

BANNER ELK BOARD OF ADJUSTMENT
MONDAY, 19 AUGUST 2013
MINUTES

Members Present: Jimmy Ollis, Joe H. Perry, Ted Silver, Deka Tate, Bill Wilson, and Alternate Art Neuberger

Staff Present: Cheryl Buchanan, Rick Owen, Stacey Eggers, IV

Others Present: Abdul AlDundun, Carroll & Linda Berkley, Michael & Johanna Berkley, Allen & Rebecca Bolick, Richard & Judith Bond, Susan F. Brown, Sam Calhoun, Mr. Cooper, Mary Ann Davis, Bobby Duke, Barc Farnsworth, Charles & Donna Flanagan, Suzette Fronk, John Glenn, Mike & Gini Halus, Janet Hagget, E. Herring, Marsha McManus, JoAnn & Tom McMurray, Richard Miller, Jim & Bev Payne, Lew Pettingill, Patrick Sarsfield, Duanne & Merrill Schell, Ruth Sparks, Nancy Stevenson, Petra Weishaupt-Smith, Jack Sparks, Bill & Nancy Stephensen, John Turchin, Don Thompson, Charlie B & Penny Voncanon, Barbara Wilkering

Chairman Joe H. Perry called the meeting to order at 6:00 pm with the pledge of allegiance to the flag.

Consideration of the 2013 May Minutes

Jimmy Ollis moved to approve the June 2013 minutes as submitted. Bill Wilson seconded. The vote was:

Jimmy Ollis - yea
Joe Perry - yea
Deka Tate - yea
Bill Wilson - yea
Ted Silver - yea

The vote was unanimous and the motion carried.

At this point in the meeting, Attorney Eggers gave an explanation of what an "intervention" is and asked if anyone thought they qualified for that. Four people held up their hands, came forth, were sworn in and interviewed by American Towers, LLC's retrofit group and the Board of Adjustment (BOA). There were four people who felt that they could qualify as intervention. These were Petra Weishaupt-Smith, Jack Sparks, Suzette Fronk, and Bill Stevenson.

The first to speak was Petra Weishaupt-Smith, who resides at 267 A Silver Springs Road. Ms. Smith stated that she is immediately adjacent to the portion of the property where the cell tower will sit and is more concerned that they are unable to obscure it from view; in which she followed with a long list of rooms that you could see it from. Mr. Sarsfield objected on behalf of American Towers, LLC that a lot of people are probably adjoining

property owners and that this is not unique and injurious to other people nor is this a specific circumstance for Ms. Smith.

Deka Tate made a motion to allow Ms. Smith to have standing. Ms. Smith Bill Wilson seconded. The vote was:

Jimmy Ollis - nay
Joe Perry – yea
Deka Tate – yea
Bill Wilson – yea
Ted Silver – nay

The motion passed with a 3 to 2 majority.

Next was Jack Sparks; who resides at 307B of Silver Springs Drive. Mr. Sparks testified that he lives adjacent to the property where the proposed tower is to be located and that everyone could see the tower. Mr. Sparks said that his property values would decrease as well. Mr. Starsfield objected on the grounds that there is no substantial difference from any other residents in Silver Springs. Ted Silver moved that this was cumulative and not necessary testimony. Deka Tate seconded. The vote was:

Jimmy Ollis - yea
Joe Perry – yea
Deka Tate – yea
Bill Wilson – yea
Ted Silver – yea

The vote was unanimous and the motion carried.

Suzette Fronk was the third testimony and resides at 146 Silver Fox Drive. Ms. Fronk said she was different because she lives in the “Estates” above the subdivision, that the tower was ugly and that she knew for sure her property values would go down 15% to 20%. Mr. Sarsfield motioned to strike the testimony because they were congruive statements related to property values and views, which are not addressed in our ordinance.

Deka Tate moved to strike the testimony because it was cumulative. Bill Wilson seconded. The vote was:

Jimmy Ollis - yea
Joe Perry – yea
Deka Tate – yea
Bill Wilson – yea
Ted Silver – yea

The vote was unanimous and the motion carried.

Bill Stevenson; who resides at 314A Silver Springs Farm, was the last to testify. Mr. Stevenson stated that his property is directly adjacent and he has a unique interest since

his views will be affected. Mr. Stevenson pointed out that page 4, section I of the application states that: "The Tower will not adversely effect the property values of adjoining properties and in fact will provide better wireless access to emergency services for the adjoining property owners." Mr. Starsfield objected to this testimony stating that it does not show anything different than the others have, cumulative. Mr. Starsfield moved to strike all statements that do not relate to intervention.

Deka Tate moved to strike the testimony because it was cumulative. Bill Wilson seconded. The vote was:

The vote was unanimous and the motion carried. All testimony with the exception of Mrs. Smith are stricken and removed from the record. Of the four, Petra Weishaupt-Smith proved to be the only one with standing and could speak for the group, as the other's testimonies were cumulative and repetitive or of no substantial value.

Attorney Eggers asked Mr. Starsfield if he would be willing to look over the application and make sure it is complete. Mr. Sarsfield replied that it is complete and he has no objection,

Chairman Joe H. Perry began reading the reasons for a quasi-judicial meeting. Mr. Starsfield was asked to give an opening statement and then Mrs. Weishaupt-Smith would continue with her opening statement.

After their opening statements, Mr. Patrick Sarsfield opened with calling his first witness, Mr. Abdul Aldundun, who works for AT&T in Charlotte, NC. Mr. Abdul Aldundun is a design RF engineer. When asked, Mr. Aldundun said that the "RF" stands for Radio Frequency. Mrs. Smith asked exactly what this entails. Mrs. Smith asked for a description of his duties. Mr. Aldundun answered that he designs sites all over western NC much like these and looks for the best sites to locate towers on. Mr. Aldundun stated that overall; this was the best site for this tower. Mr. Sarsfield pulled everyone's attention back to the black notebooks he handed out and asked everyone to turn to Tab 6. The Tab 6 is the same document as Exhibit 13, a letter from AT&T with two maps. The first map shows the current coverage area and the second shows the coverage area once this tower is erected. Then referring to Tab 7, matching Exhibit 13's maps and the same maps in Tab 6. Mrs. Smith cross-examined Mr. Aldundun on his experience and other sites that AT&T had looked at before settling on this site. She asked if he had any knowledge of AT&T's website and information about co-location with another site. Mr. Aldundun answered no, but after reviewing the area, he felt 3 more sites could be accommodated.

Attorney Eggers stated that a document might trigger Mr. Aldundun's memory as to other sites but was not tendered as an exhibit. Mrs. Smith asked again why this site was the best and Mr. Aldundun answered that it met the best calculations for a site. Mrs. Smith asked if the Radio Frequency would interfere with Elk River Airport? Mr. Sarsfield objected to this question and referred back to the FAA's approval of the site.

The BOA were asked if they had any questions and Ted Silver asked why a monopole? Mr. Aldundun said it was the best alternative for the future. Mr. Sarsfield asked Mr. Aldundun with a five mile search radius, why was that spot getting coverage, was it

because AT&T is working on their collocation coverage? Mrs. Smith objected and said she felt he was leading the witness.

At 7:24 pm Chairman Perry called for a 5-minute recess.

The meeting was called back to order at 7:54 pm.

Attorney Eggers said it had been brought to his attention by Sam Calhoun that the ad run by American Towers, LLC was incorrect. It had an incorrect address and the height of the tower was being proposed at 199 feet instead of 95 feet. This mistake might cause the courts to reverse the decision made by the BOA and send this CUP back to the BOA and have American Towers start all over again from the point of advertising. There was some discussion about how long American Towers, LLC is required to advertise for and if they can't make the September meeting, to let Banner Elk know as soon as possible and they will get the word out. Attorney Eggers stated that Mr. Sarsfield would like for Banner Elk to declare this a mistrial and order them to begin again. Attorney Eggers also stated that Mrs. Smith would not lose her status as an "Intervention" and she should be able to start where she left out.

Deka Tate moved to follow council and call for a mistrial. Bill Wilson seconded. The vote was:

Jimmy Ollis - yea
Joe Perry – yea
Deka Tate – yea
Bill Wilson – yea
Ted Silver – yea

The vote was unanimous and the motion carried. With no further business, Bill Wilson moved to adjourn. Jimmy Ollis seconded. The vote was:

Jimmy Ollis - yea
Joe Perry – yea
Deka Tate – yea
Bill Wilson – yea
Ted Silver – yea

The vote was unanimous and the motion carried. Meeting was adjourned at 8:04 pm.