

ROUTT COUNTY PLANNING COMMISSION

FINAL MINUTES

June 4, 2020

The regular meeting of the Routt County Planning Commission was called to order at 6:00 p.m. with the following members present: Chairman Steve Warnke, Bill Norris, Troy Brookshire, John Merrill, Peter Flint, Brian Kelly, Roberta Marshall, Greg Jaeger and Andrew Benjamin. Billy Mitzelfeld Commissioner joined the meeting in progress. Rohail Abid was absent. Interim Planning Director Kristy Winsler and staff planner Chris Brookshire also attended. Sarah Katherman prepared the minutes. This meeting occurred via Zoom.

PUBLIC COMMENT

There was no public comment.

MINUTES - May 21, 2020

Commissioner Kelly moved to approve the minutes of the Routt County Planning Commission meeting cited above, as written. Commissioner Marshall seconded the motion. **The motion carried 9 - 0.**

ACTIVITY: PL-19-189

PETITIONER: Zirkel Wireless

PETITION: Conditional Use Permit for a telecommunications tower for wireless internet service

LOCATION: West slope of Hahn's Peak via USFS access road 490

Mr. Alan Belvo, co-founder to Zirkel Wireless, reviewed the history of Zirkel Wireless. He said that the company has wanted to extend its service to North Routt County for some time, but have had a difficult time identifying an appropriate antennae site. He said that North Routt lacks broadband service, which is becoming increasingly important for work, education, safety, etc. Mr. Belvo said that they want to respect the historic nature of Hahn's Peak and have made every effort to minimize the visual impact of the proposed facility. He said that the site is 900 ft. below the peak and that the tower extends only 5 ft. above the accessory structure, which is designed to look like a cabin with a solar array on the roof. The site is not visible from the public hiking trail and is only barely visible from CR 129.

Mr. Sean Heskett, co-founder to Zirkel Wireless, presented renderings of the proposed tower and equipment structure. He also presented photos of the site and a topo indicating that most of the site has a 70% grade. He presented an aerial photo and indicated the locations of the two closest cabins that are each **about ½ mile away**. One of the cabins belongs to Mr. Tim McGill, one of the

interest holders of the tower site. Mr. Heskett said that the site is not visible from Hahn's Peak Village and the next closest residences are about 2.5 miles away.

For comparison, Mr. Heskett presented photos of the Milner tower, taken from various locations about 1 - 1.6 miles away, indicating that it is very difficult to see. The Milner tower is twice as tall as the proposed tower, and is skylined. The proposed Hahn's Peak tower is up against the hillside.

Ms. Winser described the review criteria for telecommunication towers and the FCC regulations that prohibit approval agencies from discriminating between different telecommunications providers and from disallowing telecommunication towers in general. She also reviewed the Telecommunication Act of 1996 which disallows the denial on the basis that service is available from another provider. The County is also not allowed to deny a petition based on the environmental effects of radio frequency emissions provided that they comply with FCC regulations.

Ms. Winser reviewed the County's regulations regarding telecommunication towers, specifically Section 8.10.3 of the Zoning Regulations. She said that the site is over two miles to the nearest residences that could potentially see it, and referenced a photo from the applicant's presentation. She noted that the site is well screened by the knoll from other areas. She said that the applicant has addressed staff's initial concerns regarding visual impacts and access. She said that the applicants can obtain a permit from the US Forest Service (USFS) for use of the road mentioned in the comment from Janet Faller included in the staff packet. Ms. Winser added that referral comments had been received from the North Routt Fire Protection District (NRFPD), Colorado Parks and Wildlife and the Steamboat Lake State Park. She reviewed the staff report, highlighting suggested finding of fact #2 and suggested Condition of Approval (COA) #17. Mr. Belvo estimated that construction would take approximately eight weeks.

Mr. Belvo stated that he had spoken to NRFPD Chief Mike Swinsick regarding the solar panel array. He said that he had satisfied his concern regarding monitoring. The array will be monitored 24/7. He said that they had reviewed the COAs and are comfortable with them.

In response to a question from Commissioner Brookshire, Mr. Belvo stated that they had no plans for exterior lighting and would be fine with a condition prohibiting it. He said that no lighting of the tower is required by the FAA or FCC.

Commissioner Kelly expressed concern that the site may be in an avalanche-prone area. Mr. Heskett said that while there are avalanche chutes nearby, there are trees above the site. He added that they are consulting with Kyle Laughton, an avalanche expert, on a safe winter access plan. Ms. Winser noted that the applicants are working with the Building Department to meet snow and wind standards. The site is not in a mapped geologic hazard zone. Ms. Winser stated that the cabin portion of the proposal will require a variance, as the only flat area

on the site is located within the required setback. The Board of Adjustment will hear the variance request on Monday.

Commissioner Norris asked about maintenance of the access road. Ms. Winser stated that a maintenance agreement would probably be part of the road permit from the USFS.

Commissioner Marshall asked about the coverage area of the proposed wireless service. Mr. Belvo said that the coverage areas would include the north side of Willow Creek Pass to the Steamboat Lake area and north from there. Additional repeater towers will be needed to reach areas on the south side of Willow Creek Pass or any other areas that do not have a direct line of sight to the tower. The repeaters are planned for future development.

Commissioner Mitzelfeld expressed concern with the visual impact of the facility and suggested that additional mitigation measures, such as paint color, should be required. Mr. Belvo reviewed the plans for a cabin-like structure. He said there would be no fencing because the support equipment is inside the building and that the propane tank could be painted to match the surroundings. There was discussion of how much of the applicant's presentation Commissioner Mitzelfeld had missed in connecting to the meeting late. It was decided that the information was all included in the meeting materials. There were no objections to Commissioner Mitzelfeld's participation. Regarding the danger of avalanche, Commissioner Mitzelfeld offered that engineering measures could prevent damage to the facility.

Public Comment

Ms. Katie Warchol noted that she had sent in comments, along with a petition with 104 signatures from people objecting to the proposal. Ms. Winser confirmed that the information submitted had been distributed to Planning Commission. Ms. Warchol noted that the FCC guidelines have not been updated in 24 years. She stated that fiber optic cables are a much safer method of transmission and that YVEA is installing them. Ms. Warchol also expressed concern with the proliferation of towers needed to provide wider service.

Ms. Winser reiterated that a proposal cannot be denied because other service is available. She also reviewed the requirement to allow co-location. Mr. Heskett stated that although they must allow co-location, it would be unlikely due to the limitation on power. The solar array is designed to serve only the Zirkel equipment, and cell towers require a lot of power.

Commissioner Jaeger asked about the petition. Ms. Warchol stated that she had started with a paper petition and then moved to an online format. She said most of the people who signed the petition are residents of the area or recreate on Hahn's Peak. She said that wireless technology is dangerous. She said that the petition was based on safety concerns, repeaters and concern regarding the historic mountain. Mr. Belvo stated that the technology is fully compliant with the

regulations of the FCC, which has jurisdiction over transmission safety. He added that the availability of broadband will benefit EMS services, telehealth, education and public safety.

Seeing no further comment, Chairman Warnke closed public comment.

Roundtable Discussion

Commissioner Kelly stated that he was not concerned with the visual impact and stated that unless one were in the immediate vicinity, radiation was not a concern. He acknowledged that there is great deal of recreation on Hahn's Peak, but noted that anyone on the site would be trespassing. Commissioner Kelly said that North Routt needs broadband and that the availability of the service would increase safety. He did, however, express concern regarding the historic mountain. He stated that he was generally in favor of the application.

Commissioner Benjamin agreed that the location and topography mitigate the visual impact. He suggested that "equipment" be added to COA #5; that COA #8 be retained; and that COA #17 allow for administrative extension or an a longer time period to get the system operational. In response to emission and safety concerns, he stated that the wireless facility is located on private property and people should not be trespassing. He stated his support for the project.

Commissioner Brookshire suggested that no external lighting be allowed on site, and agreed to allow for a longer installation period. He said that no additional screening was needed. He stated his support for the proposal and offered that this facility should not be held to a different standard than what is required for a single family home. Commissioner Brookshire said that the petitioners had been very sensitive to concerns regarding visual impact in their design.

Commissioner Merrill stated his support and offered that it was a compelling petition.

Commissioner Norris stated his agreement with previous comments. He said he did not think the transmission presents a health concern and that he supports the petition.

Commissioner Jaeger expressed agreement with the suggested amendments to the COAs, and asked if COA #16 should be removed if no lighting is allowed. He offered that the technology is regulated by the FAA and the FCC; that the access is regulated by the USFS and the structure must be approved by the Building Department. He agreed with the historic value of Hahn's Peak, but stated that the mitigation was sufficient.

Commissioner Brookshire said that COA #16 should remain, as the FAA requirements are not within the County's purview.

Commissioner Flint expressed support for the petition and offered that it was well designed. He said there is no alternate site with less impact. He offered that broadband is becoming more and more essential.

Commissioner Marshall expressed her support.

Commissioner Mitzefeld stated his support, but added that more mitigation might be appropriate and that the color of the paint should be specified. Ms. Winser noted that the approval would be specific to the project plan.

Chairman Warnke stated his agreement with previous comments. He offered that the concerns had been addressed and agreed that North Routt needs better access to telecommunication.

MOTION

Commissioner Brookshire moved to approve the Conditional Use Permit for a telecommunication facility on Hahn's Peak, based on the following findings of fact.

1. The proposal with the following conditions meets the applicable guidelines of the Routt County Master Plan and is in compliance with Sections 4, 5, 6 and 8.10 of the Routt County Zoning Regulations.
2. With this approval comes the recognition that the public benefits outweigh strict non-compliance and that visual mitigations are precluded by the nature of the technology and the surrounding landscape.

This approval is subject to the following conditions:

General Conditions:

1. The CUP is contingent upon compliance with the applicable provisions of the Routt County Zoning Regulations including but not limited to Sections 5, 6, and 8.
2. The CUP is limited to the uses and facilities presented in the approved project plan. Any additional uses or facilities must be applied for in a new or amended application.
3. Any complaints or concerns that may arise from this operation may be cause for review of the CUP, at any time, and amendment or addition of conditions, or revocation of the permit if necessary.
4. In the event that Routt County commences an action to enforce or interpret this CUP, the substantially prevailing party shall be entitled to recover its costs in such action including, without limitation, attorney fees.
5. No junk, trash, or inoperative vehicles or equipment shall be stored on the property.
6. This approval is contingent upon the acquisition of and compliance with any required federal, state and local permits; the operation shall comply

with all federal, state and local laws. Copies of permits or letters of approval shall be submitted to the Routt County Planning Department prior to operations.

7. Fuel, flammable materials, or hazardous materials shall be kept in a safe area and shall be stored in accordance with state and local environmental requirements.
8. No exterior lighting shall be allowed on site.
9. Prior to the issuance of the permit, the permittee shall provide evidence of liability insurance in the amount of no less than \$1,000,000 per occurrence. Permittee shall notify the Routt County Planning Department of any claims made against the policy. Routt County shall be named as an additional insured on the policy. Certificate of liability insurance shall include all permit numbers associated with the activity.
10. Accessory structures/uses associated with this permit may be administratively approved by the Planning Director, without notice.
11. The permit shall not be issued until all fees have been paid in full. Failure to pay fees may result in revocation of this permit. Permits/Approvals that require an ongoing review will be assessed an Annual Fee. Additional fees for mitigation monitoring will be charged on an hourly basis for staff time required to review and/or implement conditions of approval.
12. Transfer of this CUP may occur only after a statement has been filed with the Planning Director by the transferee guaranteeing that they will comply with the terms and conditions of the permit. If transferee is not the landowner of the permitted area, transferee shall submit written consent of the transfer by the landowner. Failure to receive approval for the transfer shall constitute sufficient cause for revocation of the permit if the subject property is transferred. Bonds, insurance certificates or other security required in the permit shall also be filed with the Planning Director by the transferee to assure the work will be completed as specified. Any proposal to change the terms and conditions of a permit shall require a new permit.
13. The Permittee shall prevent the spread of weeds to surrounding lands, and comply with the Colorado Noxious Weed Act as amended in 2013 and Routt County noxious weed management plan.

Specific Conditions:

14. The CUP is valid for the life of the use provided it is acted upon within one year of approval. The CUP shall be deemed to have automatically lapsed if the uses permitted herein are discontinued for a period of one (1) year.
15. The construction and use of a telecommunication facility shall not cause interference to other adjacent telecommunication facilities. The County shall be held harmless if interference occurs.

16. If tower lighting is required by the FAA, the operator shall use only white (preferably) or red strobe lights at the minimum intensity, minimum number of flashes per minute, and minimum number of lights allowed by the FAA.
17. Permittee shall bring the facilities subject to this CUP into service ("on air") within one (1) year of the submittal of the application for a building permit for the facility. Facilities that are abandoned by disconnection of power service, equipment removal or loss of lease for greater than six (6) months shall be removed by the telecommunication facility owner and the site shall be reclaimed. Should the owner fail to remove the facilities, the County may do so at its option, and the costs thereof shall be a charge against the owner. The permittee shall post a bond with the County in the amount of 150% of the cost of restoration of the site. This bond will be used to guarantee the reclamation of the site in the event that reclamation and removal of equipment is not completed.
18. In order to limit proliferation of cellular tower sites in the area, the operator shall agree to allow co-location of other users on the tower, providing their requested use is compatible with the existing use.
19. A Routt County Building Permit must be obtained for the wireless facility.
20. Prior to the issuance of a Certificate of Occupancy, the permittee shall provide the Planning Department with as-built drawings of the tower and facilities.
21. Revegetation of disturbed areas shall occur within one growing season with a seed mix which avoids the use of aggressive grasses. See the Colorado State University Extension Office for appropriate grass seed mixes.
22. The telecommunication equipment shall be painted a color compatible with the existing character of the site and surrounding properties.
23. Anti-perching devices shall be installed along antennae frames, horizontal cross arms, and any other vantage point used by raptors for predation.

Commissioner Norris seconded the motion.

The motion carried 9 - 0, with the Chair voting yes.

ADMINISTRATOR'S REPORT

Ms. Winser reviewed the upcoming agendas. At this point, meetings have been scheduled for June 11th, 18th and 25th and for July 9th, all on Zoom until further notice.

Ms. Winser reported that the consultant that was to be contracted to assist with the Master Plan update had been cut from the budget. The project will continue, but at a slower pace.

The meeting was adjourned at 8:30 p.m.