Minutes of the
Planning and Zoning Commission of the City of Cherry Hills Village, Colorado
Held on Tuesday, November 8, 2011 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 Ann Kerr, Commissioner Joe Poche, Commissioner Jim Rubin, Commissioner Peter Savoie 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.

APPROVAL OF MINUTES

Vice Chair Christman asked that the October 25, 2011 minutes be corrected to state that the applicant's response to whether or not they would maintain landscaping at the proposed sites for the wireless communication facilities was that they would do it if it was a condition of the Conditional Use Permit.

Commissioner Kerr made a motion, which was seconded by Commissioner Szymanski, to accept the October 25, 2011 minutes as corrected. 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 (Continued from October 25, 2011 Meeting)

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 (Continued from October 25, 2011 Meeting)

Chairman Plotkin stated that the items on the agenda had been continued from the October 25, 2011 meeting. He asked that any residents in attendance who wish to address the Commission refrain from repeating comments that were mentioned during the previous meeting.

Mr. Zuccaro stated that the applicant has requested a Conditional Use Permit to locate two wireless communication facilities in the Colorado Department of Transportation (CDOT) right of way at two different sites. The proposed nodes would be part of a larger network in Cherry Hills Village, Greenwood Village and Centennial. There are 12 nodes currently operating in Cherry Hills Village. The proposed nodes require a Conditional Use Permit due to the fact that they are stand alone poles. The nodes currently installed in the City have been attached to existing structures. During the October 25, 2011 meeting, the

Commission asked the applicant to provide additional information regarding alternative locations in which the nodes could be placed.

Mr. Zuccaro continued that the applicant has provided an e-mail from CDOT explaining its rejection of the alternative locations. The e-mail from CDOT states that the applicant cannot attach the node to existing traffic poles at the South University Boulevard and East Belleview Avenue intersection. It also details the minimum setback required for structures near a traffic intersection, which is based on the miles per hour allowed at the site.

Mr. Zuccaro stated that the applicant had also provided additional information regarding the use of artificial trees in order to disguise the proposed facilities. He continued that the applicant found that the proposed site for "Node 17" does not have enough room to house the necessary equipment. There is space at the proposed site for "Node 8", which is proposed to be installed in the CDOT right of way on the north side of East Belleview Avenue approximately 215 feet west of Glenmoor Drive, but there would be little room between the wall and the artificial tree. He continued that it would also be impossible to attach branches to the base of the artificial tree in order to keep individuals from climbing the tree.

Mr. Zuccaro continued that he had discussed with the applicant the possibility of attaching the proposed nodes to streetlights, but there are no existing streetlights in either location. Mr. Zuccaro stated that he had also contacted the General Manager of the Glenmoor Country Club regarding the proposed site to place "Node 8" in the Glenmoor storage yard and confirmed that the applicant and the club were unable to come to an agreement in terms of the lease.

Mr. Zuccaro concluded that staff still recommends approval of the wireless communication facilities at the proposed sites and has no new findings to present to the Commission.

Chariman Plotkin stated that the public hearing was open.

Mr. Steven Garcia, representative for Crown Castle, stated that Crown Castle currently has 22 nodes installed in the area and four sites pending approval. Two are proposed to be installed in Cherry Hills Village and the other two in Greenwood Village. There have been issues surrounding the proposed facilities for the past two years. Crown Castle has taken into consideration alternative designs in order to mitigate concerns.

Mr. Garcia continued that Denver is one of the fastest growing networks for Verizon, one of the tenants of the proposed facilities. Mr. Garcia stated that according to Broadband Journal, U.S. wireless networks double in capacity every 30 months, but demand is expected to continue to increase at a fast rate.

Mr. Garcia stated that Crown Castle has examined the alternative sites suggested by the Commission. An e-mail exchange between Crown Castle and CDOT addressing the alternative sites has been provided to the Commission.

Mr. Garcia stated that "Node 17" could not be attached to a traffic signal at South University Boulevard and East Belleview Avenue because CDOT no longer allows the attachment of nodes onto traffic signals. Mr. Garcia continued that "Node 17" could not be placed in the traffic island because CDOT does not allow non-breakaway poles in traffic islands due to safety reasons. Mr. Garcia stated that "Node 17" could not be attached to a security camera because it is privately owned. Mr. Garcia also stated that CDOT would not allow "Node 17" or "Node 8" to be moved closer to the road due to the clear zone distance, which requires that structures be set back at least 14 to 16 feet for 40 miles per hour roads and 18 to 20 feet for 45 miles per hour roads.

Mr. Garcia continued that an artificial tree would not be possible for "Node 17" as the length of the pine tree branches are 14 feet, which would extend into the right of way. He added that additional height would be required for an artificial tree in order to camouflage the antennas arrays located at the top of the pole. Mr. Garcia continued that wooden poles are more compatible than artificial trees for the proposed sites and also have a smaller footprint. Mr. Garcia stated that low profile poles and poles disguised as street lights are also compatible alternatives.

Commissioner Szymanski stated that during the October 25, 2011 meeting the Commission was shown an illustration which showed a free standing pole without a canister located on top. He continued that during Mr. Garcia's presentation another illustration was shown that contained a picture of a free standing pole with antennas extending horizontally. He asked which pole the applicant was proposing.

Mr. Garcia responded that smaller antennas were being proposed for the facilities so the canister could be used and not the horizontal antennas.

Vice Chair Christman asked which node the negotiations with Glenmoor Country Club had been for.

Mr. Garcia responded that the negotiations had been for "Node 8". He continued that the terms of the agreement could not be reached.

Mr. Tom Foster, Project Manager for Crown Castle, added that several alternative designs and locations had been proposed, but an agreement could not be reached.

Vice Chair Christman asked if Crown Castle had proposed installing the node in "Tract A".

Mr. Zuccaro stated that "Tract A" is south of Glenmoor Country Club's maintenance yard and looks like what would be a continuation of the right of way.

Mr. Foster responded that "Tract A" is private property owned by Glenmoor Country Club. Crown Castle had proposed going as north and east as possible while meeting coverage needs on the club's land, but an agreement could not be reached.

Vice Chair Christman asked if the alternatives that the applicant had proposed had taken into account the location of the proposed facilities and its effect on the club's future development.

Mr. Foster responded yes. Crown Castle proposed installing the nodes at the guard shack, west of the guard shack and behind and in front of the club's wall.

Vice Chair Christman asked when the negotiations with Glenmoor Country Club had taken place.

Mr. Foster responded that they took place during June, July and August of 2010.

Chairman Plotkin asked if any residents would like to address the Commission.

Mr. Kerry Sullivan, resident of 2260 East Grand Avenue, stated that he does not have a problem with acknowledging the need for cell towers in the City. He does have a problem with the specific location of the proposed facilities, which he believes could not be worse for certain residents. Mr. Sullivan continued that it appears from communication with CDOT that Crown Castle has not submitted an application in order to place the proposed nodes in any other location. It was thought that maybe New Path had applied to place the

facilities elsewhere, but CDOT stated that New Path had not either. Mr. Sullivan concluded that it seems as though good faith has not been placed and effort has not been made to mitigate neighbors' concerns.

Commission Savoie asked why the specific location of the proposed nodes is a problem for Mr. Sullivan.

Mr. Sullivan responded that "Node 17" would stand approximately six to ten feet from the brick wall that is the border to his and other neighbors' backyards. He continued that the proposed node not only affects the appearance of his home but could also pose a health risk.

Mr. Greg Cleveland, resident of 2290 East Grand Avenue, stated that following the October 25, 2011 meeting he contacted CDOT and asked why a stand alone pole could not be placed closer to the intersection at South University Boulevard and East Belleview Avenue. Mr. Cleveland continued that Mr. Roger James, representative for CDOT, responded that a breakaway pole could be placed in that location. Mr. Cleveland asked the Commission to clarify this point with the applicant.

Chairman Plotkin asked Mr. Garcia or Mr. Foster to address the public's questions.

Mr. Garcia responded that Mr. Todd Wells, attorney for Crown Castle, had consulted with the Attorney General's office and had been told that the proposed sites were the only viable alternatives.

Chairman Plotkin asked if the proposed sites were the only viable alternatives in regards to CDOT's perspective or CDOT's perspective and the coverage area that is needed.

Mr. Garcia responded both.

Vice Chair Christman asked if the Attorney General had stated that Crown Castle could only legally place the nodes at the proposed sites.

Mr. Garcia responded yes in order to meet coverage.

Vice Chair Christman stated that she was confused by the applicant's response. She asked if the Attorney General said that Crown Castle could insist upon locating its poles in areas rejected by CDOT.

Mr. Garcia responded that the Attorney General did not say that Crown Castle could insist upon locating the poles in certain areas but stated what was available for Crown Castle to locate on. Mr. Garcia added that he could provide the Attorney General's statement in written form.

Vice Chair Christman stated that the written statement would have to come from the Attorney General's office only.

Commissioner Szymanski asked what would happen if the application for the Conditional Use Permit was not approved.

Mr. Foster responded that nodes are tied together, and if the proposed nodes are not approved, there will be gaps in coverage. He added that Verizon has been trying to provide service in the area for the past 15 years. He continued that coverage objectives are based on the carrier's needs.

Commissioner Savoie asked if "Node 17" could be made into a breakaway pole and placed in the intersection.

Mr. Foster responded that he had spoken with Mr. Jameson regarding the proposed sites. Mr. Foster continued that the nodes being proposed are breakaway poles, but Mr. Jameson stated that the poles could not be placed in the traffic island. Mr. Foster added that Crown Castle would prefer to place the poles closer to the road, but CDOT dictated the minimum distance that the poles had to be from the road.

Commissioner Savoie asked if the nodes could be placed on the traffic monitoring camera located at the intersection.

Mr. Foster responded that Crown Castle was denied access by a private company who owns the traffic camera.

Vice Chair Christman asked if a breakaway pole could be placed further away from the wall and closer to the intersection towards the southwest.

Mr. Foster responded that if "Node 17" was moved, it would no longer meet coverage needs to the north and the west. The original location that was proposed on the traffic light increased the height of the node to 60 feet, which helped to meet coverage. If the node was moved closer to the road, it would be at the bottom of the hill, decreasing its coverage.

Commissioner Savoie asked if "Node 17" could be placed on a larger pole.

Mr. Foster responded that the height would then exceed the City's height restriction of 50 feet.

Vice Chair Christman asked how tall the traffic signal is.

Mr. Foster responded 60 feet.

Vice Chair Christman asked if a taller pole would then match the traffic signal.

Mr. Foster responded yes.

Vice Chair Christman asked why "Node 8" was proposed to be set back 28 feet against the wall of 43 Cherry Hills Farm Drive when it only needs to be 14 feet back.

Mr. Foster responded that CDOT required that the pole be placed a minimum distance from the road.

Mr. Garcia stated that the proposed locations for the nodes are based on CDOT's requirements.

Vice Chair Christman responded that the e-mail provided by the applicant seems to suggest otherwise.

Mr. Garcia stated that Mr. Jameson wrote the e-mail.

Vice Chair Christman stated that the proposed setback for the pole does not have to be 28 feet according to the e-mail.

Mr. Foster responded that the minimum setback required is 14 to 16 feet. He added that if the poles can be placed closer to the road, Crown Castle would be willing to do so.

Vice Chair Christman asked if the pole could be wooden and eight inches in diameter rather than 10.

Mr. Garcia responded yes. He added that the pole could have a canister located on top and be painted green.

Chairman Plotkin asked if the pole would be breakaway.

Mr. Garcia responded no.

Vice Chair Christman asked if the applicant had thought about placing trees between the pole and 43 Cherry Hills Farm Drive.

Mr. Garcia responded yes. He continued that Crown Castle would be willing to do landscape mitigation.

Commissioner Szymanski asked what Crown Castle's preference would be in regards to the alternative location for "Node 8" presented in their recent submittal.

Mr. Foster responded that the pole cannot go further west in order to meet coverage needs. The pole could be placed between 43 and 45 Cherry Hills Farm Drive. It would not be in the direct sightline of 43 Cherry Hills Farm Drive.

Mr. Garcia added that Crown Castle was willing to mitigate with a landscape plan and a wooden pole.

Commissioner Szymanski asked if Crown Castle would benefit from moving the pole to the east.

Mr. Foster responded yes. He added that there was not a lot of room for a pole to the east though.

Commissioner Szymanski asked if placing trees on private property had been considered.

Mr. Garcia responded yes. He continued that Crown Castle would be willing to provide funds to residents in order to landscape.

Commissioner Savoie asked if both nodes were necessary.

Mr. Foster responded yes.

Chairman Plotkin asked if there were any other questions for the applicants.

Mr. Cleveland asked if wind loads had been taken into account in the design of the pole.

Mr. Foster responded yes. He continued that the proposed poles are breakaway but designed for the wind loads.

Vice Chair Christman asked if it would be possible for the applicants and the residents to meet with Mr. Jameson together.

Commissioner Savoie asked if staff could be present at the meeting, as well.

Mr. Garcia responded yes.

Ms. Janie Schwartz, resident of 2135 East Grand Avenue, stated that if a pole was placed at the proposed site for "Node 17", it would kill the trees currently planted there. She continued that the trees located at this area are 50 years old. She asked what Crown Castle will replace the trees with if they die.

Chairman Plotkin asked who owns the trees.

Mr. Cleveland responded that the homeowners association does.

Chairman Plotkin stated that the public hearing was closed.

Vice Chair Christman made a motion to continue the hearing following the meeting with CDOT.

Chairman Plotkin asked if anyone wished to second the motion.

Commissioner Poche asked what the meeting with CDOT will decide.

Vice Chair Christman responded that the meeting will determine if a breakaway pole can be placed in the intersection at South University Boulevard and East Belleview Avenue.

Chairman Plotkin asked if the Commission would be able to make any conditions of approval in order to satisfactorily resolve any outstanding issues.

Vice Chair Christman stated that the first condition for approval of the nodes is that the poles are eight inches in diameter. The second condition is that homeowners association for the area will decide whether the poles are wooden or metal.

Commissioner Poche stated that CDOT will not agree to a wooden pole in the intersection.

Vice Chair Christman responded that if CDOT does not approve a breakaway pole in the intersection then the adjacent homeowner can decide.

Chairman Plotkin stated that it sets a bad precedent to let the homeowner decide.

Vice Chair Christman stated that the applicant prefers a metal pole. If no one feels strongly about a wooden or metal pole then perhaps the applicant can choose.

Commissioner Poche added that a wooden pole will require exterior fixtures.

Vice Chair Christman stated that the third condition for approval is that any damaged landscaping be replaced with comparable landscaping. Vice Chair Christman asked how the City would enforce this condition.

Deputy City Attorney Foster responded that in order to enforce this condition the City would have to clarify the timing of destruction. He continued that an escrow could be created for a shorter amount of time for a certain amount of money.

Vice Chair Christman asked if the City would continue to escrow any time a repair was made.

Deputy City Attorney Foster responded that once the improvement has been made that there would be a warranty period.

Vice Chair Christman asked what the City would do to uphold its ongoing obligation if 10 years down the road there was damage as a result of the proposed facilities.

Commissioner Savoie asked if the homeowners association would be able to litigate.

Deputy City Attorney Foster responded that maintenance of landscaping is part of the zoning approval. The City has an ongoing responsibility to oversee maintenance and has the ability to enforce future improvements.

Vice Chair Christman stated that the fourth condition for approval is that the applicant does not harm the landscaping at both sites during installation and continues to maintain the landscaping.

Commissioner Savoie asked if this was already a mandatory requirement.

Mr. Zuccaro responded no. He continued that the specific landscaping would have to be named as a part of the condition in order to enforce a replacement requirement.

Vice Chair Christman added that this condition would include any irrigation lines. Vice Chair Christman continued that the fifth condition for approval is that the applicant screens between the poles and homes to block the sightline.

Chairman Plotkin asked if Vice Chair Christman would like to see the sightline screened with trees.

Vice Chair Christman responded yes.

Chairman Plotkin asked if Vice Chair Christman was suggesting placing trees between the pole and the property line.

Vice Chair Christman responded that or on the homeowner's property. She asked how much money should be attached to this condition. She continued that the sixth condition for approval is that the design, appearance and location, including the color of the equipment, cannot be altered in the future without applying for a new Conditional Use Permit. She also asked that all underground equipment remain underground.

Commissioner Szymanski asked if the residents could specify a dollar amount for the applicant to dedicate toward landscaping and how that money can be applied.

Deputy City Attorney Foster stated that the Commission needs to establish who the affected homeowners are. He added that it is not the residents' responsibility to negotiate a price for landscaping for a pole that they did not want installed. He continued that it is the Commission's obligation to identify an appropriate figure.

Commissioner Szymanski suggested up to $3,500 that could be used for either the right of way or on the adjacent homeowner's property.

Commissioner Savoie asked that the conditions be reviewed.

Chairman Plotkin stated that the conditions include that the applicant installs eight inch diameter poles and the homeowners association will select which type of pole is installed at the site.

Mr. Cleveland stated that the residents near "Node 17" are happy with a metal pole. He added that a breakaway metal pole is preferred.

Chairman Plotkin continued that the conditions include requiring landscaping by the applicant with an attachment of $3,500 for the adjacent homeowner and an escrow for a

warranty for life replacement in the event that any landscaping is damaged as a result of the proposed facilities.

Vice Chair Christman stated that the condition also includes an ongoing obligation to maintain landscaping during and after installation, including any repair to or replacement of landscaping.

Chairman Plotkin added that the conditions state that once the poles and equipment are approved they cannot be altered in the future.

Deputy City Attorney Foster stated that the Commission would be approving a specific application that cannot be changed in the future regardless.

Vice Chair Christman asked the applicant to specify the color of the electrical meter box.

Mr. Foster responded that it can be painted any color that the Commission prefers.

Chairman Plotkin asked if the applicant will come before the Commission again following the meeting with CDOT.

Commissioner Savoie asked what the intent of the meeting with CDOT is.

Mr. Zuccaro responded that the intent of the meeting is to verify if a breakaway pole can be installed in the traffic light medians or not. He asked if CDOT approves the placement of the pole in the median if the applicant will come before the Commission again.

Commissioner Savoie stated that there is still the issue of the setback to resolve. He stated that it seems as though the application cannot be approved yet.

Commissioner Kerr stated that she agreed.

Commissioner Poche stated that at some point the applicant will walk away from the proposed facilities.

Vice Chair Christman stated that the Commission is trying to resolve the issue of the least obtrusive location.

Commissioner Poche responded that if Crown Castle is forced to exhaust all alternatives, the applicant will eventually walk away from the proposed facilities and the City will suffer as a result.

Commissioner Rubin responded that the Commission is not denying all options. It is just asking the applicant to consider the available alternatives.

Chairman Plotkin asked if the applicant would be able to wait for a decision until the next scheduled meeting.

Mr. Garcia responded that Crown Castle would prefer the conditional approval of the application pending the meeting with CDOT.

Commissioner Savoie stated that if the applicant chose to install a pole taller than 50 feet in the intersection at South University Boulevard and East Belleview Avenue that it would require approval of a variance from another body in the City.

Mr. Zuccaro responded that City Council can approve a variance for a taller pole with the recommendation of the Commission. If CDOT approves a taller breakaway pole in the

intersection, it would require a new application and public hearing. If CDOT denies the request, the Commission would be able to move forward to the design and landscaping conditions.

Commissioner Savoie stated that he thinks that the application cannot be approved until the meeting with CDOT has occurred and the applicant, staff and residents have received clear answers regarding their options for placement of the poles.

Mr. Zuccaro stated that the condition could also be to require landscaping in the right of way rather than on the homeowner's property. The applicant could bring a specific landscape plan to be approved by City Council.

Chairman Plotkin stated that it seems as though the Commission would like to have to applicant return before granting approval of the application.

Deputy City Attorney Foster stated that he encourages the applicant to have decision-making personnel available for the meeting with CDOT.

Commissioner Savoie asked if "Node 8" could be approved.

Commissioner Rubin asked if the Commission was focusing on the proposed or alternative site for "Node 8".

Mr. Garcia responded that the applicant preferred the proposed site.

Commissioner Kerr stated that an alternative site would require a new application.

Commissioner Rubin asked if there was better screening at the site for "Node 8" than at the site for "Node 17".

Mr. Zuccaro stated that he would have to look closer at the existing landscaping of the proposed site. He continued that the Commission could make a condition in which the applicant is required to provide adequate landscaping.

Mr. Garcia stated that the proposed site for "Node 8" has more mature landscaping, which would provide better screening. If the Commission has any concerns regarding the drip line or health of trees, Crown Castle can have an arborist review the plan.

Mr. Foster added that CDOT stipulated the distance from the curb line in which the pole had to be set back. If Crown Castle can move the pole closer to the street, the applicant would be willing to screen between the pole and the adjacent home.

Mr. Zuccaro asked if the Commission would like to discuss timing of the next meeting.

Chairman Plotkin stated that there will be a quorum on November 22, 2011 and continued the hearing to that date.

Vice Chair Christman asked that the applicant speak to the residents regarding the conditions and reach a consensus.

REPORTS

Mr. Zuccaro stated that there were no reports at this time.

ADJOURNMENT

The meeting adjourned at 7:55 p.m.

Ira Plotkin, Chairman

Emily Kropf, Community Development Clerk