

ONEIDA COUNTY PLANNING and DEVELOPMENT COMMITTEE
October 16, 2012
MINOCQUA COMMUNITY CENTER BOARD ROOM
415 MENOMINEE ST, MINOCQUA, WI

Members present: Chairman, Scott Holewinski
Dave Hintz
Billy Fried
Mike Timmons

Department staff present: Karl Jennrich, Planning & Zoning Director
Lila Dumar, Secretary III

Other county staff present: Brian Desmond, Corporation Counsel

Guests present: Steve Zoellner
Lloyd Stankowski
Nathan Ward
Pete Schau
Glenn Schiffmann
Mark Hartzheim, Minocqua Town Chair
Pete Otis
Cynthia Lohman, NRG

Call to order.

Chairman Scott Holewinski called the meeting to order at approximately 3:00 P.M., in accordance with the Wisconsin Open Meeting Law. Gary Baier and Jack Sorensen are excused. Billy Fried, District 17 Supervisor, is sitting on the Committee today for quorum.

Discussion/decision of the agenda.

Motion by Dave Hintz, second by Mike Timmons to approve the agenda with the order of the agenda items at the discretion of the Chair. With all members present voting "aye", the motion carried.

Public Comments.

None.

Line item transfers, purchase orders and bills.

Bills – \$1187.75
Purchase Orders - \$177.25

Motion by Scott Holewinski, second by Dave Hintz, to pay the bills and purchase orders as presented. With all members voting “aye” the motion carried.

Refunds.

None.

Approve future meeting dates: November 7 and November 21, 2012.

The Committee confirmed meeting dates of November 7 and November 21, 2012.

Public comments

None.

Future agenda items.

None.

Conduct Public Hearing on the following.

Conditional Use Permit Application of Central States Tower II, LLC and UC/PTC of Wisconsin, LLC (Verizon Wireless), lessee; GPS, Inc., property owner and Nathan Ward, Buell Consulting, agent to construct and operate a 310 foot lattice self support communication tower including an 80' x 80' fenced compound area on property described as SE SW, Section 34, T39N, R6E, PIN MI 2501-6, Town of Minocqua.

The Committee and staff introduced themselves to the audience. It was noted that Supervisor Fried was appointed to sit on the Committee today in order to make quorum.

Karl Jennrich, Zoning Director, read the notice of public hearing for the conditional use permit application of Central States Tower II, LLC and UC/PTC of Wisconsin, LLC (Verizon Wireless), lessee; GPS, Inc., property owner and Nathan Ward, Buell Consulting, agent to construct and operate a 310 foot lattice self support communication tower including an 80' x 80' fenced compound area on property described as SE SW, Section 34, T39N, R6E, PIN MI 2501-6, Town of Minocqua.

The notice was published in the Northwoods River News on October 2 & 9, 2012. The proof of publication is contained in the file. The notice was posted on the Oneida County Courthouse bulletin board on September 27, 2012. The mailing list was also read into the record.

Correspondence in file: Email from NRG Media, Cynthia Lohman, received 10/15/2012, which was provided to the Committee at this time. Karl Jennrich described the email as a letter to himself,

with 3 sections, a timeline of Raven Broadcasting and Verizon Wireless and the current Verizon lease. Mr. Jennrich stated that the CUP was approved by the Minocqua Planning Commission and forwarded on to the Town Board and the Town Board approved the CUP and forwarded it on to the County to hold a public hearing with the request that the public hearing be held in Minocqua.

Nathan Ward, on behalf of Verizon Wireless, reviewed the CUP application with the Committee. Mr. Ward stated that Verizon Wireless is currently located on the NRG Media Tower and has been since 1993. Originally it was an Alltel installation and Verizon acquired Alltel in 2010. The equipment was old outdated technology. Verizon Wireless has a need to upgrade. Verizon approached NRG Media in March, 2011 letting them know that additional equipment had to be added to the tower. There were negotiations for approximately 3 months trying to work out a lease. This is unsuccessful. NRG has quoted rents of 3-5 times above the standards for his type of equipment. Verizon Wireless decided that it could not pay the rent that was being demanded for the expansion of the equipment. The County was notified at that time. Verizon Wireless started the process of finding a new home for the equipment. The CUP application is the result of my Mr. Ward's research of the area, trying to determine a location near the original broadcast location, allowing Verizon to maintain coverage of the footprint that has benefitted from their service since the 1990's. The property chosen was that of GPS, Inc. The CUP application is a joint application of Central States Tower and Verizon Wireless. Central States Tower would be the owner of the tower, a lessee of Mr. Schiffman's property. There will be a 300 foot self supporting lattice structure that will initially accommodate the loading of Verizon Wireless and will also accommodate the loading of 4 additional similar providers. As far as the rent, Central States Tower is coming in and leasing this property from Mr. Schiffman at a rate of \$1,000.00 a month; they are leasing space to Verizon Wireless at \$1,850.00 a month; that is our first and best example of showing that the rates requested by NRG Media are not indicative of market rates. It is within Oneida County Code that allows Verizon Wireless to make application if unable to co-locate on an existing tower because rates are unacceptable. As far as justification for building a new tower, County Code provides a list 9.54 (5) (A-F) that would provide justification for construction of a new communications tower. 9.54 (E) specifies that the fees, costs or contractual provisions required by the owner of the existing communication structure or site in order to co-locate on an existing communication structure or locate a new structure adjacent to the existing structure are unreasonable relative to industry norms. Verizon Wireless has provided numerous examples of rents that Verizon Wireless is currently paying on similar towers and in similar market places. Exhibit B of the CUP application is specific to rent (attached to minutes). It is the intent of Verizon Wireless and Central States Tower to gain approval to start construction of the tower as early as next month.

Mr. Ward clarified that the equipment would be the same equipment on the new tower as the existing tower. The existing tower and the proposed tower are 1200 feet apart; and will serve a 4-5-mile radius. Some areas will serve a larger area. It is dependent on topographic, terrain, tree cover as well as the limitation of the power that the phone works at. The tower can broadcast the signal much further from its source but the cell phone has to be able to talk back to it. Some of the small cell phones are extremely low powered. The new tower will be 45 feet shorter than the existing tower. There are no other towers in the area that would serve the needs of Verizon.

The location of the tower is critical to connect with other towers. A number of properties were evaluated; this site meets the needs of Verizon Wireless the best.

Attorney Cynthia Lohman, representing NRG Media presented NRG Media's position on the CUP application. Raven and Cellcom designed the new tower to hold a multiple cellular carriers including Verizon Wireless, which was and is an existing tenant on NRG's tower. Prior to application for the permit, Raven notified Verizon of its intentions to construct a new tower, and indicated Verizon would be moved onto the new tower and upgrade its existing equipment. The new tower was completed in May 2011 and Mr. Ward contacted Raven at that time to negotiate amendments for the current lease. Mr. Ward repeatedly emphasized that the rent amount Raven was asking Verizon to pay for the lease renewal was too high, and that is the sole basis of Verizon's request to erect a new cell tower, within a mile of the existing tower. NRG Media consulted with two separate tower consulting groups and was told that the rates for this type of installation in this area, run from \$1,500.00 to \$8,500.00 a month; and that in this area we could expect anywhere from \$3,000.00 to \$5,500.00 a month. NRG Media reviewed that information and decided the best way to determine the capacity that each installation would use would be to base it on the feedlines that go to that tower. That is how the rent rate was developed. After Mr. Ward contacted Karl Jennrich about the lease amount being too great, Mr. Jennrich sent NRG and Raven Broadcasting Corporation a letter and we explained our leasing policies at that time. It was agreed that we were within our rights. The terms that Mr. Ward has proposed for the lease are greatly different than the original lease and we asked that those terms be amended and he has refused which is why we have stuck to the pricing that we have. We've maintained in any conversations that we've had with Verizon and the Town of Minocqua and this Committee that we are willing to negotiate a lease that is equitable to both parties. We have at least one other tower at the exact rates and similar towns that we have tried to negotiate with Verizon and we are committed to provide Oneida County with a co-location site as we have promised in our CUP. Cellular companies practice lease optimization. Cell tower landlords are asked to amend the lease they are currently working under for terms more favorable to the cell company, usually lower rent for a longer term. Raven has been contacted by Verizon several times in the past few years by Verizon brokers regarding this lease and others. The Committee granted Raven a CUP a few years ago and Raven has complied with the conditions that were imposed on it. The only reason that Verizon has asked to build a new tower is because it did not like the rent amount and we were unable to come to terms on termination provisions. There is still space on the tower. It seems that it would be unreasonable to build a tower less than a mile away from the current tower when there is still space that we could get terms on.

Steve Zoellner, neighbors the proposed tower site. Mr. Zoellner stated that the zoning ordinance is intended to reduce the number of towers and provide for co-location. It seems that in correspondence back and forth, that the current tower has been deemed to be not in violation of their CUP and that the rent they are proposing is usual and customary. On 9/14/12 Karl Jennrich drafted a letter and received a response and indicated that that was the case. That they were not in violation. I don't understand how they cannot be in violation and that we can still invoke the provision that we can build a second tower because the fees are unreasonable. The two do not seem to be able to co-exist at once. It seems like the ordinance as it stands does not have the ability to be enforced. We also have the provision of the CUP #6 that indicates whether the use,

values or enjoyment of neighboring properties will be substantially impaired or diminished by the establishment, operation, or maintenance of the conditional use. In this case, I believe that will happen. We have adjacent property owners that are going to be staring at a 300 ft tower and to have a flashing light to look at thru their windows. I canvassed the area and spoke to the neighbors that are most adjacent to the proposed tower site. I was able to make contact with 22 homes and received signatures asking that you deny this CUP from 18 of the 22, or 82%. I have a petition. Any approval that is being sought for reasons that are convoluted and cannot seem to come to a resolution, you are in violation but you are not in violation. You have approval. That is confusing and needs to be clarified. It seems that there has been little discussion or consideration given to the adjacent property owners. I would ask that you clearly define these issues and come to resolution on them and address the property owners concerns. Mr. Zoellner identified the location of his property as being 1280 feet away from the proposed tower site.

Glenn Schiffman, identified himself as 50% owner of Timber Ridge Country Club, as well as 80 undeveloped lots within the Timber Ridge Subdivision. As far as devaluation of property, I don't have that concern nor does my partner. There are a multitude of lots that are substantially closer to the proposed tower site than Mr. Zoellner. The lots in the south and east corner of Timber Ridge, which is relatively undeveloped, I do not have a concern with devaluation of any of those properties. Towers have become a necessity. People are demanding more and more services and many times at meetings, there are discussions on providing more services to people. We need better communication and bring these things to our area to bring more people to our region. The towers have to go somewhere. I cannot speak for NRG Media or Verizon Wireless. For the rent, I would not be inclined to put up a tower if I felt in any way it was going to devalue our property. It is exactly opposite of that, it will probably enhance it by improving services and there will possibly be more tenants on the tower in the future that may help solve the issues of high speed internet that Minocqua is struggling with to have the space available. I'm here to attest to the fact that I am not opposed to the tower; I'm a primary property owner and would request its approval. Now I ask, where are the people? If you talked to 22 people, why are they not here to represent their interests? These meetings have been given a public notice.

Mart Hartzheim, Minocqua Town Chairman. Mr. Hartzheim asked for coordination earlier in the process. The Town was not aware of the issues until just recently. Mr. Hartzheim stressed that the public does not want these tower popping up everywhere, but this case was somewhat different. Mr. Hartzheim feels that neither party compromised at all, and the Verizon quoted what other co-location costs have been, but that was for Verizon Towers only; and that Verizon has a partnership with Central States, that keeps their rates lower than others. Mr. Hartzheim asked the Committee not to walk away from enforcement of co-location. Verizon could have paid the rate that was asked; but they just did not want to. The CUP passed at the Plan Commission; the Town Board passed it on to the County.

Steve Albertson, General Manager, NRG Media. Mr. Albertson stated that NRG was willing to negotiate, but the problem was the termination clause. Too much freedom was being asked of NRG Media for Verizon to leave that tower literally once a year. This left no ability for NRG to plan. If that could be resolved, NRG is willing to negotiate the rates.

3:48 PM. Chairman Holewinski closed the public hearing from public comment.

Discussion by the Committee: (Copies of letters are attached to the minutes).

- Letter dated September 14, 2011 to NRG Media from the Zoning Director.
- Letter dated October 14, 2011 to Zoning Director from NRG Media.
- Letter dated November 14 2011 to Peter Schau from the Zoning Director.

The Committee had concluded in November, 2011 that the County has no way to determine whether or not the rates are fair and reasonable to both parties. It was not their place to do so. Verizon must prove that the rates are unreasonable in order for this CUP to be issued.

Dave Hintz suggested that if the parties cannot reach an agreement, then the Committee should move forward with approving/disapproving the CUP.

Motion by Dave Hintz, second by Mike Timmons to approve the CUP with the General Standards having been met, subject to staff conditions; and accepting the responses from Mr. Ward on the CUP application that the parties have reached an impasse in reaching an equitable contract. The motion carried with a majority vote; Mr. Holewinski abstained.

Adjourn.

4:10 PM - The meeting was adjourned.

Chairman Scott Holewinski

Karl Jennrich, Planning & Zoning Director