

PRESENT: T. H. Byerly, Chairman
 S. F. Shreckhise, Vice Chairman
 D. A. Brown
 G. A. Coyner, II
 J. D. Tilghman
 J. R. Wilkinson, Zoning Administrator & Secretary
 Pat Morgan, County Attorney

ABSENT: None

VIRGINIA: At the Called Meeting of the Augusta County Board of Zoning Appeals held on Thursday, August 1, 2013, at 8:30 A.M., in the County Government Center, Verona, Virginia.

The staff briefing was held at **8:30 a.m.** in the Board of Supervisors Conference Room where the Zoning Administrator reviewed the staff report for each request on the Board's agenda. Copies of the staff reports can be found in the Community Development Department.

VIEWINGS

The members of the Board of Zoning Appeals assembled at the Government Center and went as a group to view the following:

- **JONATHAN AND BARBARA SENGER - SPECIAL USE PERMIT**
- **IRA BIGGS, AGENT FOR COMMONWEALTH EXCAVATING, INC. - SPECIAL USE PERMIT**
- **BEN YODER - SPECIAL USE PERMIT**

At each location, the Board observed the site and the premises to be utilized. The Board also viewed the development and the character of the surrounding area.

 Chairman

 Secretary

August 1, 2013¹³⁰

PRESENT: T. H. Byerly, Chairman
S. F. Shreckhise, Vice Chairman
D. A. Brown
G. A. Coyner, II
J. D. Tilghman
J. R. Wilkinson, Zoning Administrator & Secretary
Pat Morgan, County Attorney
B. Cardellicchio-Weber, Administrative Assistant

ABSENT: None

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VIRGINIA: At the Regular Meeting of the Augusta County Board of Zoning Appeals held on Thursday, August 1, 2013, at 1:30 P.M., in the County Government Center, Verona, Virginia....

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MINUTES

Vice Chairman Shreckhise moved that the minutes from the July 3, 2013, meeting be approved.

Ms. Brown seconded the motion, which carried unanimously.

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LYNN KOERNER, AGENT FOR GLOBAL TOWER, LLC - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Lynn Koerner, agent for Global Tower, LLC, for a Special Use Permit to construct a new wireless telecommunications facility for County EMS as well as being available for lease to wireless carriers on property owned by Harlan L., Jr. and Daniel F. Shinaberry, located on the hilltop 0.5 miles northwest of the intersection of Marble Valley Road and Rocky Springs Lane in the Pastures District.

Mr. Lynn Koerner stated this application is for a communications 300' tower with an extra 4' for the lightning rod with a standard galvanized finish and no special painting. He stated

this is a 62.7 acre parcel. He noted there will be a 75' x 75' fenced in compound area with a prefab 10' x 20' shelter and there will also be an emergency generator. He stated this will help with the public safety communication needs in the Deerfield area. He stated they have responded to an RFP from the County. He stated they are currently marketing the site to wireless carriers. He mentioned that Verizon originally proposed to build a tower at this site but they did not go forward due to funding. He stated they are proposing to build a tower in the exact location that Verizon proposed. He stated they are interested in co-location but it is not a funded site at this point. He stated they have been in contact with Ntelos too. He would request that the Board approve this request.

Ms. Brown stated the tower is over 300' because of the hillside?

Mr. Koerner stated yes. He stated the County did an extensive study with the microwave path and connecting to another site and also looked at other parcels. He stated the County's consultant also looked at this project and they feel they have achieved the right height for the tower.

Ms. Brown asked about the microwave path distance?

Mr. Koerner stated there are five (5) miles between the two (2) towers.

Mr. Coyner asked if the light on the tower would be red?

Mr. Koerner stated there will be a red light and it will blink as required by the FAA. He noted it would be white during the day.

Chairman Byerly asked if there was anyone wishing to speak in favor, or in opposition to the request?

There being none, Chairman Byerly declared the public hearing closed.

Vice Chairman Shreckhise stated this request was proposed by the County and approved by the consultant. He stated it would be good for the area. He moved that the request be approved with the following conditions:

Pre-Conditions:

1. Submit site plan meeting the requirements of Section 25-673 "Site Plan Contents" of the Augusta County Zoning Ordinance to be approved by all appropriate departments and/or agencies.

2. The property owner will submit a boundary line adjustment as shown on the site plan and meeting the requirements of Article II "Minor Subdivisions" of the Augusta County Code to be approved by all appropriate departments and/or agencies in order to meet all setback requirements.
3. The applicant will submit information necessary to comply with Section 25-68.7 "Bonding" of the Augusta County Zoning Ordinance.

Operating Conditions:

1. Be permitted to construct a 305' lattice style telecommunications tower.
2. No additional landscaping or buffering is required.
3. Tower design will allow a minimum of five (5) co-locators.
4. The applicant will notify the Augusta County Community Development Department within thirty (30) days of the date the tower is no longer used for telecommunications purposes. The tower shall be disassembled and completely removed from the site within 180 days of such notification.
5. The applicant will not unreasonably deny the telecommunications providers the opportunity to co-locate on this tower.

Mr. Coyner seconded the motion, which carried unanimously.

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J. FRANK WADE - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by J. Frank Wade, for a Special Use Permit to construct a picnic shelter on property owned by Staunton Izaac Walton League, located at 342 Haskins Lane, Churchville, in the Pastures District.

Mr. J. Frank Wade stated he is the Treasurer of the Staunton Izaac Walton League. He stated they are requesting a 24' x 36' picnic shelter on their parcel. He stated they need the shelter for their activities. He stated they have a handicapped kids fishing day for middle school students.

Chairman Byerly asked how many chapters are there in the County?

Mr. Wade stated one (1) chapter.

Mr. Coyner asked how many chapters are there in the State?

Mr. Wade stated there are 300 in the State and 3,000 across the nation. He stated they are very family oriented and conduct many educational programs. He stated this is a conservation program.

Chairman Byerly asked if there was anyone wishing to speak in favor, or in opposition to the request?

There being none, Chairman Byerly declared the public hearing closed.

Mr. Coyner stated they have been known to be a really good organization. He stated they are family oriented. He moved that the request be approved with the following condition:

Pre-Conditions:

None

Operating Condition:

1. Be permitted to construct one 24' x 36' picnic shelter.

Ms. Brown seconded the motion, which carried unanimously.

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JONATHAN AND BARBARA SENGER - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Jonathan and Barbara Senger, for a Special Use Permit to construct a building for equipment on property they own, located at 4757 Cold Springs Road, Raphine, in the Riverheads District.

Ms. Barbara Senger stated she is requesting to construct a 30' x 30' building for a cooler in order for them to expand their availability to hang animals. She stated they need to have a roof structure on top because of the equipment.

Ms. Brown asked what type of animals do they slaughter?

Ms. Senger stated beef, hogs, sheep, and deer.

Ms. Brown asked if they offer bacon to the public for purchase?

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Ms. Senger stated they do offer that but they have limited availability.

Ms. Brown asked how many do they process in a day?

Ms. Senger stated they normally process ten (10) to twelve (12) animals on a busy day.

Ms. Brown asked how many employees does the applicant have?

Ms. Senger stated they have two (2) employees who are mostly part-time. She stated mainly this is a family operation. She stated they also have two (2) men that work eight (8) hours a week.

Chairman Byerly asked if the 30' x 30' cooler will be adequate for a given period of time?

Ms. Senger stated she would hope that would be sufficient for now.

Ms. Tilghman asked if this structure would be used as a cooler and not a freezer?

Ms. Senger stated yes. She noted the meat has to hang in the cooler for a certain time after slaughter.

Ms. Brown asked if there would be any storage?

Ms. Senger stated there is no space for storage.

Mr. Coyner asked where do the clients come from?

Ms. Senger stated locally as well as Newport News and even as far away as Georgia for example.

Chairman Byerly asked if they process goats?

Ms. Senger stated no. She mentioned that they have processed ostrich and buffalo previously.

Ms. Brown asked about how many hogs are processed?

Ms. Senger stated about four (4) a week. She stated they do more beef than anything else.

Mr. Coyner asked if she works on poultry or turkey?

Ms. Senger stated no.

Chairman Byerly asked if there was anyone wishing to speak in favor, or in opposition to the request?

There being none, Chairman Byerly declared the public hearing closed.

Ms. Brown stated the Board visited the site this morning. She noted the site appeared to be neat and orderly. She stated this business is much needed in this area. She moved that the request be approved with the following conditions:

Pre-Conditions:

None

Operating Conditions:

- 1. Be permitted to construct a 30' x 30' building for storage of coolers and equipment.
- 2. Applicant will scale the structure on the current site plan.
- 3. Site be kept neat and orderly.

Vice Chairman Shreckhise seconded the motion, which carried unanimously.

Mr. Coyner stated that it is great to see this business be very successful. He stated they are a real asset to the community.

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BEN YODER - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Ben Yoder, for a Special Use Permit to use existing buildings for internet auctions on property owned by Bennie W. and Anna Mary Byler, located at 1210 Cold Springs Road, Stuarts Draft, in the Riverheads District.

Mr. Ben Yoder stated he would like to have internet auctions in the existing building at the site. He mentioned that he will market and sell items on the internet. He stated the

products will be shipped or the buyer will pick it up. He stated they have been doing auctions for twenty (20) years now and have started to sell items on the internet for the last six (6) months.

Ms. Brown asked what items are sold?

Mr. Yoder stated mainly estate items, antiques, and business liquidations. He stated bids are submitted on the website and the highest bidder can either pick up the item or it can be shipped. He stated if an item does not sell the owner can take it back or they can remarket the item. He noted it is setup similar to E-bay.

Chairman Byerly asked if he would auction vehicles?

Mr. Yoder stated he does auction vehicles. He mentioned they will be setup in the gravel lot behind the building in the rear of the property. He stated all vehicles will be licensed and running unless they are classics. He stated if the vehicle does not sell it will be removed from the property. He hoped to have them removed within seven (7) to ten (10) days.

Ms. Brown asked where the applicant lives?

Mr. Yoder stated he lives across the road.

Ms. Brown asked if he would have any employees?

Mr. Yoder stated he has four (4) part-time employees. He stated his family members also help.

Mr. Coyner asked if the applicant picks up the items or do customers bring them in?

Mr. Yoder stated yes, either way.

Mr. Coyner asked what the time is to sell an item?

Mr. Yoder stated typically under two (2) weeks.

Ms. Tilghman asked what percentage of clients pick up the items rather than having it shipped to them is?

Mr. Yoder stated 75% of the clients are local within the State of Virginia. He mentioned that it depends on the size of the item and whether it is cheaper to pick up rather than ship the item.

Ms. Tilghman asked how much traffic does the applicant anticipate coming to this site?

Mr. Yoder stated he would anticipate twenty (20) to thirty (30) vehicles a week on a large sale.

Ms. Tilghman stated if the applicant is storing vehicles at the site the staff's recommended conditions would need to be changed.

Mr. Coyner stated the site plan would also need to be updated.

Mr. Wilkinson stated that is correct. He stated any outside storage would need to be shown on the site plan provided to the Board. He mentioned that the Board usually puts a limit on the number of vehicles kept at the site and that the vehicles be in a specific area.

Mr. Coyner asked how many vehicles would the applicant plan on storing at the site?

Mr. Yoder stated one (1) to two (2) vehicles at the most.

Mr. Coyner stated the gravel area at the site would be more than enough for the applicant.

Chairman Byerly asked if they would sell appliances?

Mr. Yoder stated yes and they would be inside the building.

Mr. Yoder stated this building will be a good use for this type of business.

Chairman Byerly asked if there was anyone wishing to speak in favor, or in opposition to the request?

There being none, Chairman Byerly declared the public hearing closed.

Ms. Tilghman stated the Board can permit the applicant four (4) vehicles being stored outside.

Vice Chairman Shreckhise stated the applicant may need at least six (6) vehicles.

Ms. Tilghman stated this is a good, viable business. She stated the applicant should keep the site neat and the traffic appears manageable. She mentioned that all items should be stored inside unless they are vehicles. She stated the Board may want to permit up to six (6) vehicles, tractors, or boats in the gravel area to the rear of the main building. She moved that the request be approved with the following conditions:

Pre-Condition:

1. Applicant submit a revised BZA site plan to Community Development.

Operating Conditions:

1. All items for the business be kept inside the existing buildings.
2. There be no outside storage other than company vehicles.
3. Site be kept neat and orderly.
4. No junk or inoperable vehicles, equipment, or parts of vehicles or equipment be kept outside.
5. Any new outdoor lights over 3,000 lumens require site plan submittal and must meet the ordinance requirements of Article VI.A Outdoor Lighting.
6. Be permitted to store up to six (6) motorized vehicles/equipment in the gravel area to the rear of the main building.

Mr. Coyner seconded the motion, which carried unanimously.

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OLD BUSINESS

IRA BIGGS, AGENT FOR COMMONWEALTH EXCAVATING, INC. - SPECIAL USE PERMIT

A request by Ira Biggs, agent for Commonwealth Excavating, Inc., for a Special Use Permit to have a topsoil operation on property owned by LowKey, Inc., Blue Fox, Inc., and Middle River, Inc., located on the north side of Rifes Ford Road (Route 906), approximately .6 of a mile west of the intersection of Rifes Ford Road and Laurel Hill Road (Route 612) in the Beverley Manor District. - TABLED AT THE 7/3/13 MEETING

Ms. Tilghman moved that the item be brought forward.

Ms. Brown seconded the motion, which carried unanimously.

Chairman Byerly and Vice Chairman Shreckhise have filed a conflict of interest with this request and will refrain from the discussion and voting on this request. He asked Mr. Coyner to act as Chairman for this part of the meeting.

Mr. Coyner stated lengthy discussions for this public hearing was held last month and the public hearing was closed but he will allow a spokesperson to speak on the request if there is any new information. He stated the Board visited the site this morning. He asked how much topsoil is the applicant envisioning removing from this site?

Mr. Ira Biggs stated he does not know. He mentioned possibly 10,000 to 20,000 yards. He stated it will take him about eight (8) to nine (9) months to get it all out. He stated he has not tested it yet.

Ms. Brown asked how much topsoil has the applicant taken out so far?

Mr. Biggs stated 8,000 to 9,000 yards.

Ms. Brown asked how long did it take to do that?

Mr. Biggs stated four (4) to five (5) months.

Mr. Coyner asked how many yards are taken out on a load?

Mr. Biggs stated ten (10) to twelve (12).

Mr. Coyner asked if this would be a seasonal operation?

Mr. Biggs stated he will not leave the stockpile outside where it will get wet. He mentioned that he will take it to his shop and store it inside. He noted that it all goes to his building offsite.

Mr. Coyner stated there has been a lot of activity in the last couple of days.

Mr. Biggs stated he was trying to get all of his Erosion and Sediment Control measures in place. He stated he fixed the sediment trap and put in rip rap, silt fence, seed, and straw. Mr. Coyner asked about the old trees?

Mr. Biggs stated 90% of the trees were already down when they started working at the site. He mentioned the folks in there before him were using it for timber so they moved it down along the berm and to the left. He stated they did not excavate passed the trees near the berm.

Mr. Coyner asked if the applicant will leave the timber as it is?

Mr. Biggs stated yes.

Mr. Coyner stated with the heavy rain trees may end up downstream. He asked how many sediment traps are installed?

Mr. Biggs stated seven (7) or nine (9) and they are not all in place yet. He stated they will be put in as they go. He stated he is starting in the back and working his way out.

Mr. Coyner asked what the applicant will do at the reclamation stage?

Mr. Biggs stated they will put the traps back in, slope, seed, and straw the land.

Mr. Coyner asked how close to the river bank will the applicant be excavating?

Mr. Biggs stated they will be ten (10') to twelve (12') feet. He stated they will not go up the hill. He mentioned they will be working only in the low area.

Ms. Brown stated they would be near the road.

Mr. Biggs stated they will be working below the road. He noted that everything will be reseeded when he is done.

Mr. Coyner stated the Board went to the back end of the property and then turned around.

Mr. Biggs stated they are excavating between the road and the river bank.

Ms. Brown asked how far off the river will the applicant go?

Mr. Biggs stated no more than ten (10') to twelve (12') feet. He stated the top of the berm is six (6') to eight (8') feet high. He noted they will not take any trees along the bank.

Ms. Tilghman stated at the end of the road there is a big hole. She asked if that is approximately the depth of the hole and it is as deep as the applicant will go?

Mr. Biggs stated yes.

Ms. Brown asked how deep is it?

Mr. Biggs stated in some places it is four (4') feet and in some places it is eight (8') foot maximum.

Mr. Coyner stated when the applicant completes the project they will have to be sure the ground is smooth and then reseed the property with grass.

Mr. Biggs stated they will need to leave the traps in until he is asked to take them out by the County.

Mr. Coyner asked about the rock at the site?

Mr. Biggs stated it is for the spillway.

Mr. Coyner asked how much equipment will be at the site at one time?

Mr. Biggs stated three (3) to four (4) units.

Mr. Coyner asked if they will operate at the site five (5) days a week?

Mr. Biggs stated yes.

Ms. Brown asked how many employees does the applicant have?

Mr. Biggs stated forty (40) employees.

Mr. Coyner asked how the applicant selected this site to have the topsoil operation?

Mr. Biggs stated he was asked to help out with the site. He mentioned that he did not know all of this was going on for the last five (5) to seven (7) years. He stated when he arrived at the site it looked like a bombshell had gone off.

Ms. Brown asked where the applicant got the topsoil from before?

Mr. Biggs stated from excess materials from his jobsites. He stated he invested in a sifting machine. He worked out a deal with the property owner to sift out the topsoil.

Ms. Tilghman asked if the applicant can tell where the water overflow is?

Mr. Biggs stated the water will filter through because the rock is twelve (12") to sixteen (16") inches deep.

Mr. Coyner asked if there was anyone wishing to speak in favor, or in opposition to the request?

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Mr. Francis Stout, 855 Patterson Mill Road, Grottoes, stated he owns the farm across the river from the mining site. Mr. Stout read a portion of a letter from the Army Corp. of Engineers and Headwaters. He noted that John Kaylor, Senior Technician, for Headwaters knows what is going on. He stated that he inspected the site a week ago and that the conditions were terrible. He stated he would like to see a fifty (50') foot buffer or more if this is approved. He stated the Board has seen pictures of the site and has heard all of the complaints pertaining to the property. He stated every time it rains the river turns yellow. He would trust that the Board makes the right decision on this request. He does not know how Mr. Biggs can have 9,000 yards already completed without any traps in place.

Mr. Biggs stated he has had the traps in place per the County's information. He mentioned that he has not seen anything go into the river. He stated the Army Corp. of Engineers said the site is fine and he has all of the appropriate permits in order. He stated he has never seen any mud going into the river.

Mr. Coyner stated the applicant is a qualified excavator and this is not his first job he has ever had. He stated the applicant is now just getting the ponds and traps in place. He mentioned that they should have been in since day one.

Mr. Biggs stated he was just asked to prepare a set of plans in the last couple of months but he did have some traps in place.

Mr. Wilkinson stated that Dustin Staton, the County's Erosion Inspector, is here to answer any questions the Board may have on the request.

Mr. Dustin Staton stated the County was made aware of a large area being disturbed and they contacted the owner. He stated this was their second illegal land disturbance activity and they were fined \$1,000. He stated the property owner contacted Commonwealth Excavating and they said it would be under the 10,000 square foot of land disturbance. He noted they issued them an Agreement in Lieu of a Plan since they were under the 10,000 square foot requirements. He mentioned the County started inspecting the site and noticed that they got outside of the plan area and noticed the disturbance was more than 10,000 square feet. He stated the landowner was notified that they needed Erosion plans. He mentioned they did have some small traps in place. He stated since they have received the Erosion and Sediment Control plan they have made substantial progress in correcting all of the problems.

Ms. Tilghman asked how much square footage was the applicant over?

Mr. Staton stated including the road Mr. Biggs was about 10,000 square foot over what they were permitted to begin with.

Ms. Tilghman asked when did the applicant take over the site?

Mr. Staton stated the initial illegal land disturbance was discovered in February. He stated they probably took over the site in March.

Mr. Coyner stated the Board visited the site this morning. He stated the applicant was disturbing two times the amount of land permitted. He stated the applicant did not adhere to the Erosion and Sediment Control regulations.

Ms. Brown stated contractors should already know the rules of the County.

Ms. Tilghman stated the land is not in good shape.

Mr. Coyner stated a bond is in place in order to get the land to where it needs to be.

Ms. Tilghman stated she does have a problem that a professional excavator should know that they need to get a permit for the disturbance. She stated the permit was not applied for until the County stepped in. She felt that the applicant should not be excavating that close to the river. She mentioned they looked at the hole which is quite deep. She stated that she does not think this is a cut and dry issue but the main concern is that the land needs to be reclaimed to some degree. She noted the County does have a bond at the site. She moved that the request be denied because this request was not handled correctly from the applicant since day one. She stated the correct permits were not applied for until the County stepped in. She stated the berms were not put in place until the County started inspecting the site. She stated regardless of the law they should not be excavating that close to the river. She stated when she visited the site she was surprised as to how close the applicant was to the river.

Ms. Brown stated she is in agreement with Ms. Tilghman. She mentioned a contractor should know the rules before they start operating at a site. She stated the site started off as a mess and they are still having problems. She stated the applicant is disturbing land close to the river banks.

Ms. Tilghman stated she does realize that someone else was doing the excavating previously and all of these issues were not caused entirely by the applicant.

Ms. Brown seconded the motion to deny the request. The motion carried with a 3-0 vote with Chairman Byerly and Vice Chairman Shreckhise abstaining from the vote.

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STAFF REPORT

12-38 Bartley, David M. and Betty Sue Miller Bartley, Etal
12-39 Curd, Thomas Henry
12-40 Moffett, Ellen L.

Mr. Wilkinson stated that all of the permits have been inspected and are all in compliance with their conditions.

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Mr. Morgan passed out the court cases for the Board to review.

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There being no further business to come before the Board, the meeting was adjourned.

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Chairman

Secretary