

Village of Jemez Springs
Planning and Zoning Commission
Regular Meeting Minutes
June 17, 2021 6:30 p.m.
Shephard Memorial Conference Room

1. Mike Nealeigh called the meeting to Order at 18:45 June 17, 2021
 - a. Members present: Michael Nealeigh (Pres), Talia Michelle (Sec), Sarah Swarttouw, and Tom Gonzales
 - b. Members absent: none
 - c. Guests: none
2. Introduction of Guests - none
3. Agenda approved as presented.
4. Previous Meeting's Minutes (May 20, 2021) approved after correction in 7ai of the double reference to David Raue
5. Public Input – none
6. Old Business -
 - a. CommNet – We reviewed the timeline for current actions. See the attached Timeline Of Action Taken And Possible. Discussed #6 - FCC may require that we do not interrupt Cell Service.

A summary of communications between Village authorities and CommNet is attached below. The need for Conditional Use Recertification and the NIER recertification were communicated to CommNet by the Village in an email on 7/20/20.

Notice of Hearing will be posted at the Library Conference Room Public Directory Board, Village Office, Post Office, on the Village website, in Jemez Chat (Facebook), and if timing works out in the Jemez Valley Alley local newspaper.

 - b. Ordinance Review – the Commission focused on ordinance 130
7. New Business –
 - a. Servants of the Paraclete property lot line adjustment requests will be forthcoming.
8. Planning Issues -
 - a. Leyba Land park as site for municipal offices is still in progress.
 - b. Jemez River Walk project is still in progress.
9. Meeting adjourned at 20:49

TIMELINE OF ACTION TAKEN AND POSSIBLE

ACCORDING TO CHAPTER 123 – WIRELESS TELECOMMUNICATIONS FACILITIES

1. Heard Commnet claim of extenuating circumstances regarding not filing NIER certifications annually and failing to request recertification prior to five-year anniversary on May 20, 2021 and determined the claim not legitimate.
2. Notified Commnet of hearing set for July 15, 2021 to consider revocation of conditional use permit.
3. Commnet's conditional use permit may be revoked "for a violation of the conditions and provisions of the conditional use permit, or for material violation of this chapter." (123-20.C)
4. If revoked Commnet will be notified on July 16, 2021 that the wireless telecommunications facility is to be removed.
5. The Village "may approve an interim temporary use agreement/permit,..." (123-29.B)
6. Commnet "shall dismantle and remove such wireless telecommunications facility...within 90 days of receipt of written notice from the Village." (123-20.B)
7. Commnet may appeal the decision of the P&Z Commission by claiming "there was an error or an abuse of discretion, or where the decision was not supported by evidence in the matter." (123-32)
8. Commnet may apply for a conditional use permit for a different tower within the timeframe outlined above. (123-7)

SUMMARY OF COMMUNICATION WITH COMMNET

February 17, 2019 Then Village Clerk Yvonne Dickey pointed out to the Commnet consultant Joe Levie that the NIER certifications had not been submitted. She expressly stated that this determination was made after studying the Wireless Telecommunications Facility (WTF) ordinance and in consultation with the Mayor and the Chair of the P&Z.

June 10, 2020 Then Village Clerk Yvonne Dickey again advised Joe Levie that the Village had not received the annual NIER certifications required in the conditional use permit and the Village ordinance governing wireless telecommunication facilities. Joe Levie indicated on September 2nd and 9th 2020, and again on February 5, 2021, that Commnet is in the process of securing the missing NIER certifications.

July 20, 2020 Mayor Roger Sweet reiterated to Mr. Levie that Commnet was delinquent with regard to the NIER certifications and further pointed out that the conditional use permit (and the WTF ordinance) required that Commnet request recertification of the conditional use permit granted on October 14, 2014 twelve to six months prior to the fifth anniversary.

September 28, 2020 Mayor Sweet wrote to Cindy Hernandez (Phillips), Director of Real Estate and Regulatory for Commnet, citing 123-19.D on the requirements for recertification and 123-24.A on the requirement of annual NIER certifications. In an earlier communication to the Mayor Cindy had provided a response that the Mayor characterized as “the dog ate my homework” kind of excuse.

February 23, 2021 P&Z Chair Michael Nealeigh sent an email to Joe Levie stating that the Village of Jemez Springs considers Commnet out of compliance with the recertification requirements of Village ordinance Chapter 123 as of October 14, 2019 and with annual NIER certification requirements beginning with the first anniversary of granting of the conditional use permit and continuing to the present.

April 19, 2021 Mayor Sweet received NIER reports for 2014-2019 based on “Worst-Case Predictive Modeling” from Alexis Leidigh, Regulatory Compliance Manager for Commnet.

May 3, 2021 P&Z Chair Michael Nealeigh received correspondence from Alexis Leidigh explaining why the NIER certifications were not submitted annually since 2014 and offering extenuating circumstances for not meeting the recertification schedule.

May 20, 2021 The P&Z Commission met at its regularly scheduled monthly meeting to determine if the NIER certifications and statement of extenuating circumstances were sufficient to meet the requirements of the conditional use permit. Alexis Leidigh attended the meeting and reiterated the explanations specified in her correspondence to the P&Z Chair on May 3, 2021. The Commission determined that “legitimately extenuating circumstances” did not exist preventing Commnet from a timely recertification request and from meeting the NIER certification requirements of the conditional use permit granted Commnet on October 14, 2014. A wireless telecommunication facility conditional use permit revocation hearing was scheduled for July 15, 2021.