

Planning Commission Meeting
February 24, 2011
Verbatim Excerpt

2232-P10-10 – NEWPATH NETWORKS, LLC & NEW CINGULAR WIRELESS PCS, LLC

Decision Only During Commission Matters
(Public Hearing held on December 9, 2010)

Commissioner Lawrence: Thank you, Mr. Chairman. These are in reference to the 2232 case that we're considering in Providence. That's 2232-P10-10, in which Crown Castle is working the installation of a DAS, Distributed Antenna System network. The first thing I'd like to do for all those people from the neighborhoods who are viewing this tonight, is to thank you very much for the continuing correspondence that we're receiving on this application. It's giving a very good picture of where things stand. Please keep them coming. Secondly, I see the agent's representative in the audience and I'd like to call him up to ask him a question on the record.

Vice Chairman Alcorn: Please.

Frank Stearns, Esquire, Donohue and Stearns, PLC: Good evening, Mr. Chairman, members of the Commission. Frank Stearns, with Donohue and Stearns. I'm here on behalf of - - Mr. Donohue was unable to be here this evening, but I have full authority to act on his behalf.

Vice Chairman Alcorn: Welcome.

Commissioner Lawrence: I see you don't part your hair the same way that Mr. Donohue does.

Mr. Stearns: That's correct. I'm a little taller also.

Commissioner Lawrence: I consider you to be interchangeable for this purpose. I have a question for you. There is concern that the approval of Nodes 6 and 7 will have an undue influence on options for the nodes in the Oak Valley and Lake Vale neighborhoods. As we saw at the public hearing, a network of nodes must be arranged to mesh together and that is a determinant for your client's designs. However, your letter – excuse me – asking for a time extension refers to continuing the work you are doing with the neighborhoods. I read that to mean you are affirmatively seeking to satisfy another determinant here, namely that those nodes in the neighborhoods will be acceptable to them. Are we agreed on that?

Mr. Stearns: Yes, Commissioner Lawrence, we are agreed on that.

Commissioner Lawrence: Thank you very much, Mr. Stearns.

Mr. Stearns: Thank you.

Commissioner Lawrence: With that, Mr. Chairman, I have a couple of motions to make.

Vice Chairman Alcorn: Okay.

Commissioner Lawrence: First, I want to move for approval on Nodes 6 and 7 on Chain Bridge and Hunter Mill Roads.

Commissioner Sargeant: Mr. Chairman, I'm sorry to interrupt Commissioner –

Vice Chairman Alcorn: Yes, Mr. Sargeant.

Commissioner Sargeant: I need to - - as you know, as an employee of Dominion Virginia Power, this involves Dominion utility poles. So, I didn't know we were going to do this. I'd like to recuse myself and leave during this discussion. Thank you.

Vice Chairman Alcorn: Yes, please. This is - - this is not on the printed agenda.

Commissioner Lawrence: Must have been something I said.

Vice Chairman Alcorn: Before you go on, Commissioner Lawrence – is there any objection to moving forward with this? This is not on the printed agenda at this point. We don't have any procedural problem, I believe, with doing that. Is that correct?

Commissioner Lawrence: We're going to have a partial approval and a partial deferral.

Vice Chairman Alcorn: Yes. Right. Parliamentarian, there's no problem with that, is there?

Commissioner de la Fe: There's no problem. We were scheduled to have the entire decision tonight, so we can make a partial one tonight.

Vice Chairman Alcorn: Okay, all right. So let us move forward, Mr. Lawrence.

Commissioner Lawrence: Let me begin again, Mr. Chairman. I want to move for approval on Nodes 6 and 7 on Chain Bridge and Hunter Mill Roads. These nodes are like those already in place along Hunter Mill and other major roads. They will support in-vehicle wireless coverage on those roadways. Therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION FIND THAT NODES 6 AND 7 SATISFY THE CRITERIA OF LOCATION, CHARACTER, AND EXTENT, AND ARE SUBSTANTIALLY IN ACCORD WITH THE COMPREHENSIVE PLAN UNDER THE PROVISIONS OF *VIRGINIA CODE* 15.2-2232, AS AMENDED; FURTHER, THAT APPROVAL OF NODES 6 AND 7, WILL NOT AFFECT THE LOCATION, CONFIGURATION, APPROVAL, OR DISAPPROVAL OF NODES, 5, 8, AND 9.

Commissioner Flanagan: Second.

Vice Chairman Alcorn: Seconded by Commissioner Flanagan. Any discussion on that motion? Okay, all those in favor of approval of Nodes 6 and 7, as articulated by Commissioner Lawrence, please say aye.

Commissioners: Aye.

Vice Chairman Alcorn: All opposed? That motion carries. Commissioner Lawrence.

Commissioner Lawrence: The second motion –

Commissioner Donahue: Mr. Chairman, one thing, if I could ask –

Vice Chairman Alcorn: Commissioner Donahue.

Commissioner Donahue: Did we identify the application number for that?

Vice Chairman Alcorn: In his motion.

Commissioner Donahue: It is there? Okay, thank you.

Commissioner Flanagan: It's on the agenda.

Vice Chairman Alcorn: It's on the agenda as a deferral –

Commissioner Flanagan: Yes.

Vice Chairman Alcorn: – but not for a partial approval.

Commissioner Flanagan: Right, right.

Vice Chairman Alcorn: Yes, Commissioner Lawrence.

Commissioner Lawrence: Mr. Chairman, the applicant has met and continues to meet with the community on the remaining wireless nodes proposed by them. I believe they have recognized that, while optimizing their network is important, community acceptance of the nodes is of equal importance. Therefore, Mr. Chairman, I MOVE AS FOLLOWS: THE PLANNING COMMISSION NOTES THAT THE APPLICANT ASKS FOR ADDITIONAL TIME TO WORK WITH STAFF AND THE COMMUNITY ON THE PROPOSED NODES 5, 8, AND 9. THE PLANNING COMMISSION NOTES ALSO THAT APPROVAL OF NODES 6 AND 7 DOES NOT PREDETERMINE OR PREDISPOSE THE LOCATION OR CONFIGURATION OF NODE 5, NOR OF ANY NODES PROPOSED FOR THE OAK VALLEY AND THE LAKE VALE NEIGHBORHOODS. THE PLANNING COMMISSION WILL DEFER ITS DECISION AND EXPAND ITS 2232 REVIEW ON NODES 5, 8, AND 9 UNTIL APRIL 30TH (sic), AS REQUESTED.

Commissioner Flanagan: Second.

Vice Chairman Alcorn: Seconded by Commissioner Flanagan. Any discussion on that motion?
Commissioner Hart.

Commissioner Hart: Yes, thank you, Mr. Chairman. I thought it was May, the something, and I was confused about the dates.

Commissioner Lawrence: Yes. If I may, there is a small - - the letter asks for April 30th. The nearest business day for us is May the 5th, so that's the first date we could move on it. But I only have the letter to work from. I would not be at all surprised if this did not change some more.

Commissioner Hart: Well, are we meeting April 30th?

Commissioner Lawrence: No, it's a Saturday.

Commissioner Hart: Well, then how can we defer our decision to then?

Commissioner Lawrence: All right. Mr. Chairman –

Commissioner Hart: It seems to me we have to - - let me ask, can we do that? I mean, don't we have to defer it to a night that we're meeting? Because otherwise it's automatically approved.

Commissioner Lawrence: I can amend the motion.

Commissioner Hart: Let's pick a meeting date before it runs out.

Commissioner Lawrence: Well, I think the nearest date we meet is May the 5th.

Commissioner de la Fe: The 5th.

Commissioner Hart: But it has to be before that.

Commissioner Lawrence: Well, I don't think so, but – or if you will we can take it to the date in April.

Commissioner Hart: Well, I don't mean to belabor this. My point was that if the time runs out before we voted, it seems to me it's automatically approved. So the deferral date needs to be before the expiration in the letter, which was the 30th.

Vice Chairman Alcorn: How about, let's check. Ms. Hardy (*sic*), is that correct?

Robin Ransom, Assistant Director, Planning Commission Office: Can you hear me? No? Is this better?

Vice Chairman Alcorn: There you go.

Ms. Ransom: Thanks. I would – yes, you’re correct and it does need to be deferred to a date that the Planning Commission is meeting. The extension that the applicant has asked for is to the end of the month. I would recommend that you DEFER IT TO APRIL 28th. And if it needs to go further than that, and if Commissioner Lawrence is out of town, then perhaps a colleague would defer it to a further date if another extension is received from the applicant.

Commissioner Lawrence: FRIENDLY AMENDMENT, I’LL ACCEPT IT.

Vice Chairman Alcorn: Okay, and accepted by the seconder –

Commissioner Lawrence: – who went away.

Vice Chairman Alcorn: – who ran away.

Commissioner de la Fe: I’ll accept it.

Vice Chairman Alcorn: Okay, accepted.

Commissioner Lawrence: So that makes it April the 28th.

Vice Chairman Alcorn: Okay, so let me repeat the motion. All those in favor of deferring decision only on 22 - - on Nodes 5, 8, and 9 of 2232-P10-10 to a date certain, for now, of April 28th, 2011, please say aye.

Commissioners: Aye.

Vice Chairman Alcorn: All opposed? That motion carries. And I presume by the seconder saying aye that he has no objection to that change in the motion. Anything else, Mr. Lawrence?

Commissioner Lawrence: Yes, Mr. Chairman, I have one more point to make. Mr. Stearns, there is some confusion still in the communities concerning a tower at Madison High School and whether or not that tower would provide adequate coverage and/or capacity, or both, for Lake Vale and Oak Valley. I wonder if you, please, could work on that with the engineers and have them do something definitive about that question. And if you’ll provide me with the information, I’ll announce it at the next Planning Commission meeting. If you could also send it to the community leaders in those two communities, it would be very useful. By the emails that I’m getting, there still seems to be a fair amount of confusion.

Mr. Stearns: I'd be happy to do so, Commissioner Lawrence.

Commissioner Lawrence: Thank you very much.

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(The motions carried unanimously with Commissioner Sargeant recusing himself from the votes; Commissioners Hall, Harsel, and Murphy absent from the meeting.)

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