

Due to the COVID-19 pandemic, the April 15 Mayor and Commission session was remote. The meeting could be viewed live at www.accgov.com/videos, on YouTube at www.youtube.com/accgov, on Facebook at www.facebook.com/accgov, and on ACTV Cable Channel 180 or the live ACTV stream at www.accgov.com/actvlive

Unified Government of Athens-Clarke County, Georgia
Mayor and Commission
Special Called Session
Thursday, April 15, 2021
5:34 p.m.
City Hall/WebEx

The Unified Government of Athens-Clarke County, Georgia met this date in a special called session. Present: Mayor Girtz; Commissioners Davenport, Link, Wright, Denson, Houle, Edwards, Myers, Thornton, and Hamby. Absent: Commissioner Parker.

The purpose of the meeting was to consider request for special use in AR (Agricultural Residential) District on 0.557 acre of a 34-acre tract known as 855 Nowhere Road; and any other item in proper order.

Public hearing and deliberation on a recommendation from the Athens-Clarke County Planning Commission

A public hearing was held on request of Kiersten Lurer, PM&A for Freddie Massey for special use in AR (Agricultural Residential) District on 0.557 acre of a 34-acre tract known as 855 Nowhere Road. Proposed use is a telecommunications facility. Type II

Planning Commission recommendation: Approve (unanimous)

Citizen input

There was no citizen input.

A motion was made by Commissioner Edwards, seconded by Commissioner Denson, to suspend Rules of Commission for consideration of the item listed on this agenda. The motion passed by unanimous vote.

A motion as made by Commissioner Denson, seconded by Commissioner Myers, to adopt the following ordinance (#21-04-41) which was presented by title only. The motion passed by roll call vote with Commissioners Davenport, Link, Wright, Denson, Houle, Edwards, and Myers voting YES and Commissioners Thornton and Hamby voting NO. (7 YES, 2 NO)

AN ORDINANCE TO AMEND THE CODE OF ATHENS-CLARKE COUNTY, GEORGIA, WITH RESPECT TO SPECIAL USE APPROVAL OF A WIRELESS TELECOMMUNICATIONS FACILITY IN THE AR (AGRICULTURAL RESIDENTIAL) DISTRICT ON AN APPROXIMATE 0.557-ACRE PORTION OF A PARCEL OF LAND AT 855 NOWHERE ROAD COMPRISED OF 34 ACRES IN TOTAL; AND FOR OTHER PURPOSES.

The Commission of Athens-Clarke County, Georgia hereby ordains as follows:

SECTION 1. The current AR (Agricultural Residential) District is hereby amended to provide for special use approval of a wireless telecommunications facility. The subject parcel, which comprises 34 acres and is located at 855 Nowhere Road, Athens, Georgia, is known as Tax Parcel No. 151 019 on the Athens-Clarke County Tax Map, being on file and available for public inspection in the office of the Athens-Clarke County Planning Department, 120 West Dougherty Street, Athens, Georgia. The date of this amendment to the Official Zoning Map of Athens-Clarke County as shown by Attachment A hereto shall be noted on said Official Zoning Map in the office of the Clerk of Commission and duly noted in the minutes of the Commission meeting.

The subject parcel is further described in that certain document entitled "Overall Boundary Plan," prepared by Chad T. Wilhoit, Georgia registered professional engineer, designated in the lower right-hand

corner as sheet number C-2, initially dated April 24, 2019 and most recently revised August 14, 2019, and being on file and available for public inspection in the office of the Athens-Clarke County Planning Department, 120 West Dougherty Street, Athens, Georgia. The approximate 0.557-acre portion of the subject parcel that will serve as the special use area for the wireless telecommunications facility is shown on said document as “Verizon 100 x 100 Lease Area” and “C/L 30’ Ingress-Egress Fiber & Utility Easement.”

SECTION 2. The binding site plan associated with this ordinance and incorporated herein by reference consists of twelve pages in total, with each sheet being numbered and titled on the right-hand side. The respective number, title, and date of each sheet is listed below.

Sheet No.:	Title:	Date:
T-1	Title Sheet & Project Information	Most recently revised August 14, 2019
1 of 3	Exhibit Survey Prepared By: Point To Point Land Surveyors	Most recently revised July 10, 2019
2 of 3	Exhibit Survey Prepared By: Point To Point Land Surveyors	Most recently revised July 10, 2019
3 of 3	Exhibit Survey Prepared By: Point To Point Land Surveyors	Most recently revised July 10, 2019
C-2	Overall Boundary Plan	Most recently revised August 14, 2019
C-2A	Overall Site Plan	Most recently revised August 14, 2019
C-2B	Aerial Site Plan	Most recently revised August 14, 2019
C-3	Enlarged Site Plan	Most recently revised August 14, 2019
C-4	Tower Elevation & Antenna Orientation	Most recently revised August 14, 2019
C-11	Fence Details	Most recently revised August 14, 2019
C-13	Tree Management Plan	Most recently revised August 14, 2019
L-1	Landscape Plan	Most recently revised August 14, 2019

The title sheet of the binding site plan is stamped “Binding 10-8-19,” and said plan is on file and available for public inspection in the office of the Athens-Clarke County Planning Department, 120 West Dougherty Street, Athens, Georgia.

The binding written report associated with this ordinance and incorporated herein by reference consists of six pages in total, entitled “Letter of Intent for Proposed ‘Nowhere’ Telecommunications Facility to be located at 855 Nowhere Road, Athens 30601 (Parcel ID: 151 019) via Special Use Permit,” prepared by P. Marshall and Associates, LLC, dated August 21, 2019, stamped “Binding 10-8-19,” and is on file and available for public inspection in the office of the Athens-Clarke County Planning Department, 120 West Dougherty Street, Athens, Georgia.

SECTION 3. The conditions of zoning associated with this ordinance, as agreed to by the Applicant, areas follows:

- a) the size of the gravel turnaround area in the tower “compound” shall be reduced and limited to 20 feet by 25 feet on the Northwest side of the “compound” (the turnaround area will remain as shown for the area in front of the gate).
- b) twelve (12) additional trees shall be planted along the southeast side of the “compound” to provide additional screening.

SECTION 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

A motion as made by Commissioner Wright, seconded by Commissioner Denson, to adopt the following resolution. The motion passed by roll call vote with Commissioners Davenport, Link, Wright, Denson, Houle, Edwards, and Myers voting YES and Commissioners Thornton and Hamby voting NO; (7 YES, 2 NO)

RESOLUTION AUTHORIZING SETTLEMENT OF LITIGATION

WHEREAS, Athens Cellular filed an application for a Special Use Permit to allow the construction of a cell tower which application was denied by A-CC, and

WHEREAS, Athens Cellular challenged the denial in the United States District Court for the Middle District of Georgia in a matter styled Athens Cellular, Inc. d/b/a Verizon Wireless v. Athens-Clarke County, Georgia, et al., CAFN: 3:20-cv-00001 (the “Litigation”), and

WHEREAS, the District Court ruled in favor of Athens Cellular by Order dated March 26, 2021 [D.E. 52] (the "Order"), and

WHEREAS, the Commission now desire to resolve this matter without further litigation, appeals or filings;

NOW, THEREFORE, the Commission hereby resolves as follows:

SECTION 1.

The Commission does hereby approve and authorize the Mayor to execute the Settlement Agreement and Waiver of Costs attached hereto as Exhibit "A" and incorporated herein by reference.

SECTION 2.

The County Attorney and outside counsel retained for purposes of this Litigation shall have authority to prepare, or to cause to be prepared, any and all documents and court filings necessary to effectuate the resolution of the Litigation as described herein, and to make such filings with the court as may be necessary or appropriate. The Mayor of Athens-Clarke County, Georgia, shall have authority to sign any documents as may be necessary or appropriate to effectuate the resolution of the Litigation as described herein.

EXHIBIT "A"

SETTLEMENT AGREEMENT

AND WAIVER OF COSTS

This Settlement Agreement and Waiver of Costs ("Settlement and Waiver") is entered into this _____ day of April, 2021 between Unified Government of Athens-Clarke County, Georgia ("A-CC") and Athens Cellular, Inc. d/b/a Verizon Wireless ("Athens Cellular").

WHEREAS, Athens Cellular filed a proper application for a Special Use Permit to allow the construction of a cell tower which application was denied by A-CC, and

WHEREAS, Athens Cellular challenged the denial in the United States District Court for the Middle District of Georgia in a matter styled Athens Cellular, Inc. d/b/a Verizon Wireless v. Athens-Clarke County, Georgia, et al., CAFN: 3:20-cv-00001 (the "Litigation"), and

WHEREAS, the District Court ruled in favor of Athens Cellular by Order dated March 26, 2021 [D.E. 52] (the "Order"), and

WHEREAS, the parties now desire to resolve this matter without further litigation, appeals or filings.

NOW THEREFORE, in consideration of the mutual promises and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. A-CC shall approve a special use permit with two (2) conditions that have been agreed to by Athens Cellular, which shall read as follows:
 - (a) The size of the gravel turnaround area in the tower "compound" shall be reduced and limited to 20 feet by 25 feet on the Northwest side of the "compound" (the turnaround area will remain as shown for the area in front of the gate).
 - (b) twelve (12) additional trees shall be planted along the southeast side of the "compound" to provide additional screening.
2. If A-CC approves the Special Use Permit with those two and only those two conditions, Athens Cellular shall waive its right to seek the costs of the action and shall not file a Bill of Costs. This Settlement and Waiver shall be a complete defense for any requests for costs arising out of the Litigation.
3. Upon execution of this Settlement and Waiver, A-CC shall waive its right to appeal and shall not file any Notice of Appeal regarding the District Court's ruling in the Litigation. Should ACC seek to file a Notice of Appeal after execution of this Settlement and Waiver, Athens Cellular will be entitled to a dismissal of the appeal based upon this Settlement and Waiver.
4. This instrument shall be governed by and interpreted in accordance with the laws of the State of Georgia. The parties hereby waive all defenses related to personal jurisdiction, venue, and forum non conveniens in any action involving this Agreement brought in the state or federal courts of the State of Georgia.
5. Whenever possible, each provision of this Settlement and Waiver shall be interpreted in such a manner as to be valid under applicable law. However, if any provision of this Settlement and Waiver shall be

invalidated or prohibited for any reason, any such provision shall be ineffective only to the extent of any such prohibition or invalidation, and the remainder of any such provision and the remaining provisions of this Settlement and Waiver shall remain valid and enforceable.

6. A-CC agrees to take any additional steps reasonably necessary to implement the Order, as modified by this Settlement and Waiver, and to execute such other and further documents, if any, as may be reasonably required to effectuate the terms of the Order and this Settlement and Waiver.
7. This Settlement and Waiver (along with an Ordinance granting the Special Use Permit) constitute the entire and sole understanding of the parties hereto notwithstanding any prior oral or written statements, instructions, agreements, representations, or other communications. The Settlement and Waiver shall not be amended, modified, or abrogated, except upon written agreement executed by that party or those parties whose rights or obligations are being amended, modified, or abrogated.

The meeting adjourned at 5:54 p.m.

Clerk of Commission