



## Chatham County Planning Board Agenda Notes

**Date: July 1, 2014**

**Agenda Item: VII. 4**

**Attachment #: Online**

**Subdivision**

**Conditional Use Permit/WTP**

**Rezoning Request**

**Other:**

<b>Subject:</b>	A Wireless Telecommunication Permit request by American Tower Corporation and AT&T Mobility for a portion of Parcel No. 3391, known as the Bennett Site, located at 24477 NC Hwy 902 for a 300' self-supported telecommunications tower on a lease area of approximately 0.69 acres of the 28.90 acre tract, unzoned, within the Bear Creek Township. The application includes a waiver request to exceed 199' in height pursuant to Section 2-4 of the Wireless Telecommunication Facilities Ordinance.
<b>Action Requested:</b>	See Recommendation
<b>Attachments:</b>	<ol style="list-style-type: none"> <li>1. The application packet was provided at the in advance of the July 1<sup>st</sup> Planning Board meeting.</li> <li>2. Sufficiency Review Materials: Revised Site Plan, Determination of No Hazard to Air Navigation and "Dialight" Beacon Tower Lighting Information sheet posted on the 2014 Subdivision and Rezoning Page- Received May 30, 2014.</li> </ol>

### **Introduction & Background**

A quasi-judicial public hearing was held on this request June 16<sup>th</sup>, 2014. Planning staff presented the request. The applicant's attorney, Karen Kemerait presented the application. The applicant's attorney covered the application, required findings of fact, and answered questions from the Board and staff (see in bold below). No public comments were received regarding the proposed Bennett cell tower.

### Site

The subject parcel is 28.90 acres within the unzoned portion of the county and is located in the Local Watershed district, which allows non-residential development, provided it does not exceed 36% built upon area. The proposed wireless tower site is well under this threshold with a proposed total site disturbance of 9,703 sq. ft. The applicant has provided a map indicating the tower site is not within a Major Wildlife Area (Tab 16 of application) and is not

within 1.5 miles of an existing tower (Tab 5 of application).

Access to the tower site is from an existing drive off Hwy 902, near the intersection of Hwy 902 and Hwy 22/42 and the applicant will obtain a driveway permit from NCDOT as required. The proposed access drive is 30' in easement width, with a 12' graveled access drive. The Fire Marshal has indicated this access road width and proposed vehicle turnaround is acceptable for emergency services.

The tower is proposed to be a 300 foot self-supported lattice tower with a 15' lighting rod. The tower will include an AT&T antenna and space for three other wireless providers both on the tower and within the fenced compound, consistent with the minimum collocation accommodation requirements of Section 2-4. (Tab 2, pg. 10 of application). The 8' tall fence with three strands of barbed wire exceeds the minimum required 6' tall fencing around the tower compound.

It was noted within the initial site plan submittal that the total land disturbance proposed was 30,056 sq. ft., which exceeds the minimum 20,000sq. ft. threshold that would require a stormwater management plan and an erosion control plan. The applicant has revised the total land disturbance to 9,703 sq. ft. with the site plan resubmittal (pg. T-1), dated May 30, 2014.

#### Height and Setbacks

As mentioned, the tower has a proposed height of 300' with a 15' lighting rod. Per the Wireless Telecommunications Facilities Ordinance ("Wireless Ordinance") a tower may exceed 199' in height with the granting of a waiver by the Board of Commissioners with the required technical justification. The applicant has provided such justification in Tab 2, pg. 12 of the application.

Per the Wireless Ordinance, towers greater than 100' are subject to a setback of 50% of the Wireless Support Structure tower height or the engineered fall zone, whichever is greater. The engineered fall zone of the proposed tower is 300', which exceeds 50% of the tower height. The proposed location of the tower is compliant with the setbacks as shown on pg. C-1 of the revised site plan (dated May 30, 2014).

The Wireless Ordinance also requires a line of sight diagram showing the proposed tower from at least four different directions within the surrounding area. The applicant has provided this diagram, along with a balloon test illustrating the height, under tab 19 of the application.

**During the public hearing, the applicant answered questions about the height of the tower, as the project includes a waiver to exceed 199' in height. The Ordinance requires technical information or other justification to document the need for the additional height request. The following information was submitted into the record, in addition to the project application, for the waiver justification:**

- **The applicant provided radio frequency justification maps (Tab 7 of the application) to illustrate the proposed coverage of the 300' tower.**

- **The applicant's attorney stated that 300' towers are generally spaced five miles apart and 195' towers are generally spaced three miles apart.**

**Please note that pursuant to NCGS § 153A-349.52 (c), A county may not require information that concerns the specific need for the wireless support structure, including if the service to be provided from the wireless support structure is to add additional wireless coverage or additional wireless capacity.**

#### Aesthetics

The proposed tower will comply with the FCC's lighting requirements and will be constructed of galvanized steel, gray in color, consistent with the Wireless Ordinance.

The proposed tower is located just northwest of the center of the parcel that and is heavily wooded. The tower will be located within the wooded portion of the lot (Tab 12 of application) and proposes a continuous all-season perimeter landscaping (p. L-1 of site plan) compliant with the landscape requirements of the Wireless Ordinance.

**The applicant's attorney stated that the tower will be required to have a flashing white light during that day and a red light pulse at night, specifically referred to as a dual lighting system of red lights (L-864) for nighttime and medium intensity flashing white lights (L-865) for daytime and twilight use. The applicant's attorney stated the lighting technology for towers has greatly advanced and the tower lights are designed so "little if any ground-scatter from the lighting will be detected at ground level". Additional information regarding the lighting system has been provided by the applicant's attorney as part of the Sufficiency Review response and is labeled "Dialight" Beacon Tower Lighting Information.**

**Regarding the proposed color of the tower, the applicant's attorney entered into the record that the Federal Aviation Administration (FAA) has issued a Determination of No Hazard to Air Navigation. As a result, the FCC will not require the tower to be painted and the applicant is willing to enter into a condition requiring the tower to remain galvanized steel and gray in color.**

#### Community Meeting

As required by ordinance, the applicant held a community meeting April 29<sup>th</sup>, 2014. The applicant notified adjoining property owners by mail of the meeting and no citizens attended the meeting. The community meeting report is provided in the application under tab 10.

#### Technical Review Committee (TRC)

An interdepartmental staff review of the application was completed during the May 14<sup>th</sup> TRC meeting. Comments received included the requirement that the site receive an E911 address prior to building permit, per the E911 Addressing Office. Additionally, a blue line stream was apparent on the south of the subject property and per Environmental Quality staff, a revised site plan was requested to show the proposed tower in relation to these features. A revised site plan was received May 30<sup>th</sup>, 2014 with the stream feature identified, along with a 50' stream buffer, and not within proximity of the proposed tower (pg. C-1,

revised site plan).

Supplemental Information

The applicant also provided the following supplemental information that is not required of the Wireless Ordinance: Radio Frequency Maps (tab 6), RF Letter of Justification (tab 7), RF Engineers FCC Compliance Assessment (tab 9), Property Impact Assessment (tab 20), Impact on Emergency Services (tab 21), Construction Schedule (tab 22) and an FAA Determination of No Hazard (proof of filing) and Lighting Report (tab 24). Please note this information is supplemental in nature and was not required by ordinance.

**Discussion & Analysis**

A Wireless Telecommunication Permit application must meet the required five findings as required by the Conditional Use Permit standards of Section 17 of the Chatham County Zoning Ordinance. Those findings are addressed as follows and are found on page 23, behind Tab 2 of the application packet:

**FINDING #1 – The use requested is among those listed as an eligible conditional use in the district in which the subject property is located or is to be located.** The proposed tower is located on a parcel within the unzoned portion of the county. However, telecommunication towers are regulated by the Wireless Telecommunications Facilities Ordinance, which requires a Wireless Telecommunication Permit approval processed in accordance with the standards for granting Conditional Use Permit set forth in the Chatham County Zoning Ordinance. Therefore the use requested is listed as an eligible conditional use in the district the subject property is located.

**FINDING #2 – The requested conditional use permit is either essential or desirable for the public convenience or welfare.** It is Planning Staff’s opinion that this finding can be supported. The applicant states the proposed tower will provide convenience, safety, efficiency, as well as connectedness for the community. Presently, there is little if any wireless service in the subject area and a publicly communicated need for additional wireless coverage.

**FINDING #3 – The requested permit will not impair the integrity or character of the surrounding or adjoining districts, and will not be detrimental to the health, safety, or welfare of the community.** It is Planning Staff’s opinion that this finding can be met due to the galvanized steel, gray color of the tower, the minimized lighting impact on the landscape and additional support for emergency communications needs for the community.

**FINDING #4 – The requested permit will be consistent with the objectives of the Land Use Plan.** This request meets the recommendations of the Land Conservation and Development Plan Policy Objective #7: *Preserve both the form and function of rural character- the landscape.* The proposed tower is at such a height, that fewer of these towers will be required across the landscape, therefore preserving the rural character of Chatham County.

This request is also consistent with Policy Objective #12: *Provide infrastructure in ways that support the land use, economic development and environmental objectives*: this proposed utility will support rural home-based businesses and encourage economic development.

### **Recommendation**

Planning staff has found the application complete and the proposed tower to be consistent with the Land Use and Development Plan. If the Board is of the opinion that the above required findings can be made to approve the project, staff recommends the site be subject to the following conditions:

#### **Site Specific Conditions**

1. The tower shall be gray in color, constructed of galvanized steel.
2. Approval from NCDOT on the relocated commercial driveway must be obtained and a copy presented to the Planning Department before the issuance of the first building permit for the new structures.
3. At least one wireless tenant that intends to locate on the proposed tower must be identified at the time of building application. If a wireless tenant is not identified, then the building permit shall not be issued.

#### **Standard Site Conditions**

4. The application, standards and adopted regulations of the applicable ordinances and policies, and the approved recommendations as provided for and/or conditioned, are considered to be the standards as set forth and shall comply as stated. Changes or variations must be approved through the Planning Department or other approving board before any such changes can take place. These include but are not limited to landscaping, lighting, signage, parking, building construction, wireless facility abandonment and removal, etc.
5. All required local, state, or federal permits (i.e. NCDOT commercial driveway permits, NCDWQ, Chatham County Erosion & Sedimentation Control, Environmental Health Division, Stormwater Management, Building Inspections, Fire Marshal, etc.) shall be obtained, if required, and copies submitted to the Planning Department prior to the initiation of the operation/business.
6. A building permit must be obtained and remain valid at all times within 2 years from the date of this approval or this permit shall become null and void.

#### **Standard Administrative Conditions:**

7. Fees - Applicant and/or landowner shall pay to the County all required fees and charges attributable to the development of its project in a timely manner, including, but not limited to, utility, subdivision, zoning, and building inspections.
8. Continued Validity - The continued validity and effectiveness of this approval was expressly conditioned upon the continued compliance with the plans and conditions listed above.
9. Non-Severability - If any of the above conditions is held to be invalid, this approval in its entirety shall be void.
10. Non-Waiver - Nothing contained herein shall be deemed to waive any discretion on the part of the County as to further development of the applicant's property and this

permit shall not give the applicant any vested right to develop its property in any other manner than as set forth herein.

**Also, staff recommends approval of the waiver request, as required by Section 2-4 (6) to exceed 199' in height based on the technical justification provided by the applicant and the Public Hearing Record.**