

**Minutes for the Meeting of the
City of Dyersburg Municipal-Regional Planning Commission
May 11, 2017
10:00 am
Municipal Courtroom**

Commission Members Present: Mayor John Holden, Brian Ramm, Tony Dement, Paul Newbill, Eddie Burks, Robert Taylor, Jr., and Sherry Guthrie.

Staff and Others Present: Will Radford, Planner/Consultant, Nelson Community Development Group, Tiffany Heard, Engineer, SSR., Scott Ball, Storm Water and Construction Inspection, John Lannom, City Attorney, Thomas Mullins, Codes Enforcement, Daniel Cobb, Manager of Dyer County Building Inspection.

Chairman Burks declared that a quorum was present and called the meeting to order. Chairman Newbill called for a motion to approve the minutes of the April 13, 2017 Commission meeting. The motion was made by Commissioner Paul Newbill with second by Commissioner Brian Ramm. The motion passed and the minutes were approved.

Chairman Burks called for any old business. Staff noted old business included the un-tabling of a motion from the April 13, 2017 meeting regarding the review and approval of an ordinance amendment of regulations for Telecommunication towers and equipment following item (A.) of New Business on the agenda.

New Business:

A. Susan Cox Development Rezoning Request

Background

A rezoning request has been submitted to rezone a portion of property located near the intersection of Carter Lane and Highway 104 from FAR (Forestry, Agriculture, Residential) to C (Commercial). The property can be further identified as Parcel 14.00 on Dyer County Tax Map 100. The property does not appear to be located in a federally identified flood hazard area.

Analysis

The area requested for rezoning is FAR and is surrounded completely by FAR. There do not appear to be any existing C districts in the area. This could be considered spot zoning if rational planning policies in favor the rezoning aren't also considered.

The Dyersburg 2020 Development Plan shows the area designated as "Low Density Residential/Public Semi Public".

There are concerns of the impact a commercial rezoning would have to the adjacent residential development and the largely rural character of the area. A commercial rezoning could cause increased traffic and noise would impact the residential area.

Staff understands that sewer is not available in the area which would mean future commercial development would likely take place on septic systems. Staff questions whether a commercial development is viable on septic systems. The Dyersburg Future Land Use and Transportation Plan states:

2. Commercial development shall be approved in only those areas where infrastructure is available and is adequate to support such development.

The Parcel is located along a major arterial street in the Dyersburg Major Road Plan and is located at an intersection. This location makes it conducive to commercial development.

It should also be noted that this is a regional zoning request and there isn't an existing "commercial district" that one might find inside the corporate limits of Dyersburg.

The Dyersburg Future Land Use and Transportation Plan states:

5. Commercial uses, which are high intensity traffic generators, shall be located away from the CBD and shall be on major collector or arterial status roads.

8. Commercial developments should be designed to minimize negative impacts on residential developments and to enhance the aesthetics of such developments.

9. To the extent feasible, landscaping or other screening shall be provided between commercial and residential land uses.

10. Neighborhood commercial areas should be provided to make convenience goods and services available to residential neighborhoods.

Should the Planning Commission grant this rezoning, staff will work to ensure #8 and #9 and complied with if necessary on site-plan review.

Recommendation

Staff finds sufficient evidence in adopted planning documents to support the rezoning request. While the Planning Commission may have some concerns regarding "spot-zoning", staff finds that a rational basis due to adopted land use policies, along with the location on an intersection of a major arterial road is more than sufficient to support the rezoning. Additionally, staff noted there was no sewer service at the property and the development would need to use a commercial septic system.

Chairman Burks called for any further discussion. With none presented a motion was made by Mayor Holden, with a second from Commissioner Robert Taylor, Jr to approve the

request as presented before the commission and send the approval to the County Commission for their final approval. The motion was approved by the full commission.

B. Text Amendment – An Ordinance amending regulations for Telecommunication Towers and Equipment

Mr. Radford requested the commission un-table a motion from the April 13, 2017 meeting regarding the review and approval of an ordinance amendment of regulations for Telecommunication towers and equipment. The motion to u-table was made by Commissioner Brian Ramm, with a second by Commissioner Sherry Guthrie. The motion passed.

Mr. Radford and John Lannom presented a final *DRAFT* Ordinance amending the current Telecommunication Towers and Equipment Regulations by adding regulations for Small Cell Carriers that would be located within public right of ways. The following ordinance amendment was presented:

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE TEXT OF THE DYERSBURG MUNICIPAL ZONING ORDINANCE BY AMENDING STANDARDS FOR TELECOMMUNICATION STRUCTURES.

WHEREAS, Section 13-7-201 through 13-7-210 of the Tennessee Code Annotated empowered the City to enact the Dyersburg Municipal Zoning Ordinance and provide for its administration, enforcement; and

WHEREAS, the Board of Mayor and Alderman deems it necessary, for the purpose of promoting the health, safety, morals and general welfare of the City to amend said Ordinance; and

WHEREAS, there is a need to establish standards for location, aesthetics and compatibility for small cell communication structures and uses, and to update the standards for other kinds of telecommunications facilities; and

WHEREAS, there is a need to encourage the availability of affordable, high-speed internet and cellular telephone access for businesses and residents, acknowledging that a growing number of businesses are conducted in whole or in part from homes and/or on-the-go, that increasingly education incorporates on-line learning necessitating good home internet connections for students and faculty, and that government participation and emergency services to the general public are enhanced by fast and reliable cellular and home internet connectivity;

WHEREAS, it is important to encourage coordination between suppliers and providers of telecommunications services to maximize use of existing facilities and structures; and

WHEREAS, establishing predictable and balanced regulations within the authority reserved for local land use determination is in the interest of citizens of the City of Dyersburg; and

WHEREAS, there have been recent changes to the mandates of the Telecommunications Act of 1996, the Middle-Class Tax Relief and Job Creation Act of 2012, and other applicable federal and state laws limiting local discretion to regulate location of personal wireless service facilities (PWSF), and

WHEREAS, a mechanism for the zoning and permitting of small cell telecommunications uses and an update of existing zoning provisions for other kinds of telecommunications uses is in the best interest of the citizens of the City of Dyersburg.

WHEREAS, the Dyersburg Municipal-Regional Planning Commission has reviewed said proposed amendments and recommends such amendments to the Dyersburg Board of Mayor and Alderman; and

WHEREAS, the Board of Alderman has given due public notice of hearings on said amendments and has held public hearings; and

WHEREAS, all the requirements of Section 13-7-201 through 13-7-210 of Tennessee Code Annotated, with the regard to the amendment of a Municipal Zoning Ordinance by the Planning Commission and subsequent action of the Board of Mayor and Alderman have been met.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF DYERSBURG, TENNESSEE:

SECTION 1. The text of the Dyersburg Municipal Zoning Ordinance be revised by amending **ARTICLE III, DEFINITIONS** by adding the following definitions;

Cellular on Wheels (COW) means a temporary PWSF placed on property to provide short term, high volume telecommunications services to a specific location and which can be easily removed from the property.

Eligible support structure means any tower or base station existing at the time the application is filed with the City of Dyersburg. For purposes of this ordinance, the definition of "eligible support structure" shall include utility structures currently hosting fiber, cable and wire.

Pedestrian Travel way means the portion of a sidewalk or multi-use path intended to facilitate the unobstructed through movement of pedestrians and/or bicyclists.

Personal Wireless Service Facility (PWSF) means any staffed or unstaffed location for the transmission and/or reception of radio frequency signals or other personal wireless communications, including commercial mobile services, unlicensed wireless services, wireless broadband services, and common carrier wireless exchange access services as defined in the

Telecommunications Act of 1996, and usually consisting of an antenna or group of antennas, transmission cables, feed lines, equipment cabinets or shelters, and may include a tower. Facilities may include new, replacement, or existing towers, replacement towers, collocation on existing towers, base station attached concealed and non-concealed antenna, dual purpose facilities, concealed towers, and non-concealed towers (monopoles, lattice and guyed), so long as those facilities are used in the provision of personal wireless services as that term is defined in the Telecommunications Act.

Small Cell Facility means a wireless service facility that either meets both of the following qualifications or is within a stealth design that is consistent with the design guidelines:

- (a) each antenna is located inside an enclosure of no more than five (5) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an enclosure of no more than five (5) cubic feet, however, the maximum dimensions of the antenna shall not exceed 36" in height and 16" in diameter; and
- (b) primary equipment enclosures are no larger than seventeen (17) cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: Electric meter, concealment, telecommunications demarcation box, underground enclosures, back-up power systems, grounding equipment, power transfer switch, and cut-off switch.

Small Cell Network means a collection of interrelated small cell facilities designed to deliver wireless service.

Support Structure means anything constructed or erected, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground, including alternative structures, but excluding antennas.

Transmission Equipment means equipment that facilitates transmission of communication service (whether commercial, private, broadcast, microwave, public, public safety, licensed or unlicensed, fixed or wireless), including but not limited to radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply.

SECTION 2. That the Dyersburg Municipal Zoning Ordinance, **ARTICLE XXIII, GENERAL PROVISIONS, EXCEPTIONS AND MODIFICATIONS, Section V**, is hereby amended by adding the following new sections;

- 17. Small Cell Facilities and Other Telecommunication Facilities with public rights of way.
 - (a) Support structures and above-ground transmission equipment are prohibited within the pedestrian travel way, but may be

located within a grass strip/green zone or frontage zone. For substantial changes to eligible support structures or for new telecommunications use of an alternative structure, the eligible support structure or alternative structure shall be relocated outside of the pedestrian travel way and all above-ground utilities consolidated with the permit application. For eligible support structures that already have wireless telecommunications facilities on them, the structure need not be relocated unless it exceeds the zoning height limitation set in number 10. of this section, unless such structure is owned by the City of Dyersburg.

- (b) No new telecommunication facility support structure may be erected in the public right-of-way within 500' of an existing telecommunication support structure. The term "new telecommunications facility support structure" as used in this subsection shall include a relocation and/or replacement of a pole or equipment.
- (c) New telecommunication facilities or relocated telecommunication facilities shall place all transmission equipment, excluding antennas and remote radio units, underground to the extent possible consistent with departmental regulations. To the extent transmission equipment cannot be placed underground, business justification, excluding cost, for this must be provided.
- (d) New telecommunication facility support structures may not be erected to a height greater than the height surrounding utility poles or street lights, whichever is greater. If no utility poles are present, the total height shall be built to a maximum height of 35', including antennas, lightning rods or other extensions. All new proposed structures, or a stealth telecommunications support structure replacing an existing support structure or alternative structure, within the ROW shall be designed for a minimum of two PWSF providers.
- (e) A permit for a COW is limited to 5 days, but when circumstances reasonably warrant, the permit may be renewed.
- (f) Telecommunication facilities shall be constructed consistent with the design requirements of the Planning Commission,

and, where applicable, the Downtown Historical District. The design guidelines will provide greater detail, description and examples of acceptable telecommunications facilities, including visual descriptions. The requirements in this section shall be in addition to those required by Article XXII, Section V, Requirements for Telecommunication Towers Equipment, of the Dyersburg Municipal Code.

18. Maintenance.

It shall be the responsibility of the owner/carrier of the Telecommunication Structure, Telecommunication Tower, Telecommunication Facility, COW, or Small Cell Carrier and not the City of Dyersburg to assume to the maintenance and repairs, whether routine or extraordinary, of their structures and equipment including any affected area around the equipment or structure.

SECTION 3. BE IT FURTHER ORDAINED that this Ordinance shall become effective immediately upon its passage, THE PUBLIC WELFARE REQUIRING IT.

Date of the First Reading _____

Date of the Second Reading _____

Date of Public Hearing _____

Mayor

City Recorder

Background: Mr. Lannom discussed how the demand for more telecommunication data needs have significantly increased. Due to this need federal regulation allows for the installation of small cell technology. However, small cell equipment requires specific equipment and the telecommunication receivers must be placed in close proximity to one another in order to be efficient. It is recommended the receivers should not be more than 500 feet apart. The state agrees with this distance. Municipalities can set criteria for controlling the location and placement of small cell equipment devices. In the final draft revision changes were made to definitions and maintenance text to assist the city in regulatory actions.

Analysis: the city planner and the city attorney have worked together to update and propose a final draft ordinance amendment to serve as the city's best method to allow for municipal control of the standards for small cell electronic structures within the city's right-of-way. Because small cell equipment providers are currently negotiating with Dyersburg Electric System for the

placement of the equipment it is important for the city to adopt a plan through ordinance that will serve in the best interest of the city in this endeavor.

Commissioners undertook discussion about various aspects of regulation of location and maintenance of telecommunication structures, equipment, and general agreements with contractors and other public and private agencies. Mr. Lannom stated he felt the language compromised within the text amendment was the city's best effort to have some degree of regulatory control, balanced against the FCC authority.

In conclusion to discussion, staff noted an additional need to further modify the language of Section 16 of the ordinance to read as follows:

SECTION 2. That the Dyersburg Municipal Zoning Ordinance, **ARTICLE XXIII, GENERAL PROVISIONS, EXCEPTIONS AND MODIFICATIONS, Section V, 16.** is hereby deleted and replaced with the following language;

16. Removal of Obsolete Structures, Towers, and any related appurtenances. - Any telecommunications structure, equipment, tower, or related appurtenances that is no longer in use for its original purpose shall be removed at the owner's expense. The owner shall provide the City with a copy of the notice of intent to cease operations that must be submitted to the FCC and shall be given ninety (90) days from the date of ceasing operations to remove the obsolete tower, structure, and any accessory structure(s). In the case of multiple operators sharing a single tower or structure, this provision shall not become effective until all users cease operations.

Recommendation

Mr. Lannom and planning staff recommended approval of the draft ordinance amendments to the ordinance.

On a motion by Commissioner Paul Newbill, and a second from Commissioner Brian Ramm, the commission voted to approve the amendments to the ordinance. The motion was approved.

C. Any other new business that may be accepted by the Planning Commission.

None presented.

D. Other Business/Reports: No report.

E. Administrative Reports: No report.

Chairman Burks welcomed newly appointed Robert Taylor, Jr. to the commission. Additionally, he recognized the long and faithful service of recently resigned Commissioner John Pressler.

Chairman Burks requested the commission create a formal commendation and resolution in recognition of his years of service to the commission.

With no further business, the meeting adjourned at 10:50 a.m.

Tony Dement, Secretary

Robert C. Jones, City Recorder