

**Joint City-County Planning Commission
of
Barren County, Kentucky**

March 15, 2021

The Joint City-County Planning Commission of Barren County, Kentucky met in regular session on Monday, March 15, 2021 at 7:00 PM in the Council Chambers of the Glasgow City Hall.

Chairman Gumm, Chairman called the meeting to order at 7:00 PM.

The roll was called with the following Commission Members present:

Eddie Atnip (Zoom)	David Jessie
Joe Austin	Joan Norris
Brad Bailey (Zoom)	David Rutherford (Zoom)
Lewis Bauer	Janis Turner
Tommy Gumm	Candy Wethington
Ricky Houchens	Forrest Wise

Rondal Brooks was absent.

I. GENERAL BUSINESS:

Agenda Item # 1 - Approval of Minutes

A motion was made by Ricky Houchens and seconded by Candy Wethington to approve the January 19, 2021 minutes. Motion unanimously carried.

Agenda Item # 2 - Approval of Invoices

The following February 16, 2021 and March 15, 2021 invoices were presented for payment.

A motion was made by Forrest Wise and seconded by Joe Austin to pay the February 16, 2021 and March 15, 2021 invoices as presented for payment. Motion unanimously carried.

Agenda Item # 3 – Committee Reports

Kevin Myatt reported the Staff would be meeting with Cave City and Park City regarding the potential changes to the text of their respective zoning ordinances. He also encouraged the Commission Members to attend a Continuing Education class offered by BRADD virtually. There is no charge and members can get 4 hours for the class.

Agenda Item # 4 - Treasurer's Report

The bank balance as of February 28, 2021 was \$64,143.35. Deposits in the amount of \$3,925.00 were received from Barren County and \$1,100.00 from the City of Glasgow. The Treasurer's Report was filed as presented.

Agenda Item # 5 – Director's Report

Kevin Myatt, Planning Director, stated his office currently uses PDF to make presentations. Adobe Acrobat Pro is a program that can be used for presentations, interaction with local engineers on plats and other uses. The charge for this program is \$14.99 per month or \$179.88 per year. Mr. Myatt requested permission to purchase this service. He stated he knew this was not an item in the current budget but felt it would be an asset to the performance of his office.

A motion was made by Lewis Bauer and seconded by Candy Wethington to approve the purchase of the Adobe Acrobat Pro program. Motion unanimously carried.

Chairman Gumm stated he was changing the order of the Agenda due to the first item listed could potentially be a lengthy presentation.

II. PUBLIC HEARING:

- 2. 031521-01-G – Zone Change Application – Rita Neighbors, Owner/Applicant – R-1 (Low Density Residential District) & B-3 (Highway Service Business District) to B-3 (Highway Service Business District) – Property located at 1398 Happy Valley Road – 4.804 +/- Total Acres – Glasgow**

Attorney Charles A. Goodman, III recused himself from the proceedings due to a conflict of interest.

Chairman Gumm opened the hearing and served as the Hearing Officer.

A public hearing was conducted.

Chairman Gumm swore in Kevin Myatt, Planning Director, who stated that all notifications had been made and all signage was in place.

Kevin Myatt, Planning Director, presented the Zone Change Application and Planning Staff Recommendations.

Chairman Gumm asked if anyone present would like to speak in favor of the proposed Zone Change.

No one present address the Commission.

Chairman Gumm asked if anyone present would like to speak in opposition of the proposed Zone Change.

No on present addressed the Commission.

Chairman Gumm closed the hearing.

A motion was made by Eddie Atnip and seconded by Janis Turner to approve the Proposed Zoning for Rita Neighbors, Owner/Applicant, for property located at 1398 Happy Valley Road because the proposed map amendment is in agreement with the adopted Comprehensive Plan. Motion unanimously carried.

Attorney Goodman returned to the meeting.

- 3. 031521-01-C – Zone Change Application** – *Danny & Martha Yoder, Owner, Charles & Deborah Brand, Applicant – R-1 (Single Family Residential District) to B-2 (General Business District) – Property is located approximately six hundred and eighty (680') feet northeast of the Northside Estates and North Dixie Highway intersection and one thousand two hundred (1,200') feet southwest of the Lakeview Drive and North Dixie Highway intersection – 15 +/- Total Acres – Cave City*

Lewis Bauer recused himself from the proceedings due to a previous business relationship with the Applicant.

Chairman Gumm opened the hearing and served as the Hearing Officer.

A public hearing was conducted.

Chairman Gumm swore in Kevin Myatt, Planning Director, who stated that all notifications had been made and all signage was in place.

Kevin Myatt, Planning Director, presented the Zone Change Application and Planning Staff Recommendations.

Commission Member Eddie Atnip asked Mr. Myatt about a buffer between the proposed property and the residential area.

Mr. Myatt stated there was no landscape buffer ordinances in Cave City's zoning ordinance for this property.

Chairman Gumm asked if anyone present would like to speak in favor of the proposed Zone Change.

Dewayne Hatcher, Mayor of the City of Cave City, who was sworn in by Chairman Gumm, spoke in favor of the Zone Change Application and thought the RV Park would be an asset for Cave City.

Charles Brand, spoke in favor the Zone Change. He was sworn in by Chairman Gumm. He stated there would be a 20' – 50' buffer on three (3) sides of the proposed property. There would be 78 trailer sites, not that they would all be occupied at the same time. The trailer sites would be 35' to 70' long. He stated that restrooms would be installed at a later date and he would keep as many trees on the site as possible.

Chairman Gumm asked if anyone present would like to speak in opposition of the proposed Zone Change.

Kerry Mears, 110 Northside Estate, was sworn in by Chairman Gumm, spoke in opposition to the Zone Change. Her concern was that the RV Park would be so close to her back yard. She only has 115' in her back yard and was fearful that there would not be a sufficient barrier to keep the noise from being a bother. She thought the area should remain as residential.

Martin McIntire , 132 Northside Estate, was sworn in by Chairman Gumm, spoke in opposition to the Zone Change. He felt the area should stay residential.

Ricky Myers, speaking on behalf of Cheryl Myers, was sworn in by Chairman Gumm. Mr. Myers reported that Ms. Myers was opposed to the RV Park being installed.

Mr. Brand spoke to the Commission again and explained in detail how he would maintain the Park. He said he would not allow any type of riff-raff in the park and if renters did not abide by the rules they would be asked to leave.

Martin McIntire asked what RV Park Residents would do for entertainment. He was concerned that with nothing in the park for entertainment, the resident's children could become destructive to the property in Northside Estates.

Dewayne Hatcher, Cave City Mayor, spoke again to the Commission and others present. He stated there is another RV Park in Cave City and it is well maintained. Mr. Hatcher felt that Mr. Brand would maintain his property in such a way as the other RV Park.

Kerry Mears spoke again to the Commission. She stated she is very much concerned about the noise from vehicles at nighttime.

There being no further questions, Chairman Gumm closed the public hearing.

A motion was made by Forrest Wise and seconded by Joan Norris to approve the Proposed Zoning for Danny & Martha Yoder, Owner, and Charles and Deborah Brand, Applicant, because the proposed map amendment is in agreement with the adopted Comprehensive Plan.

Ricky Houchens suggested a sound barrier between the RV Park and the Residential Area.

A motion was made by Mr. Houchens and seconded by Brad Bailey to amend the original motion to include an eight (8') foot double sided, treated lumber fence with six (6") inch x six (6") inch posts being placed on the South boundary of the property for the length of the property. Motion unanimously carried.

A vote was then taken on the amended motion which reads: to approve the Proposed Zoning for Danny & Martha Yoder, Owner, and Charles and Deborah Brand, Applicant, because the proposed map amendment is in agreement with the adopted Comprehensive Plan and also the following Binding Element, which was agreed upon by Charles Brand, Applicant to install an eight (8') foot double sided, treated lumber fence with six (6") inch x six (6") inch posts being placed on the South boundary of the property for the length of the property. Motion unanimously carried.

Lewis Bauer then returned to the meeting.

III. DEVELOPMENT PLAN:

- 1. 031521-02-G – Preliminary and Final Plan – Tract 2, Phase 1 – J B Enterprises of Cave City, Inc., Applicant/Owners(s) – Property located along New Bowling Green Road and Carroll Knicely Drive – 4 Tracts – 5.82 +/- Total Acres – Glasgow – Plans prepared by ACES, Inc.**

Staff Findings:

1. Currently the subject property is located within an I-2 (Heavy Industrial) District.
2. The existing tract of land contains approximately 5.82 total acres with 1.10 total acres being disturbed in Phase 1 of Tract 2 of the site. The majority of the existing site slopes to the south-southwest, see Sheet C1.

3. As shown on Sheet C2, the Applicant is proposing the construction of a 3,200 ft² spec building.
4. Section 158.400(22) of the Glasgow Zoning Ordinance requires uses not specified to provide one (1) space for each 300 ft² of gross floor area. The minimum required parking spaces is forty one (41); the Applicant is providing forty three (43) new spaces.
5. Sheet C3 and C4 are detailed proposed grading and erosion sheets for the development.
 - A. As shown on the plans, storm water runoff is to drain to an existing drainage basin via a proposed ditch-line and then naturally flow along the hillside.
 - B. Silt fencing and rock check dams are proposed along the leading edge of the top of the hill that the proposed development is located on. Additional erosion control methods are in place for the hillside in an effort to reinforce sediment control.
6. This site is to be serviced by a proposed fire hydrant to be located along Circle Road and an existing hydrant north of the subject property on Carroll Knicely Drive. All utilities shown are proposed and will need final approvals from the applicable utility companies prior to construction.

Staff Recommendation:

It is the Staff's recommendation of approval of the Preliminary and Final Development Plan subject to the following conditions: adequate soil erosion and sedimentation control measures, shown on the approved plans, be implemented during and after site construction in order to reduce soil erosion and to minimize water runoff to the surrounding developments.

A motion was made by Ricky Houchens and seconded by Joe Austin to approve the Preliminary and Final Plan for Tract 2, Phase 1 for J B Enterprises of Cave City, Inc., because the proposed development plan does meet the minimum standards set forth in Section 152 of the Glasgow Development Ordinance and subject to Staff Findings and Recommendations of approval of the proposed development with conditions that adequate soil erosion controls be implemented and no building development to occur on any other proposed Tract until a Final Plan has been submitted. Motion unanimously carried.

- 2. 013521-03-G – Preliminary Plan – Span Tech/NexGen – Span Tech, Applicant/Owner(s) – Property located at 101 Hilltopper Way – 1 Tract – 16.9 +/- Total Acres – Glasgow – Plans prepared by Scott & Murphy, Inc.**

Janis Turner recused herself from the proceedings because of a Conflict of Interest.

Staff Findings:

1. Currently the subject property is located within an I-1 (Light Industrial) District.
2. As shown on Sheet C-0.1, the Applicant is proposing the construction of a 100,000 ft² building.
3. The existing tract of land contains approximately 16.9 total acres with 4-5 total acres being disturbed in on the site. The majority of the existing site slopes to the northwest, see Sheet C-0.5.
4. Sheet C-1.0 shows the site layout including the existing facility and the proposed structure in conjunction with the fire lane, parking layout and entrance and docking to the new structure.
5. Sheet C-2.0 through C-3.0 are detailed proposed grading and erosion sheets for the development.
 - A. As shown on the plans, storm water runoff is to drain to an proposed drainage basin, that has been reconstructed from the existing basin/pond, via a proposal of drop box inlets.
 - B. Silt fencing and rock check dams are proposed along the leading edge of the top of the hill that the proposed development is located on. Additional erosion control methods are in place for the hillside in an effort to reinforce sediment control by “J” hook style silt fencing.
 - C. A proposed eighty (80’) linear foot block retaining wall is on the northwest corner of the site. However, no construction can be done until detailed engineering specifications have been submitted.
 - D. The proposed drainage calculations submitted do indicate an increase in impervious area and runoff coefficient , however, the proposed detention basin will facilitate the additional runoff.
6. A storm water maintenance agreement has been signed with the City of Glasgow Stormwater Coordinator.
7. Sheet C-4.0 shows the approximate utility locations. Arrangements will need to be made with Glasgow Water Company pertaining to sewer availability as well as the water line locations. The electric utility is being finalized for preliminary satisfaction in regards to the removal of the existing power line location. The proposed FDC pit has been

submitted by the Glasgow Fire Chief, as well as the proposed fire hydrants (3) service to be located on the north, northwest and south on the subject property. All utilities shown are proposed and will need final approvals from the applicable utility companies prior to construction.

Staff Recommendation:

It is the Staff's recommendation of approval of the Preliminary Development Plan subject to the following conditions: adequate soil erosion and sedimentation control measures, shown on the approved plans, be implemented during and after site construction in order to reduce soil erosion and to minimize water runoff to the surrounding developments, no construction is allowed for the proposed retaining wall until all engineered plans are submitted.

A motion was made by Lewis Bauer and seconded by David Jessie to approve the Preliminary Plan for Span Tech/NexGen, Applicant/Owner, because the proposed development plan does meet the minimum standards set forth in Section 152 of the Glasgow Development Ordinance and subject to Staff Findings and Recommendations of approval of the proposed development with conditions that adequate soil erosion controls be implemented and that all engineered specifications for the proposed retaining wall be submitted. Motion unanimously carried.

Janis Turner returned to the meeting.

II. PUBLIC HEARING (Continuance):

- 1. 031521-01-B – Cellular Antenna Tower Application – Consideration of Uniform Application to construct a Cellular Antenna Tower along Whites Chapel Road, approximately one thousand (1,000') feet south of the Patton Road and Whites Chapel Road intersection – Barren County – New Cingular Wireless PCS, LLC, Applicant.**

Janis Turner recused herself from the proceedings because of a Conflict of Interest.

Chairman Gumm reminded the Commission that this item is pursuant to KRS 100.985 – 100.987.

Attorney Goodman made a few comments to the review Commission. "Your customary procedures involved here are essentially zone change applications and development plans. This is a different animal which many of you have not been involved with before. This is an application for a proponent to construct a cell tower and that is controlled by KRS 100.987 and the applicable portions of 987 with regard to the responsibilities and actions of the review commission are to review the application in light, and this is verbatim, in light of its agreement

with the Comprehensive Plan and the offices of the local Zoning Regulations, but this is outside the City Limits so it would not apply, and make a final decision to approve or disapprove the Uniform Application and advise the Applicant in writing of that final decision within 60 days from the date of the filing of the Uniform Application. Now we are past the 60 days, but the statutes provides that there can be a written agreement for that written decision to go beyond the 60 days period. Now the reason we went beyond the 60 days was because of inclement weather that caused the hearing to be cancelled the last time but also considerations of certain moratoriums that had been placed by the courts and then by the Governor's Office. In light of that, the applicant and I entered into a written agreement extending the time to issue that written decision until next Monday which is March 22nd. So, we are within the statue with regard to that. Now if we disapprove the application, we will have to state the reasons for that disapproval and we may, and underline may, make suggestions of how to better accomplish the objectives of the Comprehensive Plan. That is may and not shall, and its only upon disapproval. Now even though the written decision does not need to be issued until no later than next Monday because of open meeting considerations and because this has been scheduled as a Public Hearing, the deliberation and the verbal decision has to be made tonight. We can't go into closed session and make that determination and I agree that is the way it should be done. It has to be done as a part of the Public Hearing process since it is a finale of the Public Hearing. I just wanted the commission to understand the process. We have the proponent's attorney here who will be making a presentation. It is my understanding that there is an opposition, its more than my understanding, I know there has been an opposition filed and there will be documents which will be entered into the record in connection with that. So, the first matter, if you will, will be the presentation of the Application."

Chairman Gumm opened the hearing and served as the Hearing Officer.

A public hearing was conducted.

Chairman Gumm swore in Kevin Myatt, Planning Director, who stated that all notifications had been made and all signage was in place.

Kevin Myatt, Planning Director, presented the Cellular Antenna Tower Application (Uniform Application) and Planning Staff Recommendations.

Chairman Gumm asked if anyone present would like to speak in favor of the proposed Cellular Antenna Tower Application.

David A. Pike, Attorney, Pike Legal, 1578 44 East, Suite 6, P O Box 369, Shepherdsville, KY, spoke in favor of the Cellular Antenna Tower Application and submitted Hearing Binders to each Commission Member as evidence. He then presented a digital power-point presentation. For a full copy of the presentation, please contact the Joint City-County Planning Commission office.

After Mr. Pike's presentation, he introduced all the filings previously tendered as part of the application process and wanted to file cumulatively the Hearing Binder that was submitted as an Exhibit in this proceeding as well.

Commission Member Eddie Atnip asked how much extra space would be on the proposed tower.

David Pike responded there were multiple additional co-location spots associated with this. He would check, but believed it is a minimum number of 3 – 4 and there is also adequate ground compound space for their radio equipment.

Chairman Gumm asked if anyone present would like to speak in opposition of the proposed Zone Change.

Caitlin McQueen Tubbesing, with Freeman, Mathis and Gary, LLP, representing SBA Communications was present by the mean of Zoom spoke in opposition.

Mrs. Tubbesing presented several attachments of maps and cited KRS 100.987 of the Planning Commission's responsibilities with specific reference to Barren County's Comprehensive Plan. Mrs. Tubbesing stated that AT&T is a current tenant on the existing tower and that the lease was renewed on January 5th, 2021. Mrs. Tubbesing referenced Mr. Pike's presentation relating to FirstNet for emergency personnel that the equipment referenced was installed in March of 2020 on the existing tower. Mrs. Tubbesing reiterated the co-location definition and referenced the attachments of a Distance Map and a gap in coverage with maps in the attachment of AT&T's website coverage map. Mrs. Tubbesing mentioned the RF studies in her presentation with attachments. Mrs. Tubbesing proceeded to reference the Regulations for Cellular Antenna Tower Services on the Planning Commission's webpage as well as the Comprehensive Plan's suggestions and statements in Chapter 2 (Goals and Objectives) and Chapter 6 (Community Facilities). Mrs. Tubbesing stated three (3) factors against granting AT&T's application: 1. Concerns whether the proposed tower adequately serves the residents of Barren County within less than .5 miles from the existing tower because coverage is comparable to the existing coverage provided now and; 2. How helping a multi-national company save one million (\$1,000,000) dollars over twenty (20) years will help the residents of Barren County and; 3. Construction of the proposed tower is anti-esthetical to the expressed objective of the vision of Comprehensive Plan for cellular antenna towers. Mrs. Tubbesing's presentation is available in its entirety with the Planning Commission staff.

David Pike's rebuttal: I'll keep this rebuttal quick. There are six (6) points. First of all, the key here is:

1. Reasonable availability and that is what the statutes call for; and
2. Efficient, and that is what your regulations call for. If you have questions about that, I recommend you consult your own legal counsel on that;

3. Next, the Cost Savings issue is expressly documented as a key goal by the Kentucky Public Service Commission in the case quotes that I provided you with. Now if I was SBA, I wouldn't want to talk about what the PSC had to say about them either. But, of course, that is the case, and those decisions are final;
4. Next, you have a Staff Recommendation here on the table in which your own staff has recommended approval without reservation;
5. Next, ultimately the question here is whether or not we are in, whether or not the alternative is reasonably available and efficiently available and that necessarily includes cost and the cost numbers here are uncontroverted with the tremendous difference with rent over twice as much in addition to delays in deployment associated with additional studies and other delays every time we want to make a change in antenna configuration.
6. Finally, I do want to correct one thing indicated by opposing counsel, she said that this was the first time that anyone had approached SBA concerning this. I'm going to introduce as an exhibit a letter dated February 13, 2018 from AT&T to SBA Corporation concerning this exact site indicating that we needed to hear from them within 60 days regarding whether they were prepared to match the other rates and of course, crickets. In any event, I'll introduce that as an additional Supplementary Exhibit.

Again, I appreciate your time that you've taken here this evening. Otherwise, there was nothing in that Comprehensive Plan analysis that was offered by opposing counsel which in any way alters any of these legal requirements, all of which have been addressed by your staff and in the materials that we've submitted including affidavits substantiating the cost differentials. Thank you very much.

Caitlin McQueen Tubbesing's rebuttal included:

1. This isn't a case before the PSC and does not have jurisdiction. Specific statutes apply. Your comprehensive plan applies and it matters.
2. AT&T renewed their lease January 2021.

Mr. Pike responded "we renewed the lease because we had to in order to keep providing service and it is noteworthy that SBA's first concern is what, their lease. Now, we can break that lease and are prepared to do so with gusto.

Caitlin McQueen Tubbesing did not respond with a rebuttal.

Commission Member Eddie Atnip asked Caitlin McQueen Tubbesing on the existing tower, of how much additional room is there for other utilities to co-locate on it.

Caitlin McQueen Tubbesing replied that she would have to get back with Mr. Atnip with an answer to supplement the record.

Chairman Gumm asked for any other comment either on behalf or against the Cellular Antenna Tower Application.

There being no further questions, Chairman Gumm closed the public hearing.

Attorney Goodman advised the Commissioners that the statute provides that the decision of the Commission must be in writing but as we mentioned before the verbal decision needs to be made tonight. That decision in terms of being a verbal decision does not need to be anything other than approval or disapprove. The written decision, if necessary, will supplement anything that needs to be expanded on in terms of that decision that is made. So, a motion made one way or another, I think, and it is my advice, should be made in terms of a motion to approve or disapprove and that should be the extent of it and have a vote on it.

A motion was made by Eddie Atnip and seconded by David Rutherford to approve the Uniform Application to Construct a Cellular Antenna Tower along Whites Chapel Road, New Cingular Wireless PCS, LLC, Applicant because the proposed request is in agreement with the Statutes of KRS 100.985 through 100.987 for the placement of a Cellular Antenna Tower.

A roll call vote was taken with all eleven (11) Commission Members present voting YES. Motion unanimously carried.

There being no further business to come before the commission, upon the motion of Lewis Bauer, seconded by Candy Wethington, and unanimously carried, the meeting was adjourned at 9:34 PM.

JOINT CITY-COUNTY PLANNING COMMISSION
OF
BARREN COUNTY, KENTUCKY

By: _____
Tommy Gumm, Chairman

ATTEST:

Janis Turner, Secretary-Treasurer