Minutes of the
Planning and Zoning Commission of the City of Cherry Hills Village, Colorado
Held on Tuesday, October 25, 2011 at 6:30 p.m.
At the Village Center

CALL TO ORDER

Chairman Ira Plotkin called the meeting to order at 6:31 p.m.

ROLL CALL

Present at the meeting were the following Planning and Zoning Commissioners: Chairman Ira Plotkin, Vice Chair Laura Christman, Commissioner Ann Kerr, Commissioner Joe Poche and Commissioner Steve Szymanski.

Present at the meeting were the following staff members: Robert Zuccaro, Community Development Director; David Foster, Deputy City Attorney; and Emily Kropf, Community Development Clerk.

Absent were Commissioners Jim Rubin and Peter Savoie.

Chairman Plotkin stated that he had two announcements before approving the minutes. First, he requested that a letter of appreciation be sent to Commissioner Jacque McIntyre in thanks for her time served on the Commission. Second, he asked that the Commission welcome Commissioner Szymanski.

APPROVAL OF MINUTES

Vice Chair Christman made a motion, which was seconded by Commissioner Kerr, to accept the June 28, 2011 minutes as written. The motion passed unanimously.

AGENDA ITEMS

Request by Crown Castle for a Conditional Use Permit to Locate Wireless Communication Facilities in the Colorado Department of Transportation Right of Way on the North Side of East Belleview Avenue Approximately 215 Feet West of Glenmoor Drive

Request by Crown Castle for a Conditional Use Permit to Locate Wireless Communication Facilities in the Colorado Department of Transportation Right of Way Drive and on the West Side of South University Boulevard Approximately 460 Feet North of East Belleview Avenue

Mr. Zuccaro stated that the applicant has requested a conditional use permit to locate two wireless communication facilities in the Colorado Department of Transportation right of way at two different sites. He continued that last year the Commission approved a request from New Path to install similar facilities in the City off of Monroe Lane and has installed several other facilities in the right of way under the terms of a Right of Way Use Agreement approved by City Council. Crown Castle has since acquired New Path and is currently operating 12 other distributed antenna systems (DAS) in the City. The facilities being proposed are part of a larger network of antennas in Cherry Hills Village and Centennial.

Mr. Zuccaro continued that the facility designated as "Node 8" by the applicant is proposed to be installed in the Colorado Department of Transportation (CDOT) right of way on the north side of East Belleview Avenue approximately 215 feet west of Glenmoor

Drive. The second facility designated as "Node 17" is proposed to be installed in the CDOT right of way on the west side of South University Boulevard approximately 460 feet north of East Belleview Avenue.

Mr. Zuccaro stated that in order to meet the requirements of the conditional use permit, notice was sent to neighbors surrounding both sites, signs notifying residents of the public hearing were posted and notice of the public hearing was published in the Villager.

Mr. Zuccaro continued that all current facilities in the City have been installed on existing utility poles. The facilities being proposed are different from standard cell antennas, which typically provide service for one carrier only, such as the churches in the City that have cell antennas attached to their structures. Additionally, there has been positive feedback regarding new antenna systems, which can provide service to multiple carriers.

Mr. Zuccaro said that the applicant's proposal includes the installation of a 35-foot tall, 10-inch diameter pole with an antenna array at the top covered by sheath at each site. An underground fiber optic vault and equipment vault would be installed next to the pole and a 4-foot tall electrical meter pedestal would also be installed next to the pole. The pole and sheath are proposed to be painted forest green. Mr. Zuccaro presented several illustrations showing the proposed sites and existing conditions.

Mr. Zuccaro stated that staff has been working with the applicant for some time regarding the proposed facilities. The applicant had considered other options in terms of screening, such as concealing the poles as evergreen trees but found that this solution was not feasible due to the overhang of the trees. The applicant also considered attaching the antennas to existing utility and light poles in the area, but CDOT rejected the proposal. Staff asked the applicant if shorter poles would work, but the applicant found that there would be gaps in coverage as a result.

Mr. Zuccaro continued that there are several review criteria that the applicant's proposal must meet in order to be approved for a conditional use permit. Staff has found that each requirement has been met and recommends approval of the proposed wireless communication facilities at both sites.

Chairman Plotkin asked if there are any questions for staff or the applicant.

Commissioner Szymanski asked if the proposed facilities had been included in the applicant's prior planning for the City-wide network.

Mr. Zuccaro responded that the exact locations had not been proposed but similar sites were suggested.

Mr. Steven Garcia, representative for Crown Castle, asked that the Commission uphold staff's recommendation for approval of the proposed facilities. A consultant hired by the City has reviewed the proposal and validated the applicant's findings. Crown Castle does not take the installation of wireless communication facilities lightly. The proposed project has been on hold for the past two years while Crown Castle has attempted to find suitable solutions for any concerns related to the proposed facilities. The primary tenant for the proposed facilities will be Verizon.

Vice Chair Christman stated that she has several questions for the applicant. First, it appears that the proposed facilities are needed in order to connect with an outside hub. She asked where the hub is located.

Mr. Garcia asked if she meant the AT&T or Verizon hub.

Mr. Tom Foster, representative for Crown Castle, responded that the AT&T hub is located at the Village Club and the Verizon hub is located at the King Soopers at South Holly Street and East Orchard Road.

Chairman Plotkin asked if only one hub is located in Cherry Hills Village.

Mr. Foster responded yes.

Vice Chair Christman continued that according to the applicant' legal analysis, the proposed sites are the least intrusive locations. However, along South University Boulevard by Saint Mary's Academy, there is an existing telephone pole. Vice Chair Christman asked why "Node 17" was not being installed on this pole.

Mr. Garcia responded that Crown Castle seeks to install facilities on existing structures but found that the telephone pole was not available. All existing structures in Cherry Hills Village in the right of way have been exhausted.

Mr. Foster added that there is a node already installed on the telephone pole.

Vice Chair Christman asked why the facilities are not being proposed to be installed in Greenwood Village.

Mr. Garcia responded that there are other nodes that have been planned for Greenwood Village. He continued that the nodes are needed where they have been proposed.

Vice Chair Christman asked the applicant to address the issue of the least obtrusive location.

Mr. Garcia stated that Crown Castle has taken efforts to design the proposed facilities to be the least visually obtrusive at the proposed sites, including painting the facilities and installing underground vaults.

Vice Chair Christman asked if the applicant has made an effort to lessen the impact on neighbors at both sites.

Mr. Garcia responded yes. He continued that the facilities will be screened by trees at both sites.

Vice Chair Christman stated that "Node 8" would practically be in someone's backyard. She asked why the facilities could not be moved east where it would be adjacent to Glenmoor Country Club's parking lot.

Mr. Garcia responded that relocating the facilities might be possible but would have to be investigated further. If the facilities were relocated any further from the proposed site, it would be difficult to meet coverage goals.

Mr. Zuccaro added that the area being proposed by Vice Chair Christman may not be in the CDOT right of way. The tract of land might be owned by Glenmoor Country Club.

Vice Chair Christman asked if the trail adjacent to the parking lot belongs to the City.

Mr. Zuccaro responded yes.

Vice Chair Christman asked what color the aboveground meter will be.

Mr. Garcia responded that the meter can be painted any color. The pole will be painted evergreen. The meter can also be painted this color.

Vice Chair Christman asked who will be responsible for maintenance of the landscape at both sites.

Mr. Garcia responded that Crown Castle would maintain the landscaping at the proposed sites if it was a condition of the Conditional Use Permit.

Vice Chair Christman stated that the adjacent community has a legal obligation to maintain the landscape in the right of way.

Mr. Zuccaro stated that Crown Castle currently maintains the landscape for other nodes in the City.

Mr. Garcia added that similar to other jurisdictions, Crown Castle would be responsible for maintaining the landscape in the right of way or land owned by homeowner associations if affected by Crown Castle's facilities if it was a condition of the Conditional Use Permit.

Vice Chair Christman asked if these would be the last nodes installed in the City.

Mr. Garcia responded yes. He continued that it is difficult to state whether other carriers will propose facilities in the City in the future, however.

Vice Chair Christman stated that she is worried that the proposed facilities will become the standard nodes in the City.

Mr. Garcia responded that the proposed facilities are low profile designs with a small footprint.

Vice Chair Christman asked if it would be impossible to conceal the pole as a tree.

Mr. Garcia responded that it would be an issue due to the need for a larger base, as well as the overhang in neighboring properties. The effort would become counter-productive.

Vice Chair Christman asked if the neighbors would find it counter-productive.

Mr. Garcia responded that switching to a larger, more obvious pole with the illusions of branches could be more obtrusive.

Chairman Plotkin stated that according to the staff's report, the proposed facilities would not directly benefit any houses in Cherry Hills Village. He asked if this was correct.

Mr. Garcia responded that the goal of Crown Castle and its networks is to assist with residential needs and services. Any mobile customer of Verizon would benefit from an increase in service level.

Chairman Plotkin asked if any members of the public would like to address the Commission.

Mr. Greg Cleveland, resident at 2290 East Grand Avenue, stated that he was thankful for the thoughtful questions from the Commission, as well as the answers provided by staff and the applicant. He continued that he represents the neighbors surrounding the proposed site of "Node 17". Mr. Cleveland asked why the facilities were not being placed closer to the traffic signal. The proposed site would be located directly next to a residential fence. He asked what CDOT's objection was to placing the node on top of the traffic signal.

Mr. Kerry Sullivan, resident at 2260 East Grand Avenue, stated that he is Mr. Cleveland's next door neighbor. He continued that the concern of the neighbors of the area is that the location of the facilities would be within inches of homes. There is also concern regarding the health risk of these facilities. There are nine children in the area that could be affected by the close proximity of the node. He asked the Commission to take personal concern into consideration when reaching its decision.

Chairman Plotkin stated that the issue does not seem to be the presence of cell towers in Cherry Hills Village but the specific location of the proposed facilities.

Mr. Sullivan responded yes.

Mr. Grant Brown, son of the residents at 43 Cherry Hills Farm Drive, stated that if "Node 8" were approved, it would be located practically in his parents' backyard. He continued that the proposed facilities are not unobtrusive at all. His parents are currently trying to sell their house and the addition of the proposed facilities would make that more difficult. He added that people do not move to Cherry Hills Village to deal with cell phone towers in their backyards.

Chairman Plotkin stated that he would now be closing the public hearing.

Deputy City Attorney Foster suggested that Chairman Plotkin keep the hearing open.

Mr. Zuccaro stated that the public hearing was the first in a process, which would be followed by another public hearing before City Council. If the Commission were to reach a decision, it would not be final. He added that two letters that had been submitted by residents regarding the proposed facilities had been provided to the Commissioners on the dais.

Mr. Garcia stated that he would try to answer some of the questions posed by residents. Regarding the health issues raised by Mr. Sullivan, Mr. Garcia stated that Crown Castle has always made an effort to inform neighbors of any emissions from facilities. The proposed facilities emit well below the rate of any safety risk. He continued that Crown Castle sought to place "Node 17" on top of CDOT's traffic signal, but CDOT rejected the proposal. Xcel also restricts the combination of facilities on poles, which limited the number of existing structures on which to place the nodes.

Deputy City Attorney Foster stated that he did not notice CDOT's rejection of the stand alone pole in the applicant's submission.

Mr. Foster responded that CDOT rejected any proposal located in the traffic aisle.

Commissioner Poche asked if the pole could be located in the flower bed at South University Boulevard and East Belleview Avenue.

Mr. Foster responded that there was not enough room in the right of way.

Mr. Zuccaro added that the land belongs to the Cherry Hills Farm Homeowners Association.

Commissioner Poche asked if the homeowners association would give up that portion of land.

Mr. Foster responded that this solution was looked at two years ago and rejected by the homeowners association.

Commissioner Poche asked if it was possible to move the proposed facilities to Greenwood Village.

Mr. Foster responded no. He continued that moving the proposed facilities would diminish the objectives of the carrier.

Vice Chair Christman stated that in the legal memo provided by the applicant, it states that Crown Castle has the ability to place facilities in the right of way.

Mr. Garcia responded that Crown Castle can place facilities in the public right of way but not in a privately owned right of way.

Vice Chair Christman asked if CDOT has the right to reject Crown Castle's proposal.

Mr. Garcia responded that he believes so. He continued that CDOT rejected the proposal due to potential issues with traffic operations.

Mr. Foster added that CDOT rejected the proposal due to a possible safety and sightline complications.

Mr. Cleveland asked if the node could be placed on a security camera located at the northwest corner of Cherry Hills East.

Mr. Foster responded no. Xcel would prohibit combining facilities on the pole, and there is not enough room for a free standing pole at this site.

Vice Chair Christman asked if it would be impossible to locate the pole on the south side of East Belleview Avenue.

Mr. Foster responded yes.

Vice Chair Christman asked if moving "Node 8" closer to the trail would mitigate the concerns of residents.

Mr. Brown responded yes.

Mr. Foster stated that the pole could be moved to the west side of the trail.

Vice Chair Christman asked if the pole could be moved to the east side of the trail.

Mr. Zuccaro responded that this tract of land might belong to a homeowners association or Glenmoor Country Club, but the applicant might be able to get approval from the owner.

Chairman Plotkin asked if the node was moved to the east side of the trail if it would still meet coverage needs.

Mr. Garcia responded yes.

Commissioner Szymanski asked if the applicant had discussed the potential site with Glenmoor Country Club.

Mr. Foster responded yes. He continued that the applicant and Glenmoor Country Club were unable to come to an agreement and there were existing utilities on the property that made it difficult to locate the pole.

Chairman Plotkin asked if Glenmoor Country Club was opposed to granting the applicant the use of land.

Mr. Garcia responded yes. The owner did not want to dedicate a portion of the land to the right of way.

Deputy City Attorney Foster asked if it was a requirement that Crown Castle's facilities be located in the right of way.

Mr. Garcia responded no. He stated that Crown Castle was trying to meet the concerns of residents by placing the facilities in the right of way.

Commissioner Szymanski asked if Crown Castle could buy a portion of the land to place its facilities on.

Mr. Garcia responded yes.

Chairman Plotkin asked if the Commission were to recommend the conditional use permit with the stipulation to move "Node 8" as far east as possible, would it carry any weight with City Council's final decision.

Deputy City Attorney Foster responded yes. He continued that the Commission can articulate that there is a less obtrusive location.

Vice Chair Christman stated that the same standard can be applied to "Node 17".

Mr. Garcia responded that all other options for "Node 17" have been exhausted.

Vice Chair Christman stated that she is not comfortable that the least obtrusive standard has been met. She continued that other private users in the area have been able to install equipment. She also is unsure if CDOT has the absolute right to reject Crown Castle's proposals.

Chairman Plotkin stated that the Commission would like to see a letter from CDOT detailing its objections.

Commissioner Szymanski stated that he would also like to see documentation of the negotiation between Crown Castle and Glenmoor Country Club regarding "Node 8".

Mr. Sullivan stated that he would like the Commission to the address the rights of the homeowners association.

Chairman Plotkin stated that the proposed facilities are not being placed in the right of way of the homeowners association's but CDOT's.

Mr. Sullivan responded that little evidence has been provided regarding CDOT's rejection. He would like to see more information, as well.

Chairman Plotkin asked how the Commission would like to proceed.

Vice Chair Christman made a motion, which was seconded by Commissioner Szymanski, to continue the public hearing at a later date pending additional evidence regarding the least obtrusive standard of the proposed facilities.

Mr. Zuccaro asked if the Commission would like to establish a date certain.

Chairman Plotkin asked if the applicant would be available on November 8th or 22nd.

Mr. Garcia responded that November 8th would be agreeable.

Vice Chair Christman amended her motion to continue the public hearing on November 8th.

The motion passed unanimously.

REPORTS

Mr. Zuccaro stated that City Council passed the Bulk Plane and Floor Area Ratio ordinance, which went into effect on September 26th. He continued that City Council has requested that the Commission review the flexibility of variance criteria.

ADJOURNMENT

Commissioner Kerr made a motion to adjourn, which was seconded by Vice Chair Christman. The motion passed unanimously.

The meeting adjourned at 7:52 p.m.

Ira Plotkin, Chairman

Emily Kropf, Community Development Clerk