

Minutes
WARRICK COUNTY AREA BOARD OF ZONING APPEALS

Regular meeting to be held in the Commissioners Meeting Room,
Third Floor, Historic Courthouse,
Boonville, Indiana
May 28, 2019 at 6:00 P.M.

PLEDGE OF ALLEGIANCE

MEMBERS PRESENT: Jeff Valiant, Chairman; Terry Dayvolt, Doris Horn, Paul Keller, Mike Moesner, Jeff Willis, and Mike Winge.

Also present were Morrie Doll, Attorney, and Molly Barnhill, Assistant Director.

MEMBERS ABSENT: None

MINUTES: Chairman Valiant called for a motion to approve the minutes from the April 22, 2019.

Doris Horn made a motion to approve the minutes from the April 22, 2019 as circulated.

The motion was seconded by Mike Winge and approved unanimously.

Chairman Valiant explained the rules and procedures.

SPECIAL USES:

BZA-SU-19-07

APPLICANT: New Cingular Wireless PCS, LLC d/b/a AT&T Mobility by David Pike, Attorney

OWNER: Christopher R. & Tiffany Bey by David Pike, Attorney

PREMISIS AFFECTED: Property located on the South side of Eble Rd. approximately 1,900 feet east of the intersection formed by Eble Rd. and Bethany Church Rd, Anderson Twp. 35-6-8, 1355 Eble Rd.

NATURE OF CASE: Applicant requests a Special Use, SU 18, from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow: an ILP to be issued for a 255' tower with a 15' lightening arrestor (total 270') and associated equipment and equipment shelter to be within a 100x100 sq. ft. lease area with a 30' access and utility easement in an "A" Agricultural Zoning District. (*Advertised in the Standard May 16, 2019*)

Robert Grant Regional Council for AT&T Mobility, and Christopher & Tiffany Bey were present.

Chairman Valiant thanked Mr. Grant and he called for a Staff Report.

Mrs. Barnhill stated we do have all the pay receipts from the notice to the adjacent property owners. She said we are missing two green cards from Jeff & Angela South and Dennis & Caroline Frasier. She said when you get those back please bring them in. She said the existing land use is a single family dwelling. She stated all of the abutting property is zoned "Con" Recreation and Conservancy and have single-family dwellings. She said there is no flood plain. She said they have filed a Commercial Driveway Permit on Eble Rd and will have to post surety or construct the driveway prior to permits being issued. She said the proposed tower will be a self-supporting tower 255' tall with a 15' lightning arrestor (270' total). She said in the packets there is a map showing there are no suitable tall structures or other communication towers, which they could co-locate on within a one-mile radius of the proposed site. She said the tower will be able to co-locate an addition of three more service providers once the tower has been completed. She said the proposed tower is 79' from the nearest property line to the north, 97' to the south, and 629' from the nearest residence/structure and not on the property the tower will be located. She said the applicant has stated in the application that this tower will enhance service to their customers and E-911 access for emergencies. She said the applicants have answered all of the proposed use questions in the Board Members' packets.

Chairman Valiant asked if Mr. Grant had anything to add to the staff report.

Mr. Grant said good evening, it is a pleasure to be with you this evening. He said as he said earlier, he is Regional Council for AT&T Mobility. He said the property owners are here, Mr. & Mrs. Bey. He said he has also spoken to Mr. Slow who is an adjoining property owner. He said he doesn't know if anyone is there on that particular application but he knows the Board is familiar with his usual presentation. He said he is not going to do that long presentation today, but he would make some comments. He said this is 21st century communication technology, this is how we connect with the rest of the world. He said we do that with our mobile devices. He said we do our banking and there is so many different things we can do with these devices, so it's not just voice anymore. He said it may be more important with the decline of landlines and the decline of people having the traditional wired phones in their homes, it is the only way to get an emergency call out if there is an emergency. He said this application certainly serves AT&T and will certainly serve Mr. and Mrs. Bey, who are leasing space with us, and it also serves this community by bringing essential and necessary public utility infrastructure to the community. He said if Mr. Slow tells me he is not an AT&T customer or if there is anyone else here that lives in the area who is not, what we do is we have agreements with all the other carriers. He said AT&T is proposing this tower. He said AT&T's equipment will go on the tower but there will be space available on the tower for all the other carriers. He said very typically these things fill up, you build it and they come. He said not always, but very typically they do. He said regardless of who your service is with, although we hope someday it is with AT&T Mobility, its state of the art 21st century communication services. He said with that I am going to open the floor to the Board's questions and whatever comments the neighbors have.

Mr. Moesner asked if it is 5G technology.

Mr. Grant said the technology that AT&T is deploying right now is 4G. He said 5G works in urban areas because they have to be closer together with shorter signals. He said the towers are shorter. He said it's an advantage to the community for shorter towers. He said the disadvantage is, a lot

of short towers. He said it's similar to running a telephone line with no strings and it's not linear, it is still in a honeycomb shape. He said right now we are deploying 4G technology with First Net. He said First Net connects E911 emergency services for first responders all over the nation. He said it is a dedicated service for them, so we are deploying that as well. He said they are also deploying, with this tower, fixed wireless local loop. He said that is high speed broadband internet service on your mobile device, so you can watch the disappointing Game of Thrones finale on your phone if you want to. He said he enjoys it and most people do. He asked if there is anything else.

Chairman Valiant said assuming where you are going with that, he asked if this tower would be capable of handling the 5G equipment at some point or are we looking at another structure down the line.

Mr. Grant replied it will be capable of handling 5G technology when they deploy it in more rural areas.

Mr. Moesner said it is his understanding that you will have to have more towers to do 5G.

Mr. Grant said with the current technology the answer to that question is yes. He said the technology will have to change. He said hopefully we can deploy 5G without the need for more towers.

Mr. Winge asked what the distance they have to stand is. He asked how far apart or how close do they have to be.

Mr. Grant said for 4G or 5G.

Mr. Winge said 5G.

Mr. Grant said he wishes he had their RF Engineer here with him. He said he doesn't know the answer to that.

Mr. Moesner said it's his understanding that in cities there will be towers placed throughout. He said they won't be big towers but they are spaced all around to where they pick up and go from there.

Mr. Grant said he doesn't know the answer. He stated he knows the distance is greater than the spacing of a telephone pole, and far less than the spacing of 4G technology. He said he doesn't know the answer but he wishes he did. He said next time he will have an answer for you.

Chairman Valiant stated there have been people come to the Board in previous meetings for the 5G technology. He said he is assuming that is where some of their questions are coming from tonight.

Mr. Grant said sure.

Chairman Valiant said he knows tonight's proposal is just for 4G equipment.

Terry Dayvolt asked E911 emergency service, is that replacing the radios they use.

Mr. Grant said it is a superior technology to a radio. He said whether or not first responders choose to keep a radio as a plan B, he doesn't know. He said he knows they are currently using their cellular devices more than their radios. He said what First Net is, is a dedicated line. He said in other words, in an emergency, what happens is, you get a traffic jam. He said everybody is trying to make their calls at the same time. He added it's just like the old landline technology where you get busy signals, but with cellular technology your call just doesn't go through, nothing happens. He said your call just spins and spins. He said First Net is dedicated for first responders so that it doesn't happen in an emergency.

Mr. Dayvolt said okay, how many first responders can get on that at one time, just one.

Mr. Grant said no, I mean think of your cell phone where you have more than just one person making a call on that band at one time. He said the problem is, I am from Louisville. He stated you get all those people jammed in and everybody wants to make a call at the same time. He said then service becomes spotty in an area that is ordinarily stellar, good. He said it is his understanding with First Net, all of the First Net people, all of the first responders, all of the police and fire, all of the ambulance services, everybody that is participating in the program will be able to communicate without fail. He said which is what we want to happen so that they can respond in the most efficient way possible to save lives, save property, and do their job.

After ascertaining there were no more questions from the Board, at this time Chairman Valiant asked if there are any remonstrators for or against this project to please step forward. He said there is a sign in sheet at the podium, please sign in.

Thomas Beckman stated his name for the record. He said he lives just to the north of the proposed location of the tower and is probably the closest dwelling to it. He said the big question he had is are there any health effects on his family. He said another thing is, this is all stripper pit land and at least every two years he hears that cliffs fall or things fall into the stripper pits, the point is, that land is moving. He said so you are going to put this big structure up there, what is that going to cause to the land. He said the other thing is there will be a leaning Tower of Pisa out there if this thing starts to subside underneath. He said it isn't the best land to put something that big and heavy on. He said the next question is how much noise he can expect from the tower. He said the fifth question he has is, is it going to interfere with his radio signal when he listens to the radio. He said there are a lot of concerns he has about this tower, not to mention that it will depreciate the value of his property. He said he is certainly not for this tower.

Chairman Valiant said thank you sir. He asked if Mr. Grant would like to address the questions.

Mr. Grant said as he looks at the drawing, your home is about 1,000 feet, roughly from the tower. He said he will try to do the questions in reverse order because his memory works better that way. He said in terms of safety and falling things, the towers were designed with zero fall zones and they are designed to collapse in and on itself. He said it is located within a 100' X 100' compound.

He stated in the unlikely event that something should fall off of it, it should fall within that 100' X 100' compound.

Chairman Valiant said he thinks he may have been more worried about the ground being unsettled because it's old mining ground, so there was worry about a shift in the ground.

Mr. Grant said as part of their due diligence, this is something they do is, certainly we are concerned about the ground we build on. He said we want to build on solid foundation that is just basic. He said so one of the things they do is have a geotechnical study done, they drill and determine whether or not there is bedrock underneath the tower. He said so that the tower is built on a foundation, certified by an engineer, to hold the structure in place. He said another thing they do is that the foundation varies with tower type, but is deep. He said they penetrate deep down to the bedrock to set the thing on the bedrock. He said in terms of a seismic event, none of us can predict or control that. He said what impact that might or might not have depends on all the factors that it would have, so there is nothing they can do to predict that. He said what we have done here is if there was a seismic event, there is no structure than 1:1 height of the tower even though it is designed to collapse on itself; even if it were to fall like a tree, there is nothing for it to fall on. He said if there was a seismic event and the ground just disappeared underneath it, it's designed that way. He said he should have made better notes. He asked what the other questions are.

Chairman Valiant said health effects.

Mr. Grant said that is tricky, as this Board knows, health effects cannot be considered by this Board. He stated that is within the exclusive jurisdiction of the FCC, who issues our license. He said what he can tell you is, the FCC, to answer those questions from public officials and concerned public, is they have done a publication that is available on their website. He said it goes through all the scientific studies and explains why there is no effect on health, but we cannot discuss that and we are not having this conversation tonight. He said the other questions related was interference with existing equipment. He said we are required by the FCC to operate within our band wave that we have purchased from the FCC, and nothing else operates within that band wave. He said so another cellular device from another company, which is the closest technology that operates on another band wave, it won't interfere with that, and it certainly won't interfere with radio or television transmissions over the air. He said those are all things that are typically transmitted over the air.

Mr. Winge said noise level.

Mr. Grant said it is an unmanned, silent facility. He said it operates in utter silence 99.9% of the time, the only time it generates any noise at all is because there is a backup power generator for emergencies. He said so those first responders can make their calls and communicate with one another. He stated that generator is muffled, it's not silent but it's pretty darn quiet.

Mr. Dayvolt said it probably runs automatically once a month or something, he would assume.

Mr. Grant said it might have a safety check on it where it does that for just a few minutes to check its safety. He said he knows he said it was unmanned, but we send somebody out there in a small

pickup truck every few months just to check on everything. He said that is the only traffic to the site. He said in terms of property value, there is a lot of stuff on the internet that says golly gee this is going to ruin my property value, the fact of the matter is that this is a necessary public utility structure. He said rural land without utilities is typically worth less than rural land that has utility service to it: power, water, electricity, and communication services. He said so typically what people who have done studies on this will say is no, it doesn't depreciate. It appreciates and adds value. He said it adds value to the community. He said it makes for a safer place and it makes for a better quality of life. He said it adds value. He said he thinks that was everything.

Chairman Valiant said thank you sir. He asked if there are any other remonstrators for or against this project. He said he would ask that no one addresses the same items again.

Syam Chilukuri stated his name for the record. He said he is probably going to be the one who is most affected by this because his property is immediately adjacent where this is going up. He said he actually got the same letter, asking for his permission to do this and he turned it down because he did not want this on or near his property. He said he is planning on building a house at that location. He said so when it comes to property values and the esthetics because this piece of property is gorgeous, it is so peaceful. He said this big tower sitting right next to the property is going to mess things up. He said other than the esthetic value, he has already addressed property values going up or down, it is true there are no utilities on his property but certainly everyone else in the area has utilities already. He stated he has water but no power. He said he isn't opposed to having cell towers or having technology, he is just questioning the location. He said he has never had any problem with signal and he is there all the time watching things on his phone, and doesn't know if it is necessary to have this put in. He said he doesn't know what the signals are in the area, maybe down the line it might be necessary. He said once again, he is questioning the location of this. He said the strip of land where this is going up is basically 200 feet wide. He said if you put this in the middle of it and if it falls, he is sorry but pictures of towers he has seen falling down, fall on houses and cars. He said so there is no place for it to go except on an adjacent property, if it does fall without collapsing. He said that would be his side of the property. He said going back to the stability of the land, bedrock is way down from there. He said you have to go down to Eble Rd. level to get to the bedrock and we are talking about pretty high elevation. He stated he doesn't know if that is what they planned on doing. He stated this area is extremely windy. He said they are sitting on top of a hill. He said he actually thought that would be a great place to have a windmill because of how windy it is. He said he has had structures picked up by the wind and blown half way down the field. He said he doesn't know if they studied that or not. He said the wind always blows north towards his property. He said he doesn't know how the road and easements will come into this, but he guesses they are constructing a new road.

Mrs. Barnhill said yes they have an access easement to get back to the tower.

Mr. Chilukuri said okay other than the risks of falling, the other risk he has read about is fire. He asked if there is a way for fire and first responders to get to it. He said because the roads that would easily get to it would have to go through his property. He said he actually has already had issues with people going through his property. He said the biggest question is the location that is what he is concerned about. He stated he already has plans drawn up for a house and it's going to be fairly close to that.

Mr. Dayvolt asked Mr. Chilukuri to come show him on the map where the location of his property is.

Mr. Chilukuri stated he already has a road there. He told Mr. Dayvolt the location where he would like to put his house.

Mr. Dayvolt said so you don't know where your house is going to be setting here.

Mr. Chilukuri said no, they just have the plans drawn up, but he doesn't want to put it down low where the water can run down.

Rama Chilukuri stated she is Saym Chilukuri's wife. She said they bought this property seven or eight years ago just because her husband fell in love with that property, finally he has retired so we can build a house and enjoy the property. She stated they got a letter asking for permission to build on their property because their property had the highest in the area. She said they said no, because of the reason why they bought it. She said the place it is going to be setting now, the tower will be right in front of where we were planning on enjoying. She stated even though it is owned by our neighbors, it is not being built behind their house and it doesn't affect them. She said it comes around and sits right in front of our house and it affects us more than the neighbors. She said she knows they don't have any say because it is their property but that kind of seems upsetting. She said second, the council for AT&T said it adds value to the community and it will increase property values in the community. She said that would be true for everybody in the surrounding areas but the people in the immediate area, she doesn't know if that is true. She said like Saym said, people have electricity and they have phones working and everything because if she is buying a new property, she doesn't know if she would buy it if there was a tower sitting right in front of the place where I would be building it. She said so that the fate of the neighbors, when the company says it helps the rest of the community but they don't care how it affects you as the immediate property owners. She said those are her questions. She said and the same thing, if the tower is so tall, why can't it be built right by the property of the owners that are leasing the area. She asked why it should come to the other areas where it affects my neighbors and us. She said because the height shouldn't matter so if the owners did not want to obstruct the view of their property, would it be ok for us to not have it affect our view.

Chairman Valiant said thank you.

Mr. Grant said if you will forgive him, he doesn't see their name on the property so he doesn't know where their property is. He asked Mr. Chilukuri to show him their property on the map so he knows what they are talking about. He said the way this technology works is that, these communication facilities are spaced at a distance from one another so that each tower and each set of antennas can communicate with each other. He said a cell phone is a fancy walkie talkie, which has very limited range. He said what cellular technology does is that you send that limited range to the nearest tower, and that tower has a greater broadcast capability and it sends it to the next closest tower and on and on so that you can make a call half way around the world wirelessly. He said you can't do that with a walkie talkie, okay. He said so, when our engineers are looking at our network and looking at problem areas where we have service problems, service problems are one

of two types. He said one type is zero service, you can't get a call through period. He said the other type of service issue is capacity, one similar to what we were talking about with first responders or the Kentucky Derby where you've got everybody trying to make a call at the same time, the system doesn't have sufficient capacity to get the call through. He said this picture is complicated by the fact that this technology is more than voice. He said this technology is now data. He said we are sending more data wirelessly than we are making voice calls. He said that data not only gobbles up more band width, we are sending an monumental amount of data right now and it's growing rapidly because folks are doing stuff like streaming the Game of Thrones finale. He stated in the same house there are spouses doing their online banking data, their teenage daughter is making a purchase on Amazon, and their teenage son is talking or texting his girlfriend. He said all this is happening in one household. He said never mind everybody else in the community that is all happening at the same time so, we've got a service problem in this area that we have to resolve. He said our engineers look at their existing network and make a determination of where we have to be to solve that problem. He said if they get too close to an existing tower then they interfere with each other and the service degrades, it gets worse.

Mr. Winge said he noticed that these folks said you had contacted them first. He asked if he is correct. He said you are talking about them looking at a key spot and their concern is exactly where it's sitting, but yet you were willing to take their place first. He asked so why is this place so critical now.

Mr. Grant said well that is sort of what I am getting to. He said they have a half of mile search area, search radius okay. He said they look for the largest parcels in the search area, they look for the highest parcels in the search area. He said they had a team, sight acquisition team that does this work. He said they do it a lot and they are very good at their jobs. He said the problem they have is that they have to have a willing landlord within an area where we can resolve the service issues. He said when their RF Engineer says you have to be in this area, if you don't get in this area forget it, we can't fix the service, okay. He said looking at this drawing here, their parcel is to the north and it's slightly larger so it would have been preferred. He said their site acquisition people would have contacted them first because their parcel is a little bit bigger than this twelve acre parcel that they are going on, okay. He said so what they typically do is knock on doors or they send letters to people. He said they work from the Auditor's tax map, the Auditor's records, and property owners of record. He said they reach out to them, the best ones. He said the ones that the properties meet all of the requirements of the Zoning Ordinance, okay. He said their number one priority is to resolve the service issue. He said their number two priority is to do that and still comply with this communities guidelines about how this should happen. He said they reach out to everybody where we can construct a facility that will comply with your zoning regulations, and they typically will reach out to the people where we can do that with the greatest lead way, okay. He said in that instance these folks were contacted. He said this application where we are also meets all of your set back requirements, they comply with all the guidelines, and the rules of the road, okay. He said except that this is a special exception process that you take a look at. He said so having said all of that, these folks were an unwilling landlord, they were unwilling to lease space to us so they had to look someplace else to find somebody who was willing so that they could solve the service problem and to meet the community's communication needs. He said this is a land use that does not just serve Mr. and Mrs. Bey and AT&T Mobility. He said it serves the community at large. He said it doesn't just serve immediate neighbors, it serves the community at large. He said because

the strength of the network is a little bit like that old analogy about a chain's weakest link kind of thing. He said the network is the same, it is only as strong as its weakest link and this is a weak link. He said they are working to fix it. He said so what I heard is these people owned this property for seven or eight years and have not built a home on the property. He said when their people went out there, there was no home there. He said if there had been a home there, they might have looked elsewhere. He said but there was no home, so this looked like an ideal second choice and meet all the requirements of your Zoning Ordinance.

Mr. Dayvolt asked if the location of the tower was because of the elevation of the ground.

Mr. Grant said it is elevation and proximity to other towers and its availability.

Mr. Dayvolt said he understands that but what he is asking is, there are no elevations on the map here so he was just wondering is where the tower sitting the same elevation as say 300 feet to the east.

Mr. Grant said elevations have a huge impact....

Mr. Dayvolt said he understands but he is asking....

Mr. Grant said he doesn't have the contour lines and he doesn't know the answer to that. He said he can tell you where there is a flat space like this in a community it doesn't have as much of an impact, then it's more about proximity and availability. He said if they were over in the Knobs somewhere or Eastern Kentucky it would have a huge impact.

Mr. Dayvolt said in Hazard you have that.

Mr. Grant said absolutely, yes sir. He said and they do deployments there too because their mission is to bring service everywhere to remote areas. He said this deployment is about bringing service to remote areas that are poorly served or unserved, and this area is one of those areas.

Chairman Valiant asked if Attorney Doll had a question.

Attorney Doll said this tower is an open tower.

Mr. Grant said open, he isn't quite sure what he means by open.

Attorney Doll asked if it is a latus work tower.

Mr. Grant said oh yes sir, it is a latus tower.

Attorney Doll said okay. He said according to the engineer plans that was submitted with your application, its span at the base is thirty one feet, so it has a wide stance at the base.

Mr. Grant said it makes it more stable, yes.

Attorney Doll said he understands. He said it was designed with load factors, because he doubts that these folks know this stuff. He said it was tested or designed to withstand wind load factors of 106MPH according to the engineer report. He asked if that is correct.

Mr. Grant said that is correct.

Attorney Doll said if you add ice factors to it, it is still designed to withstand wind even if it's buried in ice. He said not at 106 MPH but it's still designed, engineering wise, with a load factor to withstand that.

Mr. Winge said didn't that say thirty on that same data.

Attorney Doll said but we haven't had a lot of ice in the last few years.

Mr. Winge said that is a lot of ice.

Attorney Doll agreed that is a lot of ice. He said this is a self-collapsing tower design, which the Indiana General Assembly has said that if we are provided with an Engineer Certificate that says "I'm the person who has designed this tower and as a professional engineer, it has been designed in a way that will buckle instead of fall". He said which means it falls on itself if it happens to fail. He asked if he had any reason to say that this is not correct. He said he is looking at the February 15th letter of Robert Beacon in your application.

Mr. Grant said he is a professional engineer and that is how we design our towers. He said so that is correct, you can rely on that report.

Attorney Doll said previously in this county we have had a two for one rule which says that if you're building a tower you have to have a surrounding area for collapse twice the height of the tower. He said but the Legislator has taken that authority away from us and now the most that we can have is a one for one rule. He asked if this tower has a 255 foot circumference area around it that meets the state standard.

Mr. Grant said yes.

Attorney Doll said okay. He said so we have the letter on a self-collapse and it is designed to withstand 106 MPH in wind. He said according to the site survey, the pier length below ground is estimated to be at 42 feet. He said so the foundation to this tower, looking at the color attachment, indicates that the pier below ground will be 42 feet deep. He asked if he is reading that correctly.

Mr. Grant said yes sir, that is correct.

Attorney Doll said so the 42 foot deep foundation pier 31 foot cross member stance on the base of the tower, its load factor and design is 106MPH in wind stamina, and it's a self-collapsing tower certified by the engineers which means the most that we can ever require is a one to one height to surrounding area ratio. He asked if any part of that is incorrect.

Mr. Grant said that is all correct. He said if it were to fall, and it won't...

Attorney Doll said in 1996 the Federal Government with the Telecommunications Act forbid states and local governments generally from regulating the placement, the construction, or the modification of wireless service facilities. He said or to unreasonably discriminate among providers. He said like okay we like Verizon over AT&T. He said if Verizon wants a tower that's the one we will approve but if AT&T wants a tower we are not going to approve that. He said we are all precluded by Federal Law from being able to do things like that, as long as the service is being provided or functionally equivalent. He asked if that is incorrect or correct.

Mr. Grant said that is a correct statement of the law.

Attorney Doll said and lastly, the regulation that occurs on this tower, the broadcasting and receipt and transmission of the messages, or data services that is presumed to a license that AT&T will have to have for this facility or for this tower is given to them by the Federal Communications Commission. He asked if that is true.

Mr. Grant said that is true.

Attorney Doll said and we are precluded just like we were in the Telecommunications act, we are precluded at local levels of government; state or local levels, from regulating frequencies or any activities of broadcasting or receipt of signals on the tower. He said true.

Mr. Grant said that is true.

Attorney Doll said okay. He said last question. He asked if this is a lit tower because of its height.

Mr. Grant said this tower will be lit under FAA requirements. He said anything over 200 feet is lit for air safety.

Attorney Doll said alright, so you don't have a choice. The Federal Aviation Administration requires that if this tower is built it shall have safety lighting on it. He said there is no exception to that.

Mr. Grant said that is correct.

Attorney Doll said and again we don't have at the local or state level the ability to supersede or trump, or pardon my use of trump, supersede or invalidate the requirement that it have safety lighting by the Federal Aviation Administration.

Mr. Grant said that is a correct statement.

Attorney Doll said okay, thank you.

Jeff Willis asked if it is a strobe light at night or if it's a red light at night or how do they...

Mr. Grant said yes it is what they call Dual Lighting. He said it blinks red at night which is less intrusive to people on the ground but it can be seen by pilots. He said in the daytime in blinks white because pilots can see that better and it has virtually no impact on the ground.

Mr. Willis asked if it will be painted. He said he says painted though, but the red and safety..

Mr. Grant said no sir that is something in the early days of cellular technology they tried, but it is kind of hard to say that's not intrusive. He said so now they are steel gray which blends into the steel gray skyline. He said the only thing the pilots really need is that blinking strobe for their safety and the safety of their passengers.

Mr. Willis said he just wanted to get that so they would have an idea of what was going to be in the yard.

Mr. Grant said thank you.

Mr. Winge said all the footers they put in, they wait for full strength before they build on them.

Mr. Grant said he is sorry but he missed the first part.

Mr. Winge said the concrete that they pour for their piers and footers. He said they don't plan directly to build on, they wait till they have fully cured.

Mr. Grant said he is a lawyer not a construction engineer. He said what he can tell you is there is very stringent engineering standards that we must comply with. He said they are standards that far exceed any building around it. He said they far exceed anything constructed in this town. He said so we comply with those standards. He said that is the best he can give you for that.

Chairman Valiant asked if there are any more questions for the Board at this time. He asked Mr. & Mrs. Chilikuri if their questions were answered.

Inaudible chatter from crowd.

Phil Elkofer introduced himself for the record. He said he is the property manager for Saym and Rama. He said his question is this: sir, I want to make sure I caught you right. He said you said in a Warrick County code it was 1:1 if you put a tower up you had to have a 1:1 footage.

Attorney Doll said the Warrick County Code use to have a 2:1 rule.

Mr. Elkofer said okay.

Attorney Doll said we were permitted by the State Legislature. He said last year, as he can recall, the State Legislator passed a statute that said local governments cannot require a fall zone greater than 1:1 for a tower, or is certified by an engineer as a self-buckling design structure. He said towers used to be feared to fail and fall intact. He said towers are now designed and certified, in this case by Robert Beacon, a licensed State Engineer in Indiana to buckle on themselves so that

if this structure fails in a wind, event of some sort, or what have you, that it doesn't fall laterally, it falls down towards its base and hangs there.

Mr. Elkofer said okay. He said this tower is going to be 79 feet from our property and 79 feet from the existing property on the back side.

Attorney Doll said it isn't the property line that was the trigger in the Warrick County Ordinance. He said it was a structure or home that was the 2:1 measurement. He said it had to be that far from a structure or home.

Mr. Elkofer said structure.

Attorney Doll said not necessarily the property line.

Mr. Elkofer said okay. He said he does want to say one thing about your theory about it collapsing within.

Attorney Doll said it's not his theory. It's Mr....

Mr. Elkofer said well the Governments theory...

Attorney Doll said its Mr. Beacon's theory.

Mr. Elkofer said what you spoke of. He said he will restate, 9/11 fell within itself too but it destroyed everything for blocks. He said this 270 foot tower, if it falls within itself, it's still going to destroy stuff. He said he can guarantee you. He said so they said it's going to be 30 foot wide.

Attorney Doll said 31.

Mr. Elkofer said 31 foot wide.

Attorney Doll said at the base.

Mr. Elkofer said so that puts it 40 feet away from our property. He said I guarantee you it's going to fall on our property.

Attorney Doll said he doesn't know how far it is from the property line.

Mr. Elkofer said 79 feet.

Attorney Doll said well then it puts it...

Mr. Elkofer said from the center of their tower.

Mr. Dayvolt said it's more than 79 feet from the center. He said the base the tower sits on is 100 square feet. He said its 100' X 100'.

Mrs. Barnhill said 97 feet from the south and 79 feet to the property line.

Attorney Doll asked from the center.

Mrs. Barnhill said yes.

Attorney Doll said okay well, all I can tell you is the Legislature says if it's a certified self-collapsing tower, we cannot require it to be what we use to require which is 200 feet. He said two times.

Mr. Elkofer said I will probably get myself in trouble here, but the property from the center of where they got their stake is no 179 feet from our property line. He said the reason is because the other people that owned the property, he used to shoot his gun back there, and its 579 feet totally from our property line all the way over to the other man's property line.

Attorney Doll said well there is a drawing that has been submitted and it looks like from not the center of the tower but from one of the legs of the tower to the property line is 79 feet. He said is what he thinks he said. He stated so its maybe 15 feet further away than you thought it was.

Mr. Elkofer said well the collapse is still going to collapse on us.

Attorney Doll said well not according to Mr. Beacon.

Mr. Elkofer said well, you're not the one that has to...

Attorney Doll said no I'm not.

Mr. Elkofer said live next to Mr. Beacon.

Attorney Doll said no, but we have to follow the Legislature Requirements.

Mr. Elkofer said he wants to make one more statement and then he will sit down. He said this tower is a tower of greed. He said AT&T don't care nothing about communications, AT&T worries about filling their pockets. He said my neighbors are the same way, they aren't getting that tower for nothing. He said he doesn't know how much but he knows another man that's got a tower and he gets right at \$1,200 a month to let that tower sit on his little strip of property.

Attorney Doll said he doesn't know.

Mr. Elkofer said a tower of greed.

Mr. Grant said according to the engineer drawings, the nearest residence is 629 feet to the northeast.

Mr. Chilukuri asked if the 1:1 is not the property line it has to be a structure. He said so you are pretty much putting a restriction on me to build anything on his property that might be within that...

Attorney Doll said they are not putting it on him, the Indiana General Assembly and the Governor who signed the Act put it on you. He said they took that authority away from us. He said they had a bigger protective zone around towers in this county, for years. He said last year, if he recalls, the General Assembly passed a new law that says you can't do that anymore. He said as long as an engineer report certifying it's a self-collapsing tower, you cannot require these big fall zones around cell towers and they took that authority away from us.

Mr. Willis said he thinks his question may have been more of can he build his within the certain feet once the tower is up or will it limit him.

Attorney Doll said why would you do that though.

Mr. Chilukuri said right, that's why I said you're restricting.

Attorney Doll said that is what he is saying..

Mr. Chilukuri said by allowing this you are restricting where he can put his house on his property.

Attorney Doll said legally can you, yes. He asked but why would you.

Mr. Chilukuri said no, I wouldn't.

Attorney Doll said he knows that.

Mr. Chilukuri what he is saying is..

Attorney Doll said he wants to be clear, there isn't anything legally that precludes you from doing that but why would you.

Mr. Chilukuri said exactly. He said by approving this you would actually be putting the restriction on how he would use his property.

Attorney Doll said he understands and they used to have more protections but they do not anymore because the Legislator will not allow it.

Mr. Chilukuri asked if there had been a structure there already, then this would not be approved.

Attorney Doll said that's not necessarily true either. He said it depends on how close the structure would be to this site. He said whether it is 255 feet from the site. He said then perhaps the site couldn't be approved. He said so it depends on your land, where your home was pre-existing at the time.

Mr. Chilukuri said and we are not allowed to look at the aesthetic value of the neighbors or anything else.

Attorney Doll said the Federal Government says we can't forbid, state or local government authorities cannot regulate the placement, construction, or modification of personal wireless service facilities. He said so we are not allowed to do that. He said Congress made that decision in 1996.

Mrs. Chilukuri asked why a company that does business have more say into something that affects her personally. She said so there is no protection for the citizens for the property value she guesses.

Attorney Doll said he doesn't have any way to answer that.

Mrs. Chilukuri said okay.

Attorney Doll said it depends on Congress. He said it depends on the State Legislator.

Mrs. Chilukuri said it seems like to her that AT&T wanted their property but didn't get it so the next best thing was 70 feet away by asking another property owner to give permission. She said so that is how it seems right. She asked is it appropriate to ask why they are not building away from or on the side of our property so that it doesn't affect us personally.

Attorney Doll said he thinks he was asked that. He said the Attorney representing AT&T was asked that earlier and what he heard him say is its location, proximity to other towers, need, and height.

Mrs. Chilukuri said right, but its 70 feet towards that way is not ...

Attorney Doll said he is not an engineer, he is a lawyer. He said he doesn't have the ability...

Mrs. Chilukuri said no, she understands that she is just asking for his opinion about it. She said is there something you can say to them like go back and look at it and say that where they are putting it is not appropriate to choose it right behind her property. She asked can they look at it and maybe why not put it beside the owner's area instead of theirs. She said can she even ask for that.

Attorney Doll said you can ask the members of the Board anything you want to ask them.

Mrs. Chilukuri said that her request is to just ask them. She said thank you.

Mr. Grant asked if he can do some more clarifying because he doesn't want this to go back and forth forever and he knows they don't either. He said if you will look at the C1 drawing, this parcel to the north is the parcel they pointed out to him as being the one they own. He said the nearest residence is on that parcel and its 625 feet to the northeast. He said pardon me, 629 feet to the northeast. He said this is the parcel that they own. He said so there is a residence already constructed there.

Mr. Chilukuri said it's a barn.

Mr. Grant said alright, it's a barn. He said thank you for clarifying that, the engineer identified it as a residence. He said so the nearest residence is even further from this tower. He said that means the nearest resident is further away than 629 feet. He said much further away.

Chairman Valiant said one more, come on up.

Mr. Chilukuri asked when a decision will be made.

Chairman Valiant said ten minutes, maybe.

Attorney Doll said it could be continued if the Board wishes. He said it's up to the Board.

Chairman Valiant said right.

Attorney Doll said he works for the Board so he doesn't get to vote or make this decision.

Chairman Valiant said if we can get to the point of a decision sometime tonight then there may be one.

Mr. Chilukuri said if it's another month, he can put a house up there next month on my property line.

Chairman Valiant asked if there were any more remonstrators. He asked if there were any more questions from the Board.

Mr. Willis asked how long the special uses are good for. He asked are they permanent or can they use them for two or three years...

Attorney Doll said the regulations..

Mr. Willis said I doubt they will be up but he means if they don't build if for two or three years, there is one that we approved several years ago and it's still not up yet. He said he doesn't remember what company it was for.

Attorney Doll said is that the one that's not been built.

Mr. Winge said he thought they returned it.

Mr. Willis said he doesn't see one on the finding of fact.

Mrs. Barnhill said they have six months to start pulling permits.

Mr. Willis said okay.

Mr. Winge said and then they have two years.

Mrs. Barnhill said and then if it is ever unused for more than six months then they are to remove it, as a part of their agreement.

Chairman Valiant asked what the wishes of the board are.

After ascertaining there were no more questions or remonstrators for or against Chairman Valiant called for a motion.

Mr. Winge said he would like to make a motion but he would like to say something first. He said he wants to be fair to this company as we are to others. He said he has some concerns about what they were talking about here tonight. He said with that being said, he is going to make a motion.

I, Mike Winge, make a motion finding of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

And the Application would be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to any required State or Federal Permits.
2. Subject to an Improvement Location Permit being obtained.
3. Subject to any required Building Permits being obtained.
4. Subject to the Special Use not being altered to become any other use nor expanded than that which was approved by the Board of Zoning Appeals.
5. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.

6. Subject to all public utility easements and facilities in place.
7. Subject to an anti-climbing device and/or fence, be put up around tower.
8. Subject to no revolving beams of light or strobe lights. (See below for amended motion)
9. Subject to the following from the Warrick County Comprehensive Zoning Ordinance:

Each operator of a telecommunications facility must send to the Area Plan Commission a copy of any notice sent to the FCC of intention to cease operations. All abandoned or unused towers and associated facilities shall be removed within six (6) months of the cessation of operations at the site unless a time extension is approved by the Board of Zoning Appeals. A copy of the relevant portions of a signed lease which requires the applicant to remove the tower and associated facilities upon cessation of operations at the site shall be submitted prior to issuance of the required improvement location permit, shall be incorporated as part of the permit, and permit approval shall be conditioned upon removal of the structure(s) within six (6) months after cessation of the use. In the event that the tower is not removed within six (6) months of the cessation of operations at a site, the tower and associated facilities may be removed by the County and the costs of removal assessed against the property.

Mr. Moesner seconded the motion.

Mr. Willis said he just has one more question. He said number 8 said subject to no revolving beams of light or strobe lights. He said it is going to be a lighted tower so there will be lights on it.

Mr. Winge said but they are not revolving are they.

Mr. Willis said well it will be strobes they said in the day time.

Mr. Grant said technically the lighting is called dual lighting, that rotating strobe terminology isn't used, but that describes what the lighting is. He said so that condition would be inconsistent with FAA requirements. He said it could be interpreted to be inconsistent.

Attorney Doll said it can be stricken from the motion if you wish.

Mr. Winge said he moves to strike that.

Attorney Doll said and the second has to agree.

Mr. Moesner said he would agree with that.

The motion passed with six for with one abstention by Terry Dayvolt.

Mrs. Barnhill said they have one year to start pulling permits, not six months.

Attorney Doll said that is correct.

BZA-SU-19-08

APPLICANT: New Cingular Wireless PCS, LLC d/b/a AT&T Mobility by David Pike, Attorney

OWNER: Michael W. Heuring by David Pike, Attorney

PREMISIS AFFECTED: Property located on the south side of 2nd St. approximately 200 feet west of the intersection formed by 2nd St. and Church St., Skelton Twp. 18-5-6, 255 2nd St.

NATURE OF CASE: Applicant requests a Special Use, SU 18, from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow: an Improvement Location Permit to be issued for a 305' self-supporting tower with a 15' lightning arrester (320' total) and associated equipment and equipment shelter to be within a 100x100 sq. ft. lease area with a 25' access and utility easement in an "A" Agricultural Zoning District. *(Advertised in The Standard May 16, 2019)*

Mr. Grant stated his name and title as: Regional Council for AT&T Mobility, he is not certain if Mr. Heuring is here. He said he doesn't believe the property owner is here on this one. He stated he has a limited Power of Attorney from them in the record, authorizing for us to proceed on their behalf, as well as a Peace Agreement authorizing us to proceed on their behalf.

Chairman Valiant asked Mrs. Barnhill for a staff report.

Mrs. Barnhill said she does have all of the return receipts from certified mail to adjacent property owners. She said the existing land use is vacant. She stated the property to the north and west are zoned "A" Agricultural and are vacant fields. She said the property to the south is zoned "A" Agricultural with a residence. She stated the property to the east is zoned "A" Agricultural and "R-1A" Residential and are either vacant or have a residence. She said part of the parcel is in an "A" flood zone; sheet B-1 in your packet shows where the tower will be and it is not located in the flood zone. She stated they will need to file a Flood Plain Development Permit to work in the flood zone for their ingress/egress. She said they have filed a commercial/utility driveway permit and will have to have the driveway completed or post surety before an Improvement Location Permit will be issued. She stated the proposed tower will be a self-supporting tower 305' tall with a 15' lightning arrester (320' total). She said in the packets there is a map showing there are no suitable tall structures or other communication towers, which they could co-locate on within a one half-mile radius of the proposed site. She said the tower will be able to co-locate an addition of three more service providers once the tower has been completed. She said the tower is 207 feet 10 inches from the nearest property line/railroad right-of-way to the north, 571 feet to the west property line, and 1039 feet to the nearest residence not on the property with the tower.

She said the applicant has stated in the application that this tower will enhance service to their customers and E-911 access for emergencies. She stated the applicants have answered all of the proposed use questions in the Board Members' packets. She said the application is in order.

Chairman Valiant asked Mr. Grant if he has anything to add to the staff report.

Mr. Grant said this is located on a 65 acre parcel. He said which creates much more separation from surrounding land uses, and as staff has already stated, the tower will be 1000 feet from the nearest residence. He said he is available to answer questions.

Chairman Valiant asked if the Board had any questions at this time. He asked if there are any remonstrators for or against the project to please step forward.

Mr. Willis asked if this tower will have the dual lights as well.

Mr. Grant said yes, sir.

Mr. Dayvolt asked if it is the same type structure as far as falling in on itself.

Mr. Grant said yes, sir.

Chairman Valiant asked if this is another one that is just pushing the 4G again and capable to upgrade.

Mr. Grant said yes, 4G, First Net, and Fixed Wireless are who we are looking at, at this time.

Chairman Valiant said it's the same as the last one, just taller. He asked if that is correct.

Mr. Grant said yes, sir.

Chairman Valiant said could he ask about the height difference. He said he is just curious because he has no idea.

Mr. Grant said distance to the nearest tower.

Chairman Valiant said okay.

Mr. Grant said you have to be a little taller to broadcast to the next tower.

Mr. Winge said so you have a certain strength they are looking for.

Mr. Grant said yes, sir.

Mr. Winge said okay.

Mr. Grant said its line of sight technology. He said sometimes we have to get up to see a little further.

Chairman Valiant asked if there are any questions from the Board. He said if not, he will entertain a motion.

I, Mike Moesner, make a motion finding of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

In addition, the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to any required State or Federal Permits.
2. Subject to an Improvement Location Permit being obtained.
3. Subject to any required Building Permits being obtained.
4. Subject to the Special Use not being altered to become any other use nor expanded than that which was approved by the Board of Zoning Appeals.
5. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
6. Subject to all public utility easements and facilities in place.
7. Subject to an anti-climbing device and/or fence, be put up around tower.
8. Subject to obtaining a Flood Plain Development Permit from the Area Planning Commission before any construction activities in the floodplain.
9. Subject to the following from the Warrick County Comprehensive Zoning Ordinance:

Each operator of a telecommunications facility must send to the Area Plan Commission a copy of any notice sent to the FCC of intention to cease operations. All abandoned or unused towers and associated facilities shall be removed within six (6) months of the cessation of operations at the site unless a time extension is approved by the Board of Zoning Appeals. A copy of the

relevant portions of a signed lease which requires the applicant to remove the tower and associated facilities upon cessation of operations at the site shall be submitted prior to issuance of the required improvement location permit, shall be incorporated as part of the permit, and permit approval shall be conditioned upon removal of the structure(s) within six (6) months after cessation of the use. In the event that the tower is not removed within six (6) months of the cessation of operations at a site, the tower and associated facilities may be removed by the County and the costs of removal assessed against the property.

Doris Horn seconded the motion.

The motion passed unanimously.

Mrs. Barnhill said she will try to have the approvals done by Thursday. She asked would you like her to email him the approval.

Mr. Grant said yes, that would be terrific. He said Sherri mentioned something about the Flood Plain Permit.

Mrs. Barnhill said yes.

Mr. Grant said you guys are going to prepare that for us. He said if you need us to prepare it, let him know.

Mrs. Barnhill said she has a form and can get that to him too.

Mr. Grant said that would be great and thank you folks.

ATTORNEY BUSINESS

Attorney Doll said Mark Hendrickson has filed an amended petition for judicial review of approval of the issue on the SU 13 for a coal mining. He said we'll be responding to that...preliminarily we will probably be objecting to his amended petition as well, so we will see how that goes.

EXECUTIVE BUSINESS

Mrs. Barnhill stated there is no Executive Business.

Mike Winge made a motion to adjourn the meeting. The motion was seconded by Doris Horn and unanimously carried. The meeting adjourned at 7:30 pm.

Jeff Valiant

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of the said Board at their monthly meeting held May 28, 2019.

Sherri Rector, Executive Director