

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re Application of)
)
Nelson Multimedia, Inc.) FILE NO. BMJP-20051031ADG
) FAC ID No. 69700
For Major Modification of License)
Station WSPY(AM) Geneva, IL)

To: Secretary

ATTN: Media Bureau

OPPOSITION TO OBJECTIONS AND REQUEST FOR EXPEDITED PROCESSING

Nelson Multimedia, Inc,. ("Nelson") licensee of station WSPY(AM) Geneva, Illinois, by its attorney, hereby opposes the Objection to the above-referenced application filed by William Ostrander dated October 17, 2006, ("Ostrander") and the Objection filed by William Davis dated August 2, 2006, ("Davis"). Nelson contends that the objections should be denied or dismissed. In support thereof the following is shown:

Ostrander Objection

Ostrander's informal objection indicates that he is a supervisor for Northville Township. He comments and offers opinion on the status of zoning issues related to the proposed WSPY tower site. However, as shown below, Ostrander's submission supports the grant, rather than denial, of Nelson's application.

The objection acknowledges that Nelson amended its application with a copy of an August 8, 2006, order from the Appellate Court of Illinois, Third District. That order affirms a ruling that Nelson is entitled to a conditional use permit to erect towers at its proposed

site. Initially, the Northville Township Board denied Nelson's applications for a zoning variance and for a conditional use permit for the proposed tower site. Nelson appealed the denials to the LaSalle County Circuit Court which reversed the denial of the conditional use permit. Northville Township appealed the Circuit Court ruling to the Appellate Court of Illinois, Third District, which, by order issued August 8, 2006, affirmed the Circuit Court ruling that Northville Township had no legal basis to withhold a conditional use permit from Nelson.

Aside from statements attempting to justify prior Township Board rulings and expressing personal dissatisfaction with Nelson's original zoning applications, Ostrander reports that the Northville Township Board determined not to appeal the Appellate Court ruling due to legislation which mooted the zoning issues before the board.¹ Ostrander appears to be referring to Chapter 55 Illinois Consolidated Statutes, Section 5/12001.1 (copy attached). This section pre-empts local zoning authority over certain AM antenna towers and, as Ostrander acknowledges, effectively eliminates conditional use or other local zoning approval under conditions similar to those presented by Nelson's proposed tower site.

With limited exception, the Commission traditionally yields to state and local law concerning zoning matters. Zoning is presumed for purposes of site assurance absent a final adverse ruling. While it encourages applicants to pursue zoning approvals early in the construction permit application process, the Commission does not require

¹The Appellate Court order is now final.

an applicant to finalize zoning matters prior to the grant of a construction permit application. See, e.g., 1998 Biennial Regulatory Review - Streamlining of Mass Media Applications, Rules and Processes, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17540, ¶ 38 (1999), and Oconee River Broadcasting, LLC, DA No. 08-2446, pp. 4-5, released October 31, 2008.

Having made no showing that the proposed tower site is prevented by zoning matters, the Ostrander objection must be denied.

Davis Objection

The Davis objection raises zoning matters similar to those raised by Ostrander, adding rhetorical statements and questions related to the Illinois legislative process, State statutory preemptions concerning AM radio antenna siting, and private business analysis concerning tower site selection. However, while generally opposing the proposed tower site, Davis fails to show that local authorities relevant to the WSPY application have any further zoning discretion. Davis acknowledges that the current statute "ultimately removes counties [sic] regulatory authority for siting AM Radio Broadcast towers in the State of Illinois, with the exception of counties with populations greater than 180,000."²

Davis makes additional allegations concerning an unspecified adverse affect which the proposed antenna towers may have on historic properties and migratory birds. However, Davis provides no documentation nor other support for these bare assertions. As reported in the

²LaSalle County has a population of fewer than 180,000 people.

attached statement made under penalty of perjury by Larry Nelson, president of Nelson, the Illinois Historic Preservation Agency has determined that "no significant historic, architectural, and archaeological resources are located in the project area." In addition, Mr. Nelson has consulted with Robert Russell, a bird biologist with the Division of Migratory Bird Management - Mississippi Flyway, U.S. Department of Interior, Fish and Wildlife Services. One of Mr. Russell's areas of professional study concerns the federally designated Mississippi Flyway, which includes Illinois. He indicated that he is aware of no current data that any migratory bird path exists in the vicinity of the proposed WSPY tower site.

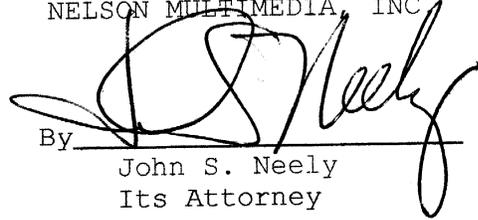
Davis' objection must be denied because it makes no showing that there are any zoning impediments to the proposed tower site, and Nelson has adequately rebutted Davis' unfounded assertions concerning historic properties or migratory birds.

Request for Expedited Processing

Station WSPY lost its licensed tower site in 2001. The station has been operating with special temporary authority from an alternate antenna site at low power for more than six years. By their nature, STAs are intended to be temporary, until the station restores full service. This extended period of restricted service impinges on the public benefits inherent in a full powered station. In addition, expediting the application will allow Nelson to implement the significant interference reduction benefits to the AM spectrum which are demonstrated by the application.

Respectfully Submitted,

NELSON MULTIMEDIA, INC


By _____
John S. Neely
Its Attorney

November 19, 2008

Miller and Neely, P.C.
Suite 704
6900 Wisconsin Ave.
Bethesda, MD 20815

(55 ILCS 5/5-12001.1)

Sec. 5-12001.1. Authority to regulate certain specified facilities of a telecommunications carrier and to regulate, pursuant to subsections (a) through (g), AM broadcast towers and facilities.

(a) Notwithstanding any other Section in this Division, the county board or board of county commissioners of any county shall have the power to regulate the location of the facilities, as defined in subsection (c), of a telecommunications carrier or AM broadcast station established outside the corporate limits of cities, villages, and incorporated towns that have municipal zoning ordinances in effect. The power shall only be exercised to the extent and in the manner set forth in this Section.

(b) The provisions of this Section shall not abridge any rights created by or authority confirmed in the federal Telecommunications Act of 1996, P.L. 104-104.

(c) As used in this Section, unless the context otherwise requires:

(1) "county jurisdiction area" means those portions of a county that lie outside the corporate limits of cities, villages, and incorporated towns that have municipal zoning ordinances in effect;

(2) "county board" means the county board or board of county commissioners of any county;

(3) "residential zoning district" means a zoning district that is designated under a county zoning ordinance and is zoned predominantly for residential uses;

(4) "non-residential zoning district" means the county jurisdiction area of a county, except for those portions within a residential zoning district;

(5) "residentially zoned lot" means a zoning lot in a residential zoning district;

(6) "non-residentially zoned lot" means a zoning lot in a non-residential zoning district;

(7) "telecommunications carrier" means a telecommunications carrier as defined in the Public Utilities Act as of January 1, 1997;

(8) "facility" means that part of the signal distribution system used or operated by a telecommunications carrier or AM broadcast station under a license from the FCC consisting of a combination of improvements and equipment including (i) one or more antennas, (ii) a supporting structure and the hardware by which antennas are attached; (iii) equipment housing; and (iv) ancillary equipment such as signal transmission cables and miscellaneous hardware;

(9) "FAA" means the Federal Aviation Administration of the United States Department of Transportation;

(10) "FCC" means the Federal Communications Commission;

(11) "antenna" means an antenna device by which radio signals are transmitted, received, or both;

(12) "supporting structure" means a structure, whether an antenna tower or another type of structure, that supports one or more antennas as part of a facility;

(13) "qualifying structure" means a supporting structure that is (i) an existing structure, if the height of the facility, including the structure, is not more than 15 feet higher than the structure just before the facility

is installed, or (ii) a substantially similar, substantially same-location replacement of an existing structure, if the height of the facility, including the replacement structure, is not more than 15 feet higher than the height of the existing structure just before the facility is installed;

(14) "equipment housing" means a combination of one or more equipment buildings or enclosures housing equipment that operates in conjunction with the antennas of a facility, and the equipment itself;

(15) "height" of a facility means the total height of the facility's supporting structure and any antennas that will extend above the top of the supporting structure; however, if the supporting structure's foundation extends more than 3 feet above the uppermost ground level along the perimeter of the foundation, then each full foot in excess of 3 feet shall be counted as an additional foot of facility height. The height of a facility's supporting structure is to be measured from the highest point of the supporting structure's foundation;

(16) "facility lot" means the zoning lot on which a facility is or will be located;

(17) "principal residential building" has its common meaning but shall not include any building under the same ownership as the land of the facility lot. "Principal residential building" shall not include any structure that is not designed for human habitation;

(18) "horizontal separation distance" means the distance measured from the center of the base of the facility's supporting structure to the point where the ground meets a vertical wall of a principal residential building;

(19) "lot line set back distance" means the distance measured from the center of the base of the facility's supporting structure to the nearest point on the common lot line between the facility lot and the nearest residentially zoned lot. If there is no common lot line, the measurement shall be made to the nearest point on the lot line of the nearest residentially zoned lot without deducting the width of any intervening right of way; and

(20) "AM broadcast station" means a facility and one or more towers for the purpose of transmitting communication in the 540 kHz to 1700 kHz band for public reception authorized by the FCC.

(d) In choosing a location for a facility, a telecommunications carrier or AM broadcast station shall consider the following:

(1) A non-residentially zoned lot is the most desirable location.

(2) A residentially zoned lot that is not used for residential purposes is the second most desirable location.

(3) A residentially zoned lot that is 2 acres or more in size and is used for residential purposes is the third most desirable location.

(4) A residentially zoned lot that is less than 2 acres in size and is used for residential purposes is the least desirable location.

The size of a lot shall be the lot's gross area in square feet without deduction of any unbuildable or unusable land,

any roadway, or any other easement.

(e) In designing a facility, a telecommunications carrier or AM broadcast station shall consider the following guidelines:

(1) No building or tower that is part of a facility should encroach onto any recorded easement prohibiting the encroachment unless the grantees of the easement have given their approval.

(2) Lighting should be installed for security and safety purposes only. Except with respect to lighting required by the FCC or FAA, all lighting should be shielded so that no glare extends substantially beyond the boundaries of a facility.

(3) No facility should encroach onto an existing septic field.

(4) Any facility located in a special flood hazard area or wetland should meet the legal requirements for those lands.

(5) Existing trees more than 3 inches in diameter should be preserved if reasonably feasible during construction. If any tree more than 3 inches in diameter is removed during construction a tree 3 inches or more in diameter of the same or a similar species shall be planted as a replacement if reasonably feasible. Tree diameter shall be measured at a point 3 feet above ground level.

(6) If any elevation of a facility faces an existing, adjoining residential use within a residential zoning district, low maintenance landscaping should be provided on or near the facility lot to provide at least partial screening of the facility. The quantity and type of that landscaping should be in accordance with any county landscaping regulations of general applicability, except that paragraph (5) of this subsection (e) shall control over any tree-related regulations imposing a greater burden.

(7) Fencing should be installed around a facility. The height and materials of the fencing should be in accordance with any county fence regulations of general applicability.

(8) Any building that is part of a facility located adjacent to a residentially zoned lot should be designed with exterior materials and colors that are reasonably compatible with the residential character of the area.

(f) The following provisions shall apply to all facilities established in any county jurisdiction area (i) after the effective date of the amendatory Act of 1997 with respect to telecommunications carriers and (ii) after the effective date of this amendatory Act of the 94th General Assembly with respect to AM broadcast stations:

(1) Except as provided in this Section, no yard or set back regulations shall apply to or be required for a facility.

(2) A facility may be located on the same zoning lot as one or more other structures or uses without violating any ordinance or regulation that prohibits or limits multiple structures, buildings, or uses on a zoning lot.

(3) No minimum lot area, width, or depth shall be required for a facility, and unless the facility is to be manned on a regular, daily basis, no off-street parking spaces shall be required for a facility. If the facility

is to be manned on a regular, daily basis, one off-street parking space shall be provided for each employee regularly at the facility. No loading facilities are required.

(4) No portion of a facility's supporting structure or equipment housing shall be less than 15 feet from the front lot line of the facility lot or less than 10 feet from any other lot line.

(5) No bulk regulations or lot coverage, building coverage, or floor area ratio limitations shall be applied to a facility or to any existing use or structure coincident with the establishment of a facility. Except as provided in this Section, no height limits or restrictions shall apply to a facility.

(6) A county's review of a building permit application for a facility shall be completed within 30 days. If a decision of the county board is required to permit the establishment of a facility, the county's review of the application shall be simultaneous with the process leading to the county board's decision.

(7) The improvements and equipment comprising the facility may be wholly or partly freestanding or wholly or partly attached to, enclosed in, or installed in or on a structure or structures.

(8) Any public hearing authorized under this Section shall be conducted in a manner determined by the county board. Notice of any such public hearing shall be published at least 15 days before the hearing in a newspaper of general circulation published in the county. Notice of any such public hearing shall also be sent by certified mail at least 15 days prior to the hearing to the owners of record of all residential property that is adjacent to the lot upon which the facility is proposed to be sited.

(9) Any decision regarding a facility by the county board or a county agency or official shall be supported by written findings of fact. The circuit court shall have jurisdiction to review the reasonableness of any adverse decision and the plaintiff shall bear the burden of proof, but there shall be no presumption of the validity of the decision.

(g) The following provisions shall apply to all facilities established (i) after the effective date of this amendatory Act of 1997 with respect to telecommunications carriers and (ii) after the effective date of this amendatory Act of the 94th General Assembly with respect to AM broadcast stations in the county jurisdiction area of any county with a population of less than 180,000:

(1) A facility is permitted if its supporting structure is a qualifying structure or if both of the following conditions are met:

(A) the height of the facility shall not exceed 200 feet, except that if a facility is located more than one and one-half miles from the corporate limits of any municipality with a population of 25,000 or more the height of the facility shall not exceed 350 feet; and

(B) the horizontal separation distance to the nearest principal residential building shall not be less than the height of the supporting structure;

except that if the supporting structure exceeds 99 feet in height, the horizontal separation distance to the nearest principal residential building shall be at least 100 feet or 80% of the height of the supporting structure, whichever is greater. Compliance with this paragraph shall only be evaluated as of the time that a building permit application for the facility is submitted. If the supporting structure is not an antenna tower this paragraph is satisfied.

(2) Unless a facility is permitted under paragraph (1) of this subsection (g), a facility can be established only after the county board gives its approval following consideration of the provisions of paragraph (3) of this subsection (g). The county board may give its approval after one public hearing on the proposal, but only by the favorable vote of a majority of the members present at a meeting held no later than 75 days after submission of a complete application by the telecommunications carrier. If the county board fails to act on the application within 75 days after its submission, the application shall be deemed to have been approved. No more than one public hearing shall be required.

(3) For purposes of paragraph (2) of this subsection (g), the following siting considerations, but no other matter, shall be considered by the county board or any other body conducting the public hearing:

(A) the criteria in subsection (d) of this Section;

(B) whether a substantial adverse effect on public safety will result from some aspect of the facility's design or proposed construction, but only if that aspect of design or construction is modifiable by the applicant;

(C) the benefits to be derived by the users of the services to be provided or enhanced by the facility and whether public safety and emergency response capabilities would benefit by the establishment of the facility;

(D) the existing uses on adjacent and nearby properties; and

(E) the extent to which the design of the proposed facility reflects compliance with subsection (e) of this Section.

(4) On judicial review of an adverse decision, the issue shall be the reasonableness of the county board's decision in light of the evidence presented on the siting considerations and the well-reasoned recommendations of any other body that conducts the public hearing.

(h) The following provisions shall apply to all facilities established after the effective date of this amendatory Act of 1997 in the county jurisdiction area of any county with a population of 180,000 or more. A facility is permitted in any zoning district subject to the following:

(1) A facility shall not be located on a lot under paragraph (4) of subsection (d) unless a variation is granted by the county board under paragraph (4) of this subsection (h).

(2) Unless a height variation is granted by the county board, the height of a facility shall not exceed 75 feet if the facility will be located in a residential

zoning district or 200 feet if the facility will be located in a non-residential zoning district. However, the height of a facility may exceed the height limit in this paragraph, and no height variation shall be required, if the supporting structure is a qualifying structure.

(3) The improvements and equipment of the facility shall be placed to comply with the requirements of this paragraph at the time a building permit application for the facility is submitted. If the supporting structure is an antenna tower other than a qualifying structure then (i) if the facility will be located in a residential zoning district the lot line set back distance to the nearest residentially zoned lot shall be at least 50% of the height of the facility's supporting structure or (ii) if the facility will be located in a non-residential zoning district the horizontal separation distance to the nearest principal residential building shall be at least equal to the height of the facility's supporting structure.

(4) The county board may grant variations for any of the regulations, conditions, and restrictions of this subsection (h), after one public hearing on the proposed variations, by a favorable vote of a majority of the members present at a meeting held no later than 75 days after submission of an application by the telecommunications carrier. If the county board fails to act on the application within 75 days after submission, the application shall be deemed to have been approved. In its consideration of an application for variations, the county board, and any other body conducting the public hearing, shall consider the following, and no other matters:

(A) whether, but for the granting of a variation, the service that the telecommunications carrier seeks to enhance or provide with the proposed facility will be less available, impaired, or diminished in quality, quantity, or scope of coverage;

(B) whether the conditions upon which the application for variations is based are unique in some respect or, if not, whether the strict application of the regulations would result in a hardship on the telecommunications carrier;

(C) whether a substantial adverse effect on public safety will result from some aspect of the facility's design or proposed construction, but only if that aspect of design or construction is modifiable by the applicant;

(D) whether there are benefits to be derived by the users of the services to be provided or enhanced by the facility and whether public safety and emergency response capabilities would benefit by the establishment of the facility; and

(E) the extent to which the design of the proposed facility reflects compliance with subsection (e) of this Section.

No more than one public hearing shall be required.

(5) On judicial review of an adverse decision, the issue shall be the reasonableness of the county board's decision in light of the evidence presented and the well-reasoned recommendations of any other body that

conducted the public hearing.
(Source: P.A. 94-728, eff. 4-6-06; 95-815, eff. 8-13-08.)

Re: WSPY(AM) Geneva, IL
FACID 69700
BMJP-20051031ADG

I am Larry Nelson, president of Nelson Multimedia, Inc., (“Nelson”) applicant for a major modification of station WSPY(AM) Geneva, Illinois. I have prepared the following statement in response to the Commission letter dated November 13, 2008, seeking further information in the above-referenced matter.

Among other things, the letter asks Nelson Multimedia, Inc., to supply information in response to allegations raised in this proceeding concerning the effect, if any, which the proposed facilities would have on historic properties and migratory bird populations.

1) Historic properties.

Nelson conducted a NEPA study in 2006 and 2007 as outlined by FCC Form 620. As part of that study, Nelson obtained a determination letter, (copy attached) from the Illinois State Historic Preservation Officer concluding that “no significant historic, architectural, and archaeological resources are located in the project area.”

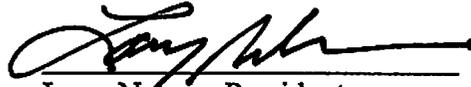
2) Migratory bird populations.

The Commission’s November 13, 2008, letter asks “that Nelson consult with the local office of the U.S. Department of Interior, Fish and Wildlife Services or seek the opinion of a qualified biologist” to evaluate the potential effects of the proposed towers on migratory birds. The applicant’s 2006-2007 NEPA study concludes that the proposed tower site is not “in or near a designated wildlife preserve” and “will not significantly impact any federally protected species.” In addition, I contacted the U.S. Department of Interior, Fish and Wildlife Services, on November 14 and again on November 17, 2008, for consultation. I spoke with Robert Russell, a Bird Biologist with the Division of Migratory Bird Management, Mississippi Flyway, U.S. Department of Interior, Fish and Wildlife Services, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55114-4058. Mr. Russell told me that the Mississippi Flyway includes the State of Illinois and WSPY’s proposed tower site.

During the consultation, I told Mr. Russell where the proposed tower site will be located and that the proposed towers will be guyed, unlighted, and less than 200 feet tall. I asked whether the proposed towers would have any potential effect on migratory birds. Mr. Russell responded that the Crane migration path stretches from Woodstock to Palos Hills, Illinois, greater than 25 miles east of WSPY’s proposed site and the Lesser Whooping Crane migratory path exists to the west of Ottawa, Illinois, and greater than 20 miles from the proposed WSPY site. Mr. Russell indicated that he was not aware of any reliable current data indicating that a migratory bird path exists in the vicinity of the proposed WSPY tower construction. Mr. Russell advised further that, in general, he does not consider antenna towers less than 200 feet tall to be a large concern for migratory bird populations and towers which are not lighted at night further diminish concerns regarding migratory birds.

I certify under penalty of perjury that the forgoing statement is true and correct to the best of my knowledge and belief.

Date: **11-19-08**

A handwritten signature in black ink, appearing to read "Larry Nelson", written over a horizontal line.

Larry Nelson, President
Nelson Multimedia, Inc.



Illinois Historic
Preservation Agency

1 Old State Capitol Plaza • Springfield, Illinois 62701-1512 • Teletypewriter Only (217) 524-7128

Voice (217) 782-4836

LaSalle County
Northville Township
4425-4445 East 30th Road, Section:24-Township:36N-Range:5E

PLEASE REFER TO: IHPA LOG #003012407 www.illinois-history.gov

PSAP-06-380
Telecommunication Tower

February 5, 2007

Mr. Larry Nelson
WSPY-Am
~~One Broadcast Center~~
Plano, IL 60545

Dear Sir:

Acre(s): 10 Site(s): 0 Archaeological Contractor: PSAP/McGowan

Thank you for submitting the results of the archaeological reconnaissance. Our comments are required by Section 106 of the National Historic Preservation Act of 1966, as amended, and its implementing regulations, 36 CFR 800: "Protection of Historic Properties".

Our staff has reviewed the archaeological Phase I reconnaissance report performed for the project referenced above. The Phase I survey and assessment of the archaeological resources appear to be adequate. Accordingly, we have determined, based upon this report, that no significant historic, architectural, and archaeological resources are located in the project area.

Please submit a copy of this letter with your application to the state or federal agency from which you obtain any permit, license, grant, or other assistance. Please retain this letter in your files as evidence of compliance with Section 106 of the National Historic Preservation Act of 1966, as amended.

Sincerely,

Anne E. Haaker
Deputy State Historic
Preservation Officer
AEH:DJH

cc: Kevin P. McGowan, Ph.D., Public Service Archaeology Program