend beyond the Kent Denver property line.

Mr. Zuccaro summarized by stating that staff is recommending approval of the Conditional Use Permit and the variance, but with the condition that the antennas be rotated on the pole so that the do not encroach across the property line.

Mr. Zuccaro added that there were some underground facilities that were located on the bridle trail without the City's approval, and that these facilities were not included in the applicant's request.

Chairman Plotkin asked how it happened that they placed the facility on the bridle trail without the city's knowledge.

Vice Chair Christman said when we have something that will encroach on a trail, shouldn't the matter come before the Parks Trails and Recreation Commission ("PTRC") before coming to Planning and Zoning.

Mr. Zuccaro said that the facility was placed on the bridle trail without the City's permission or knowledge so the matter of placement on the bridle trail was not addressed by either Commission.

Chairman Plotkin asked if there were any other questions for Mr. Zuccaro. There were no other questions.

Todd Wells, of NewPath Networks, began his presentation by saying that there happened to be one node that fell on private property and that is why they are here today. He said they had been working with Xcel Energy to find pole locations. He said that they had considered a different pole on Monroe Lane, but in an effort to move the facility out of the view of a resident, they decided on the current pole location.

Mr. Wells stated that the facilities are designed the same as the other nodes throughout the City, including painting the antennas and conduit to match the color of the poles.

Mr. Wells explained that the equipment vaults on the trail were installed to run the underground fiber to the node. They received an e-mail today regarding the equipment vaults buried on the trail and plan to move them off of the trail tomorrow.

Mr. Wells stated that there is also an underground equipment vault and Xcel residential-type meter that will be above ground at the base of the poles. They plan to move the equipment from the location shown on the plans, to the west of the trail near Monroe Lane, to the east of the trail. They could put a decorative enclosure over the meter and surround it by shrubs or place it with just shrubs. The equipment has to be 10 feet from the existing pole, which is an Xcel requirement.

Mr. Wells explained that AT&T and Verizon wireless are currently using the network.

Vice Chair Christman asked if Kent Denver was all right with the devices being placed on their property. She asked if they were all right with the move into the hay field where they do cross country and other activities.

Mr. Wells said he would have that conversation with Kent and report back to Mr. Zuccaro. He said he had talked with the facilities director and he had signed off on it.

Chairman Plotkin asked why Xcel could establish the criteria for placing the meter.

Mr. Wells replied that they will not give them service unless it is done the way they want.

Vice Chair Christman asked about the pole location and the location of the meter with respect to the trail. She suggested that the west side of the road might be a possibility.

Mr. Zuccaro said he doesn't know if there is enough room on the west side of the road between the street edge and the property line for the facility.

Vice Chair Christman asked if they could split the location of the power meter and the underground vault with the pole on one side of the road and the above ground equipment on the other side.

Mr. Wells said no because the meter has to be next to the underground vault.

There being no further questions from the Commissioners, Chairman Plotkin opened the floor to members of the public who wanted to speak.

Dannielle Heller of 26 Cherry Lane Drive began by saying she is representing the equestrian community of Cherry Hills. She showed some pictures of the poles that she had taken. She said she was concerned about anything that was placed near the bridle trail. She was also concerned that if the facilities are placed in the hayfield that the maintenance workers would be parked on the bridle trail.

Geoff Post, the representative for Star Tree Trust, the owners at 4600 Monroe Lane, asked about the facility being placed in the setback. He said that the owners would disapprove of a variance being granted. Mr. Post asked if there were alternative locations which might work for the facility that would not be so problematic. He also said that the owners have had discussions with Xcel about burying utility lines on Monroe Lane. He said that if the facilities are located where NewPath is describing on the poles in their plan that it would make discussions with Xcel about burying utility lines more difficult. He asked whether any Denver Water easements were in that location.

Mr. Zuccaro said that he did not see a water easement on the plans provided by the applicant.

Chairman Plotkin asked if the owners of 4600 Monroe Lane were successful in having their lines buried, would they be opposed to a cell tower. He asked if their concern was an above ground tower north on Monroe.

Mr. Post said that the owners of 4600 Monroe Lane were not necessarily against the above ground tower but were more concerned about its placement.

Rita Knudsen, of 23 Sunset Drive, said she rides the trails from Monroe past Kent. She thought that locating the facilities near the maintenance area at Kent would be a better location and that she would like the boxes off of the trial.

Chairman Plotkin said that he assumes that taking the boxes off of the trail will satisfy the equestrian community.

Mr. Wells offered to address some of the questions that had arisen.

Chairman Plotkin asked Mr. Wells, what is lost if the node in question is moved to the north.

Mr. Wells said that Glenmoor Country Club and those homes closer to Belleview would not have service if the node was moved farther north.

Chairman Plotkin asked if the nodes would reach homes on Quincy.

Mr. Wells explained that there were several nodes along Quincy that were part of the network.

Chairman Plotkin said his wife is concerned that the proliferation of cell towers seems to be having an impact on bees.

Mr. Wells said that the FCC has established a maximum power output and based on those standards the emissions are safe. They will operate at an 80th of that maximum – that is ultra low power that would not affect anything on the ground.

David Waterman, contractor for NewPath, introduced himself to the Commission and those present.

Lucinda Green, PTRC committee member said she wanted to applaud the contractor because she appreciated their willingness to move the boxes.

Vice Chair Christman disclosed that she had spoken to Kent about the poles prior to knowing that there would be the public hearing regarding the poles. She said that once she knew about the public hearing that she had no other discussion with Kent.

Vice Chair Christman asked if it was premature to have these discussions as Kent Denver and the residents had not been contacted. She also stated that the burying of the utility poles is part of the City's Master Plan and that support should be given to those who want to bury utility poles.

Mr. Wells said that Qwest is planning to upgrade poles and isn't planning to bury any poles on Monroe at this point. If Qwest does decide to underground facilities, NewPath would take off their equipment and find another spot for their facilities. They would have to return the site to the state it was prior to their putting it up.

Chairman Plotkin asked if there were any other questions during public forum. There being none, Chairman Plotkin said the matter is now before the commission for discussion.

Vice Chair Christman noted that the License Agreement didn't reference the location of the ground equipment and suggested that it should be updated to clearly reflect that Kent Denver is aware, and approves of their location.

Deputy City Attorney Foster said the license agreement would have to be amended to show exactly where the facilities would be located. He said it should be redone prior to going to City Council.

Vice Chair Christman asked if the equipment gets moved to the other side of the trail is there still be an accessory structure setback issue.

Mr. Zuccaro said that the antennas would still require a variance. He said it was his understanding that the meter has to be in proximity to the underground equipment in order to function properly.

Chairman Plotkin reopened the public forum so that NewPath's contractor, Mr. Waterman, could make a statement regarding the proximity of the equipment to the pole.

Mr. Waterman said that the meter simply can't be 25 feet from the pole so there is no way that the equipment could be moved to eliminate the need for a variance.

Chairman Plotkin asked if the Commissioners, as a body, were comfortable with making a conditional approval without having the application come back to the Planning and Zoning Commission.

Mr. Wells could come back with a report to ensure that the conditions were met.

The Commissioners said they were comfortable with approving the application if the conditions are met.

Conditional Use

Vice Chairman Christman made a motion, and Commissioner Poche seconded, to recommend the request by NewPath Networks, LLC for a Conditional Use Permit to locate a wireless communication facility at Kent Denver School, 4000 E Quincy Avenue, with the following conditions: The antennas shall be relocated on the utility pole so that they do not encroach onto the adjacent residential property; the ground mounted equipment and power pedestal shall be moved to the east side of the trail, setback at least two feet from the trail; and, a revised License Agreement between NewPath and Kent allowing for the placement of ground equipment on Kent's property shall be provided.

The motion was unanimously approved.

Variance

Vice Chair Christman moved and Commissioner Poche seconded the motion to approve the request by NewPath Networks LLC, for a variance allowing an encroachment of 25 feet into the required 25-foot accessory structure setback for the R-1, 2 ½ -Acre Residential District, based on the findings outlined in staff's memorandum dated February 23, 2010.

The motion was unanimously approved.

Proposed Addition of Satellite Dish Antenna Regulations to the City's Zoning Ordinance

Mr. Zuccaro began by saying that this proposal would add new regulations to the City's Zoning Ordinance for Satellite Dish Antenna. There are currently no restrictions on size or number of satellite dishes allowed. These proposed regulations allow satellite dish antennas that are less than one meter in diameter without restriction (per Federal Communications Commission requirements); up to three antennas between one and four meters in diameter, subject to the location of the satellite dish antennas and design criteria. Any satellite dish antennas which exceed the number or size requirements would only be permitted as a conditional use under the Zoning Ordinance.

Mr. Zuccaro further stated that the proposed regulations contain an amortization period for preexisting antennas that require non-conforming antennas to come into compliance with the adopted regulations within ten years of the date the ordinance is adopted.

Mr. Zuccaro said that staff has come back to the Commission, as requested, with language regarding different zone districts and the number of satellite dishes allowed per each zone district, and by lot size for certain zone districts.

Property owners would be allowed up to three wall or roof-mounted antennas between one and four meters in diameter. Free standing antennas would be considered an accessory structure and would be subject to the accessory structure restrictions for each zone district.

The commercial or community zoned properties would be allowed up to three satellite dish antennas between one and four meters, whether wall mounted, roof mounted or free standing, subject to design criteria and location standards.

Mr. Zuccaro said staff reevaluated the IRS Amortization table and changed the amortization of non-conforming satellite dishes to ten years.

The Commissioners discussed whether it was reasonable to consider satellite dish antenna as an accessory structure and if they were arbitrating things that don't affect health and safety.

Vice Chair Christman said that when the Master Plan was being worked on that aesthetic issues were addressed particularly with respect to the rural character of the City. She asked if there would be a height limitation for the satellite dish antenna.

Mr. Zuccaro said yes, there would be a height limitation. The free standing structures must comply with the applicable code restriction of 30 feet and roof or wall mounted antenna would be limited to 35 feet.

Chairman Plotkin asked if the Commissioners had any other questions for Mr. Zuccaro. Since there were none, he opened the meeting for a public forum.

Mark Derbyshire, 4950 S. El Camino Drive, addressed the Commission. He said he had a number of concerns with the proposed regulations, particularly with respect to conflicts he sees with federal regulations such as the OTARD and Telecommunications Act of 1986. Mr. Derbyshire also said he believed that the proposed ordinance is in conflict with the FCC rules governing amateur services. He said amateur radio services are not allowed to be limited. He said that non-conforming dishes existing at the time the ordinance is enacted may not be "amortized" out if the use for the dishes was lawful at the time the ordinance becomes effective.

Mr. Derbyshire says he believes the number of satellite dishes that will be added in the City is small and pre-existing antennas should not be singled out. Mr. Derbyshire said he has tried to limit the number of dishes he is using and still receive all the satellite signals that he wants to receive. Mr. Derbyshire says he is not against a well crafted ordinance. He said he has pulled permits and worked with the city over the last ten years to try and conceal the antennas. Mr. Derbyshire said he is trying to provide his children with an international upbringing with satellite dishes that bring a multitude of signals and programming that is unavailable in any other way.

Deputy City Attorney Foster stated that they had reviewed the amortization issue and was comfortable leaving it in the ordinance.

Chairman Plotkin said that the intent of the proposed ordinance is not to limit the number of one meter of less dishes. Anyone may put up as many of the one meter or less dishes as they want.

Mr. Zuccaro said that if needed they would clarify the language so that the regulations are only applicable to antennas that are one to four meters in diameter.

After some discussion it was agreed that Mr. Derbyshire would meet with Staff to provide more information regarding his comments on the proposed ordinance.

Chairman Plotkin suggested, and the Commissioners agreed, to table the issue until the city and Mr. Derbyshire have had the opportunity to discuss the regulations.

Chairman Plotkin thanked Mr. Derbyshire for his attendance and for bringing the information to the Commission.

Proposed Amendment to Section 16-16-50 of the Municipal Code Concerning Exterior Lighting

Mr. Zuccaro said that in reviewing the proposed ordinance amendment staff has some reservations that these lighting regulations would apply only to new homes and major remodels. He said that it is a good ordinance if it was applied to the entire community and not just new development and large remodels. He estimated that, based on prior years permits, there would only be about 20 homes per year that would be in compliance with the proposed ordinance. He said that staff was concerned that the proposed ordinance met the intent of what the Commission was trying to accomplish with this amendment as well as concerns about the fairness of the proposed amendment with respect to regulating such a small number of homes. After 10 years only 200 of 2300 residences would be in compliance with the proposed ordinance.

Mr. Zuccaro said the other issue of concern is requiring the lighting schedule only at the end of the project. Many projects take up to 2 years to complete and there will likely be confusion if the lighting plans aren't submitted at the beginning of the process. One example, he said, is the fire sprinkler requirements. He said that plans for fire sprinklers are not submitted at the beginning of the process which has led to several instances where the fire sprinkler requirement has been forgotten and homes have had to be retrofitted for the sprinklers or extra fire hydrants had to be installed.

Mr. Zuccaro presented three options for moving forward in light of the concerns of staff: 1) Presenting the proposed code amendment as it has been drafted; 2) explore the possibility of drafting a different code amendment that would be easier to implement and that would cover all properties in the City; and, 3) not amend the code, but direct staff to provide educational materials to builders and the public on the benefits of reducing light pollution and glare and on ways to improve lighting with the intent of meeting the Master Plan's goal of preserving a "dark sky."

Chairman Plotkin asked if the Commissioners had questions or comments for Mr. Zuccaro.

Commissioner Poche said he thought we should try to support the master plan. He said we have to start somewhere even if we are beginning with a small base of homes so we can begin to make changes for the future.

Vice Chair Christman said if we can bring the compliance requirement for lighting forward in the permit process so that it isn't at the end of the project that should help. There must be some point earlier in the process at which we can require that the lighting plan be submitted.

Mr. Zuccaro said the lighting plan could be submitted with the other building permit documents at the beginning of the project and it could be made clear to the applicant that revisions to the lighting plan could be made later as the need arises. He suggested eliminating the paragraph that says the lighting plan may be submitted at the end of the process.

Chairman Plotkin asked if the Commissioners had any other direction for Mr. Zuccaro. He asked the Commissioners if they wanted to move forward with submitting the proposed amendment to City Council with the recognition that this proposed amendment would begin by regulating only new construction.

The Commissioners agreed that the proposed ordinance amendment should move forward to City Council with the understanding that in the beginning the regulations would only apply to new construction.

Vice Chair Christman made a motion, seconded by Commissioner McIntyre, to remove the paragraph in the proposed ordinance regarding the allowance for lighting plan submittal at the end of the permit process.

The motion was approved unanimously.

Chairman Plotkin asked Mr. Zuccaro if there were any reports for the Commission.

REPORTS

Mr. Zuccaro said that due to a scheduling issue would the Commission be willing to move the next meeting to Monday, March 8th? The Commissioners agreed to try. Commissioner McIntyre is not available either the 8th or the 9th or we may not have a quorum for a meeting.

The next regularly scheduled meeting of the Commission is March 9, 2010.

ADJOURNMENT

A motion was made by Commissioner McIntyre and seconded by Vice Chair Christman to adjourn the meeting at 8:45 p.m.

The motion passed unanimously.

The meeting adjourned at 8:45 p.m.

Ira Plotkin, Chairman

Laurel Landsman, Community Development Clerk