

Planning Commission Meeting  
November 3, 2010  
Verbatim Excerpt

2232A-D09-2-1 – NEWPATH NETWORKS, LLC, AND NEW CINGULAR WIRELESS PCS,  
LLC (NODE GFE12A)

Decision Only During Commission Matters  
(Public Hearing held on September 16, 2010)

Commissioner Donahue: Thank you, Mr. Chairman. A decision only concerning Node 12A of 2232A-D09-2-1.

Commissioner Sargeant: Mr. Chairman?

Chairman Murphy: Yes.

Commissioner Sargeant: I'm going to recuse myself from this case as I have from the public hearing, given its involvement with Dominion Virginia Power utility poles.

Chairman Murphy: Okay. Thank you.

Commissioner Sargeant: Thank you.

Commissioner Donahue: Mr. Chairman, this evening the Commission is scheduled to decide the fate of Node 12A, the final node of a Distributed Antenna System proposed by NewPath Networks and New Cingular Wireless. We deferred decision on this node in September with the objective of allowing time for outreach between the applicant and area residents to identify an alternative site. Neighbors have proposed locations and - -south of the location of the application location near Corobon Lane, but NewPath contends these proposed locations will fail to satisfy coverage objectives in spite of their proximity to locations proposed by NewPath in the original DAS application. Mr. Chairman, the deadline for coming to decision on this application has passed and the applicant, after allowing previous requests for deferral, has declined to allow further delays. Area residents submitted a statement dated November 1st, which has been entered into the record, strongly objecting to the process and to the applicants' perceived unwillingness to work seriously and deliberately toward a better resolution. That statement requests a withdrawal of the application in consideration of a new Corobon Lane location. It also urges the Commission to reject GFE12A and waive the co-location preference for this node. I note this submission to the Commission for the record. With all due respect to this submission, staff has concluded that the proposal is in conformance with the adopted Comprehensive Plan. And evaluation of the prescribed merits show the following: Node 12A's location is Commonwealth of Virginia property, planned for public right-of-way use. The proposal respects safety and operation requirements and guidelines. The proposed structure will be the size and installed at a height within the perimeters of similar installations not only in Fairfax County, but in Great Falls. And staff notes, adverse visual impacts, though clearly an issue, are no more violative of the character considerations than the Plan has allowed in other locations and not legitimate grounds to deny the application as being not in substantial accord with the adopted

Comprehensive Plan. Further, the proposal does not presume installation of additional utility poles, and the height of replacement poles is compatible with others in the system and will meet radio frequency and safety requirements, thereby satisfying the requirements of extent as substantially in accord with the Comprehensive Plan. Therefore, Mr. Chairman, I concur with staff's conclusion that Node 12 - - the Node 12A proposal by NewPath Networks, LLC, and New Cingular Wireless PCS, LLC, as amended, to construct an antenna site in VDOT right-of-way on a portion of Seneca Road, for a telecommunications Distributed Antenna System in Great Falls satisfies the criteria of location, character, and extent, as specified in *Virginia Code* Section 15.2-2232, as amended. I MOVE THAT THE PLANNING COMMISSION FIND THE SUBJECT APPLICATION 2232A-D09-2-1, AS IT CONCERNS NODE GFE12A, IS SUBSTANTIALLY IN ACCORD WITH PROVISIONS OF THE ADOPTED COMPREHENSIVE PLAN, AND APPROVE 2232A-D09-2-1 AS IT CONCERNS NODE 12A.

Commissioner Lawrence: Second.

Chairman Murphy: Seconded by Mr. Lawrence. Is there a discussion of the motion?

Commissioner Hart: Mr. Chairman?

Chairman Murphy: Yes, Mr. Hart.

Commissioner Hart: Thank you, Mr. Chairman. I'm going to support the motion, but I wanted to make one observation regarding the case. I think under the - - on the record that's in front of us, the approval of Node 12A is appropriate. I think, however, this situation should not be repeated. The Commission and the citizens have a great deal at stake in the process. Applicants file for permission to construct these facilities. The citizens come and speak. And we take on faith, I think, that an applicant is going to abide by what's been approved and request permission if something isn't approved. In this situation, the three locations in question should not have been put into operation without Planning Commission approval. And when that came up, they should have been shut down or removed or something. An application should have been filed at that point to correct the problem. That shouldn't affect our decision on Node 12A. At the same time, this experience, I think, makes it more difficult not just for this applicant but for other applicants and for citizens to have faith in the process. I take the time to point that out because I think - - I want to make clear this shouldn't happen again. Thank you.

Commissioner Donahue: Mr. Chairman?

Chairman Murphy: Further discussion? Mr. Donahue.

Commissioner Donahue: Thank you, Mr. Chairman. I just want to associate myself with Commissioner Hart's remarks. I must confess when this situation developed last February, I was rather astounded at what I came to see as a rather weak or maybe nonexistent position on the part of the Planning Commission and therefore, I suppose the Board of Supervisors - - and therefore, I suppose Fairfax County, to properly remedy this type of action. I was very surprised

to find what I - - what I saw as a very weak position. And I would hope sometime in the future, I have no idea whether the Telecommunications Committee deals with that, but sometime in the very near future I would hope we would do one of two things or both things. One, either interpret the writings, the policies, the plans, the Ordinances in a way that gives us more authority, or change them to ensure we have more authority. Thank you.

Chairman Murphy: Further discussion of the motion? All those in favor of the motion to approve 2232A-D09-2-1, as it applies to Node GFE12A, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

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(The motion carried unanimously with Commissioner Alcorn absent from the meeting.)

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