

MINUTES
King Board of Adjustment
Regular Meeting
July 28, 2014

The King Board of Adjustment met in regular session on Monday, July 28, 2014, at 7:15 p.m. Present were: Norma Cox, Don Speight, Brad Tuttle, Coley Hunsucker, Jerry Byers, Director of Planning and Inspections Todd Cox, and City Clerk Tammy Hatley. Matthew Chilton, Deelaine Mabe, and Jerry Messick were absent.

Chairman Speight called the Board of Adjustment meeting to order.

SPECIAL EXCEPTION PERMIT REQUEST SE-035 BY SKYWAY TOWERS, REPRESENTED BY NEXSEN/PRUET, P.A.

Chairman Speight opened the public hearing for SE-035, a Special Exception permit request by Skyway Towers, represented by Nexsen/Pruet, P.A.

Chairman Speight polled the board after the reading of each of the following six conditions. It was the consensus of the Board of Adjustment that the answers to the six conditions under City Ordinance Article 13, Section 32-578 (d) *Action by the responsible body* are as follows:

- (1) The use request is listed among the conditional or special exception uses in the district for which the application is made. **Answer YES**
- (2) The requested use is essential or desirable to the public convenience or welfare. **Answer YES**
- (3) The requested use will not impair the integrity or character of the surrounding or adjoining districts, nor be detrimental to the health, morals, or welfare. **Answer YES**
- (4) Due consideration has been given to the suitability of the property for the use applied for with respect to trends of growth or change; the effect of the proposed use upon the community; requirements for transportation, schools, parks, playgrounds, recreational areas, conservation of natural resources, preservation of floodplains, and encouraging the most appropriate use of the land. **Answer YES**
- (5) Adequate utilities, access roads, drainage, sanitation and/or other necessary facilities have been or are being provided. **Answer YES**
- (6) Adequate measures have been or will be taken to provide ingress and egress, so designed as to minimize traffic congestion in the public streets. **Answer YES**

The board reviewed the Section 32-256. Communications towers of the City Code of Ordinances.

Chairman Speight asked board members if they had any questions about Section 32-256.

Mr. Tuttle "Todd, number two. Can you explain that?"

Director of Planning and Inspections Cox was sworn and offered the following testimony: "*No new commercial communication tower may be established if there is a technically suitable space available on an existing city facility.* In this case the nearest water tank would be the one behind the police department and they did do a study on that over a year ago, to see if they could make it work from that. It did not reach the areas that it needed to, that they were targeting, and that was the only facility."

Mrs. Cox: "Well that's only 120 feet high though isn't it? The water tank."

Mr. Cox: "To the very top is 160 but they mount it to the railing around the bottom, which they would lose another twenty some feet and it just didn't get the height that needed to be broadcast out to get the areas that they needed and that's the only thing around that meets number two as far as a City facility."

Mr. Speight: "Well, further in that number two there, *If the co-location is not possible, a written statement from an appropriate engineer must be submitted to the Planning Department stating the reasons why collocation is impossible.* Do we have that document?"

Mr. Cox: "In your packet there you have the..."

Mr. Speight: "You mean in this one?"

Mr. Cox: "Yeah"

Mr. Speight: "I've never found it."

Mr. Cox: "Not in that one, in the agenda packet. There are some maps there that show their broadcast area."

Mr. Speight: "I couldn't figure that out."

Mr. Cox: "Yeah, it's sort of technical."

Mr. Speight: "I could figure out the good looking gal on the motorcycle."

Mr. Cox: "Yeah, I got that one too."

Mr. Speight: "But it's the other things I don't, you know, that doesn't mean anything to me."

Mr. Cox: "Yeah, it just basically shows that the same span, the same circles that if they put it on the water tower it doesn't work and I don't know if Dave brought any more support for that but they did submit that like I say over a year ago. That was the first question we asked. They also tried to, even before that, negotiate with the previous City Manager on putting some cell tower work on our water tanks and at that time it got bogged down in negotiations so they sort of moved on."

Mr. Speight: "Okay then, we're going to be looking for that letter because that's what we're required by the City Council of the City ordinance makes us do. If collocation is impossible a written statement by an appropriate engineer must be submitted to the Planning Department stating the reasons why the collocation is impossible."

Mr. Pokela: "Do you want me to address that right now?"

Mr. Speight: "Not right now."

Mr. Pokela: "Okay"

Mr. Speight: "And then Todd I've got, anybody else got, Coley you got anything else?"

Mr. Hunsucker: "Not on that one."

Mr. Speight: "Okay. Item 16. *The placement of commercial communications towers shall be limited to the areas on South Main Street at the intersection of Kirby Road proceeding south to Big Oaks Drive, and along any portion of U.S. 52 (I-74).*"

Mrs. Cox: "Now does that cover the special permit?"

Mr. Speight: "I don't know what it covers. It says to me..."

Mrs. Cox: "That's the only thing I wanted to know. Does it cover the special permit?"

Mr. Cox: "That covers the use by rights areas, where it's zoned business. Where they can come in and put it in. The only other way you can get one anywhere outside of that area is to basically rezone it, which they did."

Mr. Speight: "So, we're saying that we have no control over what goes in to that space?"

Mr. Cox: "Out in the B-2, no. They just come straight to the Board of Adjustments like they're doing tonight. You'd skip..."

Mr. Speight: "No, I mean item 16. It says *The Placement of commercial communications towers shall be limited to the areas on South Main Street at Kirby Road*, so anybody who wanted to could come in and apply for a permit and put it in that area without any further thing other."

Mr. Cox: "As long as they met the sixteen conditions, right."

Mr. Speight: "Yeah, so it wouldn't come to us."

Mr. Cox: "Yes, it would still come to you through the Board of Adjustments to get their special exception permit. It just wouldn't have to go through any rezoning or that type nature."

Mr. Speight: "Is there a lawyer in the room?"

Mr. Hunsucker: "Item 12. Who actually owns the property? It says *The owners of the property shall be responsible for removal of all obsolete or unused facilities within six months of cessation of operations at the site.*"

Mrs. Cox: "Corky's heirs will do that."

Mr. Speight: "Where are you reading? I don't see where."

Mr. Cox: "Number twelve."

Mr. Hunsucker: "It means that, to me it would mean that if they just up and left for some reason that Corky, you would be responsible for removing everything."

Mr. Cox: "It's under his contract that they would have to do that."

Mr. Hunsucker: "Well I'm just reading what I've got here."

Mr. Cox: "It's a good question. It would be their agents in that particular sentence."

Mr. Speight: "Or their agent."

Mr. Cox: "Their agent being..."

Mr. Speight: "Okay, that gets us out of it."

Mr. Hunsucker: "The agents would be the tower owners?"

Mr. Cox: "Correct"

Being no further questions from the board on Section 32-256. Communications towers of the City Code of Ordinances closed the floor for questions and opened the floor for testimony.

Attorney Dave Pokela of Nexsen Pruet, Greensboro, NC; Mr. Robert Hill of T-Mobile, 1306 Rotal Links Drive, Mt. Pleasant, SC; Mr. Frand Wunderler of T-Mobile, 1694 Curlee Court, Charlotte, NC; and Mr. Graham B. Herring of GRI, 8058 Grey Oak Drive, Raleigh, NC were sworn.

Attorney Pokela gave a PowerPoint presentation and offered the following testimony: "Thank you Mr. Chairman and fellow board members. I'm Dave Pokela and obviously I've been in front of you before on a prior tower last year and then about a month ago. Because you've heard much of this already, you heard this a year ago. I'm going to go through some of the PowerPoint real quickly and then try to really highlight the issues that you all have mentioned tonight. But, in here I've got a little bit of the maps that show the coverage and then I'm going to bring Mr. Wunderler up, who is an engineer with T-mobile, who will support those maps. So, again we've got 195-foot tower. I've already talked about how, what's going on now today is that because of the need for data transmission or the demands of data transmission in addition to what we were used to of just having voice transmission. That increased demand has put us at a point where we need more wireless infrastructure and all these statistics back that up. But you've heard all that before. You've got the various maps that show the location, you know where that is. Alright, so this is new. This was not in the last PowerPoint and this gets to the Chairman's question."

Mr. Speight: "Is that in our...those things."

Mr. Pokela: "Right, so this is showing you coverage without the tower. Now, the tower that is proposed is right there. That is the water tower. Okay, so that's what coverage..."

Mr. Speight: "Yeah, I figured that out, but I, go ahead."

Mr. Pokela: "So, that's coverage without it. Okay, now this is when you add in the water tank and that shows you the coverage there. What I'm going to show you in a second is, and the water tank would be mounted at approximately 120-feet. The tower that we're proposing is 195-feet and what you're going to see when I move to the next slide, and I'll go back and forth, is this area closer to town is essentially

the same coverage with both but what we get with the 195-foot tower is the desired additional coverage out here. So hopefully this is the overlaid just right. Okay, that's what you get with the 195-foot tower. I'm going to go back so you can see the loss of green up above town there. So backing up, and the enhanced coverage with the proposed 195-foot tower. So, Mr. Chairman on the flip side of what you've got. You were holding some papers right there which were submitted. On the flip side is the written statement from the engineer and if I could have Mr. Wunderler come up. Alright, it's what I've just explained about the difference in coverage by using the 195-foot tower on the Newsome Property compared to the water tower. Is that accurate based on your review of the facts in this situation?"

Mr. Wunderler, having been previously sworn gave the following testimony: "Yes that is. The darker the color, the stronger the signal strength is. The stronger the signal strength is, the more robust the data usage and voice usage will be. Going from a smaller water tank to a larger tower will give us a lot more coverage and will reach the Brown Road area, Hartgrove Road and Southern Road/North Main Street areas. With the smaller tower, the coverage out there will be weaker."

Mr. Speight: "Well, I agree with all that but our City Ordinance requires that we have a letter. If that's what you intend there, nobody's signed it, but we need an engineer or whatever."

Mr. Pokela: "And that, I think the ordinance refers to a written statement, so we have the written statement and I've got Mr. Wunderler as the agent..."

Mr. Speight: "A written statement yes, which I would assume to be a letter, a formal letter with a signature on it with a seal."

Mr. Pokela: "Well, and I think in this case we presented in that kind of PowerPoint form, the maps with the summary as a written statement and then brought Mr. Wunderler here tonight to say under oath..."

Mr. Speight: "Well I'll vote for it when we get that written letter with your seal."

Mr. Pokela: "Okay. Alright. Okay. Thank you. So, that addresses issue #2 and we accept as a condition to the special exception permit that we submit, that it be approved upon submission of a signed written engineer's statement. I apologize that we went just based on the plain wording of the ordinance but we can supply that. That's no problem."

Mr. Speight: "Okay, and I may be wrong but that's the way I interpret it."

Mr. Pokela: "There was a question about, I guess Mr. Cox answered the other questions."

Mr. Speight: "He did."

Mr. Pokela: "So, what I'd like to do at this point is the plans cover some of the issues in the sixteen items, the 8-foot fence; the fact that there's no lighting required here because it's under 200-feet; the setbacks are under 200-feet; so I think we've met all the sixteen requirements. What I'd like to do just so the record's complete is hand out the impact statement that shows that there is no substantial impact in value. A copy of the PowerPoint and a copy of the co-location letter and again I'll hand this to Mrs. Hatley. Again, we would contend that we have actually met the ordinance with respect to having a written statement and having Mr. Wunderler here. If for whatever reason a condition is imposed on the

granting of this permit that it becomes effective upon the submission of that engineer's letter we can do that. That's not a problem."

Mr. Speight: "Well, I've shown my hand and I've got three board members. I just think that I had no idea that that's what you meant by that."

Mr. Pokela: "Okay"

Mr. Speight: "Without a signature or letterhead or just a T-mobile no address and if it doesn't fly for some reason and the City Council asks us why we approved it without this condition being met I don't have an answer for them."

Mr. Pokela: "Okay"

Mr. Speight: "Well, I'd have that answer I guess after tonight but I just by any stretch of the imagination couldn't imagine that's what you meant by that."

Mr. Pokela: "Well, I guess in conclusion then we would respectfully request that the special permit be granted either with that being the written statement or with there being a condition imposed that its granted so long as we submit that statement to Mr. Cox."

Mr. Speight: "Then we can do it that way."

Mr. Pokela: "And I'm available for any questions."

Mr. Speight: "I think you understand what we need and why. I hope you understand that."

Mr. Pokela: "Right, right. I've appeared in so many different jurisdictions, there are so many different rules."

Mr. Speight: "Well I had actually, maybe I've seen this one before but it had been so long and I knew that we surveyed each tower to find out where the most appropriate place was for it to be. I didn't know really until Sunday afternoon that it required an appropriate engineer. It doesn't say if it's a water and sewer engineer or a telecommunications engineer it just doesn't say so I agree it's a big broad statement and if we can accept that tonight if you'll just get us a statement saying the same thing with an address and an engineer's signature."

Mr. Pokela: "I would think that we could get it to you within the week. I'm on vacation next week but hopefully we'll turn it around in the next couple of days."

Mr. Speight: "I mean I don't see any big deal to sit down and write it."

Mr. Pokela: "Right"

Mr. Speight: "In the appropriate wording."

Mr. Pokela: "Right"

Mr. Speight "Okay"

Mr. Pokela: "I'm available for any other questions."

Mr. Hunsucker: "I've got nothing."

Mrs. Cox: "I only have one question. I know the elevations are higher Todd, probably than it is where I live at, elevations as far as topo. What is, do we have any idea what the elevation is there because it doesn't require a light because the tower is under 200-feet?"

Mr. Cox: "Um hum"

Mrs. Cox: " Do we know what the elevation of the property is?"

Mr. Cox: "On the second page the topo say 1080."

Mrs. Cox: "1080?"

Mr. Cox: "Uh huh"

Mr. Pokela: "Right and by virtue of the fact that the tower is under 200-feet there's no Federal requirement of lighting."

Mrs. Cox: "Yeah, I knew that part. I just wondered what the topo was though."

Mr. Cox: "Yeah, about 1080 plus or minus."

Mrs. Cox: "Okay"

Chairman Speight closed the public hearing on SE-035.

Action

Norma Cox moved to approve SE-035 as presented upon receipt of a written statement from the engineer to the Planning Department per item #2. Brad Tuttle seconded the motion which carried by a unanimous vote of 4-0.

Mr. Hunsucker announced:

- 1.) The Stokes County Fair would be held the 8th -13th of September and fair books are available at various places mainly libraries and other locations.
- 2.) At King American Legion Post #290 on the 30th of September from 10:00 a.m. to 12:30 p.m. any veteran that is in the VA system or has a DD214, whether they are in the VA system or not can get a free flu shot.

ADJOURNMENT

Coley Hunsucker moved to adjourn the Board of Adjustment meeting. Brad Tuttle seconded the motion which carried by a unanimous vote of 4-0. The Board of Adjustment meeting stood adjourned at 7:40 p.m.

Approved by:

Attest:

Don Speight
Chairman

Tamara H. Hatley, CMC, NCCMC
City Clerk