

MINUTES OF THE
SPECIAL MEETING OF THE
WASHINGTON COUNTY QUORUM COURT

Tuesday, June 4, 2013
6:00 p.m.
Washington County Quorum Court Room

BECKY TSVALLEN
CO. & PROBATE CLERK
WASHINGTON CO. AR

2013 JUN 21 PM 3:11

FILED

- 87.1 The Washington County Quorum Court met in a Special Meeting on Tuesday, June 4, 2013. The meeting was called to order by Judge Marilyn Edwards. She stated that this was a Conditional Use Permit Appeal Hearing for an East Prairie Grove Cell Tower Site.
- 87.2 PRAYER AND PLEDGE: J. Patterson led the Quorum Court in prayer and in the Pledge of Allegiance.
- 87.3 In response to a question about time limits, County Attorney George Butler stated that there is a 45 minute time limit for each side of the issue, but as the official time keeper, when there are interruptions and questions back and forth, he will stop the clock.
- 87.4 MEMBERS PRESENT: Ron Aman, Rex Bailey, Harvey Bowman, Rick Cochran, John Firmin, Barbara Fitzpatrick, Ann Harbison, Tom Lundstrum, Joe Patterson, Butch Pond, Mary Ann Spears, and Bill Ussery.
- 87.5 MEMBERS ABSENT: Candy Clark, Eva Madison, and Jimmy Mardis.
- 87.6 OTHERS PRESENT: County Judge Marilyn Edwards, County Attorney George Butler, Planning Director Juliet Richey, Emergency Services Director John Luther, Interested Citizens; and Members of the Press.
- 87.7 CONDITIONAL USE PERMIT APPEAL HEARING: East Prairie Grove Tower Site CUP (Conditional Use Permit Request) for Location: Section 23, Township 15, Range 31 West by Owner: Storm-Agri Enterprise INC. and Applicant: Smith Communications, LLC ; Dave Reynolds at Location Address: 11183 Storms RD, Prairie Grove, AR 72753 of 131.52 acres for Proposed Land Use: Cell Tower; Coordinates: Longitude- 94° 14' 21.14" W Latitude- 35° 58' 8.15" N; Project #: 2013-021 Planner: Sarah Geurtz, e-mail at - sgeurtz@co.washington.ar.us.
- 87.8 Introductory Remarks and Presentation by County Staff Summarizing the Project and Staff Recommendations: County Attorney George Butler stated that this will be handled much like a Planning Board meeting with staff giving their presentation of the project and the court is free to ask questions at anytime. He stated that there will be testimony from public agencies, if any, then presentation by the applicant in support of the project followed by presentation by appellant against the project, each with a 45 minute time limit.

Minutes of the Special Meeting of the
Washington County Quorum Court
June 4, 2013
Page 2

He reiterated that if the presentations are interrupted to ask questions, he will stop the timer. G. Butler stated that once they have heard all testimony, they will have the first reading of the ordinance, after which any motion to ratify could be made and since it is not an emergency ordinance, will require suspension of the rules to go through three readings.

- 88.1 G. Butler stated that they follow some informal rules of conduct that all speakers would be civil, respectful, and courteous and address the Quorum Court. He explained that only the Quorum Court would be allowed to do all questioning, examination and cross-examination. He stated that obscene language, violence, disruptive conduct, nor personal remarks or attacks would be tolerated. He further noted that yelling, screaming, booing or interrupting would not be allowed, but light applause at the end of a speaker is permissible.
- 88.2 County Planning Director Juliet Richey stated that she would be giving an introduction to cell towers in general and the handling of conditional use permits for this project, followed by a complete staff report to be given by County Planner Sarah Guertz that will mirror most information received in the printed staff report.
- 88.3 Ms. Richey stated that Planning Staff has extensively and comprehensively evaluated this CUP for the location proposed, and any change to the location would result in the CUP process being restarted with a newly proposed location. She explained that the matter before the court is to determine whether a CUP for this cell tower at this location should be ratified or approved, either with or without conditions or in the alternative denied. She stated while they may discuss alternative locations other than that presented, staff has not completed in depth research on those sites and the applicant has not submitted in depth information on alternative sites. She stated depending on the distance that the tower location is moved, additional factors could come into play such as whether or not the new location would be feasible for the applicant, whether or not there may be environmental, engineering or other factors in a different location, and what the response of neighboring property owners to an alternative site may be.
- 88.4 Ms. Richey stated in general it is not the county's job to design or site the project for the applicant, nor is it the county's job to gauge the potential effectiveness of the business plan of the applicant. She stated that the question here is solely whether or not the tower meets the CUP criteria laid out in their zoning ordinance at the proposed location. She noted that the planning staff take their jobs very seriously and do not make their recommendations casually and try their absolute best to anticipate issues and

Minutes of the Special Meeting of the
Washington County Quorum Court
June 4, 2013
Page 3

questions from the Planning Board, Quorum Court and public and do their best to provide answers to the issues and questions raised and strive to balance needs of all county citizens, residents, businesses, farmers and work within the framework of the ordinances in place in Washington County. Ms. Richey stated if any issues or questions are raised throughout the appeal process that more attention or research is needed, that planning staff be told specifically what they would like to have research and they will do what they can to provide that information.

- 89.1 Ms. Richey noted that applicable Federal law in Sec 704(a)(iv) of the FCC Act of 1996 prohibits them from making decisions about the possible environmental impacts of cell towers based on radio frequency emissions, etc. and this includes health-related concerns in regard to radio frequency emissions. She further stated in November of 2009, the FCC issued a Declaratory Ruling clarifying portions of the FCC Act which states the following: (a) Local governments have 150 days to review and act upon tower siting applications and if the County fails to act in that period of time, the applicant can bring action against them in court, and we will bear the burden of explaining why the delay was reasonable. (b) The County cannot deny an application solely because "one or more carriers serve a given geographic market," as in doing so, the County would be engaging in unlawful regulation that "prohibits or had the effect of prohibiting the provision of personal wireless services." In other words – just because one provider (i.e. AT&T, Verizon, etc) has existing good service in an area is not grounds to deny a tower from being placed in that area.
- 89.2 County Attorney George Butler added that the 150 days runs from the day that the applicant applied to the Planning and Zoning Board which according to his calculations will run on July 9, 2013.
- 89.3 Ms. Richey stated that the reason to discuss coverage is because it is tied in part to this location application; however, they need to keep in mind the limits to their ability to consider that.
- 89.4 Ms. Richey stated in regard to the health, safety issues, and radiation, the federal regulation allows only a certain amount of maximum radiation from the towers that the tower builders and the carriers on the tower have to comply with and as long as that amount of radiation has not exceeded the law, then they can't use that for a reason not to allow the tower.
- 89.5 Ms. Richey stated that this CUP is the first of a two-part development process in Washington County; however, if this tower is approved, it will probably be

Minutes of the Special Meeting of the
Washington County Quorum Court
June 4, 2013
Page 4

the only part of the process that the county will participate in. She noted if this CUP is approved, the next step is a communication tower review process wherein if certain criteria are met, they can be approved administratively and if they don't meet that criteria, then it goes to the Planning Board who would have the final say. She noted that the land that this site is showing currently does meet the criteria and if the CUP is approved, they would be able to be administratively approved. She noted in this part of the process, the final structural drawings come into play for the conditional use.

- 90.1 Ms. Richey noted three different tower types including the guyed lattice-type tower that is tall and thin; self-supporting lattice-type tower used for towers shorter than the guy-wired towers and allow a tower to not have guy wires but results in a wider tower, especially at the base; and Monopole-cylindrical metal pole with antennas located either inside or hanging on the outside and are used for shorter towers. She noted that the tower that they are discussing tonight is 300 to 320 feet tall and for that application, they rarely see anything besides the guyed lattice-type tower. Ms. Richey noted that tower heights need to be relatively even across a network in order for towers to communicate well between one another. Therefore, towers are engineered to have similar tower elevations within a network; some towers are shorter or taller than others, some might be located on a hill, and some might be located within a valley.
- 90.2 Ms. Richey stated that the National Environmental Policy Act (NEPA) Report is a report required for all new cell towers wherein environmental, cultural, and archeological aspects of the proposed tower site must be thoroughly researched in a NEPA report and she noted that they have received such a report for this project. Further, she noted that the FAA (Federal Aviation Administration) and FCC (Federal Communication Commission) approval must be acquired prior to tower construction and staff has received both FAA and FCC approval.
- 90.3 Ms. Richey noted that better cellular coverage can enable emergency service responders to provide even better service and the Emergency Services Director John Luther is in support of towers in the more rural areas of the County where cellular coverage is poor. She pointed out that Mr. Luther reported that over 85% of 911 calls are placed from cell phones; and better coverage allows First Responders to better serve citizens with transmission of data en route to hospitals, triangulation of a person's location, and GPS capabilities. She stated that Mr. Luther would talk more on this later in the meeting.

Minutes of the Special Meeting of the
Washington County Quorum Court
June 4, 2013
Page 5

- 91.1 Ms. Richey stated at they would discuss property value tonight and in this case, the applicant submitted a letter from a Residential Real Estate Appraiser that states from her 12 year experience appraising in Northwest Arkansas, it has not been her experience that cell phone towers negatively effect the property values of adjacent property holders. She also wrote that she has spoken with senior Real Estate Appraisers who have confirmed that there is currently no quantifying evidence of an automatic decline in property values when property is located adjacent to property containing a cell phone tower. Ms. Richey noted that in cases like this, they usually hear different stories from different appraisers or other real estate professionals and she does think that there is some common sense that goes into looking at these cases and that probably proximity to residences by a tower will probably play into this and it is hard to make a blanket statement across the board without looking at fact specific attributes.
- 91.2 Ms. Richey stated that in general all towers are lit with a white pulsating light during daytime hours and a red low-intensity pulsating light during nighttime hours and this is for all towers over 200 feet and corresponds with the County communication tower codes.
- 91.3 Ms. Richey stated that all neighbors owning parcels within 300' of the parcels on which the towers are proposed to be constructed were notified via certified mail for the Planning Board/ZBA meeting, and were re-notified by regular mail of the appeal hearing. She further stated that some neighbors have contacted the Planning Office expressing concern that they would be unable to build a future residence on their property due to the proximity of the proposed tower and this is not true. She pointed out if a proposed tower is approved and built, new residences may be located within any distance or proximity to the tower that a property owner desires.
- 91.4 Ms. Richey stated that the proposed tower, East Prairie Grove Tower Site CUP is 300 to 320' tall guy-wired lattice-type tower and the use of guy wires allows this tower to be only about 36" wide. She noted that this tower would provide better cellular coverage where poor coverage currently exists. She noted that 12 appeals have been filed for this CUP.
- 91.5 Ms. Richey stated that reasons this tower site was specifically chosen by AT&T and Smith Communications, LLC, was location within the basic service area needing better cellular coverage, leasable land, buildable site, road and utility access, and ability to meet the County's Administrative Tower checklist of requirements.

Minutes of the Special Meeting of the
Washington County Quorum Court
June 4, 2013
Page 6

- 92.1 Ms. Richey stated that staff has given consideration to a number of factors related to this proposed use such as residential structure proximities, proposed tower types and heights, type of lights on the towers, fire and emergency vehicle accesses, need for even better emergency services in the rural areas of the County, and all other items that will be discussed in the Staff Report.
- 92.2 Ms. Richey stated that she is in no way an expert on cell towers and the applicant will speak more on this. There is engineering involved in placement of towers and where they need to be located to fill holes within their existing network. She referred to a map, noting that each dot represented a tower that all talk back and forth with each other and in order to have a robust network, they do have to have somewhat specific placement of their towers and do quite a bit of research before choosing a tower site. She further stated whether or not the tower site could be moved somewhat and still fulfill their needs is a question that they will need to ask the applicant.
- 92.3 Ms. Richey stated that most towers have a number of carriers on them and usually when built, they may have 4-5 different carriers, along with other people who may hang antenna on the tower. She noted that they are not reviewing the carriers or antenna tonight, but only the structure of the tower. She stated that they do administrative reviews of all antennas added to towers in the county and when they come in, they require structure analysis for addition of each antenna to make sure that the tower can support the same.
- 92.4 Sarah Guertz, County Planner, addressed the Quorum Court stating that this CUP was heard and approved with conditions by the Planning Board and Zoning Board of Adjustments on March 7, 2013. She stated that there were five board members present and noted a correction to the staff report that Planning Board member Cheryl West had recused herself and the remaining four board members voting in favor of approving the CUP. Ms. Guertz reported at this meeting, nine members of the public spoke in opposition to the tower and one member of the public spoke in favor; and the applicant and owner of the property on which the tower is proposed also spoke in support of the tower. She noted that twelve appeals were later filed for a total number of 14 appellants with Bassett Law Firm LLP representing six of the appellants and Tom Kieklak of Harrington Miller Law Firm is representing the applicant Dave Smith of Smith Communications, LLC.
- 92.5 Ms. Guertz stated that the tower site is located south of Farmington between Prairie Grove, Greenland and West Fork, located solely within the County and

Minutes of the Special Meeting of the
Washington County Quorum Court
June 4, 2013
Page 7

not within a city's planning area. The property is zoned Agriculture/Single-Family Residential 1 unit per acre; the property owner is Patrick Storm of Storms Agri-Enterprise, Inc.; the applicant is Dave Reynolds of Smith Communications, LLC.; and the parcel consists of 131.52 acres. She stated that the tower will be located off of Storms Road which connects with Gifford Road that connects with the Illinois Chapel Road to the north and Hwy. 265 to the east.

- 93.1 In response to a question, Ms. Guertz stated that Storms Road was a residential drive.
- 93.2 Ms. Guertz stated that the property consists of open pasture with a line of trees along Hickory Creek to the north and a small hill to the west, and contains flood plain from Hickory Creek and from the Illinois River to the west. She pointed out that the tower site including the skylines is not located within any of the FEMA determined 100-year flood plain. If tower is approved, the existing cattle guard gate off of Storms Road must be 26 feet in width in order to accommodate emergency vehicle access and the road must be able to support 75,000 lbs in all weather conditions. She noted that the cattle guard will need to be removed, filled in and compacted in order to support this weight.
- 93.3 In response to a question, Ms. Guertz stated that Storms Road does meet the county's criteria, and further noted that the county will be regulating the access road from this road to the tower site.
- 93.4 Ms. Guertz addressed AT&T's Voice Coverage Map for this area, noting that this tower site currently has best cellular coverage with three areas around it with good to moderate coverage. Additionally, she addressed a map that provided by the applicant showing how cellular coverage would be improved if this tower is constructed. She stated that the tower would be located in the northeastern property corner and would consist of an approximately 300 foot tall guyed wired lattice type tower and with the addition of lights and a lightning rod to reach 320 feet in height and the use of guyed lines will allow this tower to be about 36 inches wide. She noted that they would use yellow guyed wire wraps about 1½ feet long every 15 feet; and on top of the tower there would be a white pulsating light during day hours and a red pulsating light during night hours, as well as red marker lights would be at about 150 feet of elevation on the tower and would be lite at night.
- 93.5 Ms. Guertz stated that the compound area would be abut 75' x 75' and staff is requiring that the tower pad to be elevated to withstand the 100-year storm event which is 1,175.5 feet of elevation; the tower compound would be

Minutes of the Special Meeting of the
Washington County Quorum Court
June 4, 2013
Page 8

elevated to ½ foot above the 100-year storm event. She reiterated that the tower location is not in the FEMA 100-year flood plain and a 100-year storm event is different from this. Ms. Guertz stated that the applicant had boring samples taken to inspect the soils and presence of groundwater and the tests revealed that the soil to be what they expected at this site and their test turned up water in only one of the test pits at 2' and 2½' below ground only and applicant indicated that this will not be a problem or effect the stability of the tower. She stated that there is no further land use for this area of the county and the surrounding properties are agricultural, agricultural-residential, and residential, and at this time uses are large agricultural parcels with residential homes on small, medium and large parcels.

94.1 Ms. Guertz stated that Washington County code requires that if a residence is located within 400 feet plus the height of a tower to be constructed, the owners of that residence must consent in writing to construction of the tower; however, in this case there are no residential structures located within the notification buffer distances. She noted that the two nearest residences are each located approximately .22 miles from the tower's base; one home owned by Storms Agri-Enterprises, Inc. on the subject's parcel and is located approximately 1168 feet from the tower's base and the other home is owned by Gary and Cathy Scott and is located approximately 1141 feet from the tower's base.

94.2 Ms. Guertz referred to maps of appellants and members of the public who submitted comments on this project in opposition as well as in support of the project. She noted that all neighbors within 300 feet of the boundary of this property were notified by certified mail of this March 7th CUP hearing and in total, 10 members of the public contacted staff in support of this project and 20 members of the public contacted staff in opposition to this project. She stated that there were 12 filed appeals for a total number of 14 separate appellants. The following summarized reasons were given by neighbors in opposition to this tower: lack of compatibility; feeling that it does not comply with County Zoning Ordinances; aesthetic impact, impact of view from their property, lights; tower location; displeased with the Planning Board's handling of the CUP decision; wanted more time and ability to negotiate tower location; people in favor of the tower lived several miles away; property values; safety concerns; health concerns; and affect on wildlife. She noted that concerns that were not covered in the appeal forms include: belief of Native American burial grounds to the south of the tower; environmental – concern of the generator's fuel being near Hickory Creek; believe that the farmers in this area have no to little need of the technology; desire for a different style tower; Smith's information about the tower height being a little misleading; and coverage not needed in this area. In response to the belief that Native

Minutes of the Special Meeting of the
Washington County Quorum Court
June 4, 2013
Page 9

American burial grounds may be located somewhere to the south of the tower site, Mr. Reynolds provided a letter from Larry Jenkins of Peregrine Environmental, the company who produced the NEPA report, in which Mr. Jenkins reiterated the conducted by Flat Earth Archeology and the responses from multiple Native American Tribes that found/reported no adverse impact on sites of Native American significance in this area.

- 95.1 Ms. Guertz reported that the following reasons have been given by neighbors contacting their office in support of this tower: weak cell service in the Hogeye area; no cell service in the South Highway 265 to Strickler areas; importance of this tower for social and safety reasons; business needs of better service in the Hogeye area; and poor to non-existent AT&T cell service between Hogeye and Strickler is limiting and dangerous.
- 95.2 Ms. Guertz reviewed criteria used to make the determination for this CUP. A project shall retain the agricultural nature and rural residential character of the county through proper development regulations; while at the same time recognizing the need for industrial land uses, principally where adequate utilities, roads, and other infrastructure exists or will exist. This will allow the industrial and commercial uses and rural residential lands that choose to locate in the county, as well as help to insure that incompatibility with agricultural, residential and other uses is minimized. Staff's determination is there appear to be a number of valid reasons that the tower has been requested in this region, and at this particular location and height. One cannot deny the aesthetic impact of a large tower and indeed, this tower would be quite visible from surrounding properties. However, there is a tree line between the tower site and Illinois Chapel Road to the north which offers some visual buffer. Also, the proposed tower is only 36" wide and is a guyed lattice-type tower that has less visual impact than the other tower types might have such as self-support lattice and monopoles which would be substantially wider, especially at the base. The choice of the 36" wide tower helps to mitigate its appearance in this rural and agricultural area of the County. She stated that with these items taken into full consideration, Staff feels like this cellular facility should be allowed at this location, with conditions.
- 95.3 The protection and preservation of agricultural lands through the proper use of regulatory mechanisms is critical to retain the rural nature of the county. Staff feels they have carefully considered and addressed, to the best of their abilities and knowledge, the protections and preservation of agricultural lands using the regulatory mechanisms at their disposal, primarily the Conditional Use Permit Process.

Minutes of the Special Meeting of the
Washington County Quorum Court
June 4, 2013
Page 10

- 96.1 Ms. Guertz stated that to address adjustments and items of their CUP Code, staff has given consideration to a number of factors related to this proposed use such as: residential structure proximity; the proposed tower type and height; the type of lights on the tower; fire and emergency vehicle access; the need for even better emergency services in the rural areas of the County; and all other items discussed so far.
- 96.2 Ms. Guertz stated that staff recommends approval of the East Prairie Grove Tower Site CUP, referring to planning conditions and noting three changes to their staff report: #7: Any future liquid petroleum generators shall utilize a secondary fuel containment system as determined by Title 40 CFR 112 to prevent fuel leakages; and, #8: The proposed site minimum elevation should be at elevation 1176.1 feet and the ground outside the site graded to drain away from and around the site. The adjacent drainage swells shall be rerouted and designed as per the June 3rd Professional Engineers letter from Satterfield Land Surveyors. The rest of the conditions are as stated in the staff report.
- 96.3 In response to a question, Ms. Richey stated that she does not believe that the landowner currently resides on this property and she is unaware of where he resides.
- 96.4 **Testimony from Public Agencies (Health Department, Road Department, etc.):** John Luther, Director of the Department of Emergency Management addressed the Quorum Court stating that the Washington County 911 Office supports additional cellular infrastructure in rural Washington County as it would enhance access to emergency services for the citizens of our county. He noted that currently over 85% of all 911 calls in Washington County are made with cell phones and unfortunately, they still have areas within the county that do not have adequate cell coverage or no coverage at all. He explained that the information they receive from landline calls such as fixed location and call information, they don't receive with wireless calls, but rather receive the number of the caller, name of carrier, and a triangulating point that is triangulated between the tower sites. He stated the fewer tower sites that the network has to work with to deduct the location, the harder it is to actually pinpoint a location. Therefore, he explained the more cell tower sites available for triangulation, the greater the accuracy of Emergency Services to pinpoint the location of the caller and easier to ascertain the location of the call. He added that this is often useful when searching for lost persons, such as with hunters or hikers; and they have had many farmers who have called 911 with injuries or accidents in a rural area.

Minutes of the Special Meeting of the
Washington County Quorum Court
June 4, 2013
Page 11

- 97.1 Mr. Luther reported that he was recently at the National Search and Rescue Conference and State Search and Rescue Coordinators meeting in South Carolina and was briefed on some new technology, cell and radar forensic tool at the Air force Rescue Coordination Center at Kendall Air force Base . It was explained that if the 911 system in Washington County takes a call and has the carriers information, but is having trouble with the location, they can provide them with the data from the carrier and they can drill down and actually look in a higher probability area of where the party is in relationship to the cell tower and give them a more accurate area to search. Mr. Luther stated that they could use this technology in the case of plane crashes, lost hikers or hunters, cars off the road, or with someone from out-of-town who has had an accident and does not know where they are. He stated that the key to this is that these people have to be able to dial 911 and have it access the system.
- 97.2 T. Lundstrum stated some of the problems he has heard expressed about these cell towers is the physical location being so close to existing property lines and asked if this particular tower were moved back a few hundred feet and not as close to the property line as it is proposed, would that have any effect on the point that Mr. Luther was making.
- 97.3 Mr. Luther responded to T. Lundstrum, stating that the cell companies that build the networks know where their most appropriate location is and he just knows that once it is in place, their 911 system gets the information from the network, so it is out of his scope to talk about the actual placement of the tower. He can say, however, that the cell companies consistently put the towers in the right spots because they know where they need to be in relationship to each other.
- 97.4 H. Bowman asked what percentage of 911 calls come in off of cellular vs. land lines; to which Mr. Luther responded if they look at 100% of the calls, over 85% are wireless calls and as people let their landlines go, that number continues to increase.
- 97.5 **Presentation by the Applicant in Support of the Project:** Dave Reynolds of Smith Communications, LLC, addressed the Quorum Court and introduced Tom Kieklak, their attorney and Michael Smith, owner of Smith Communications, LLC and Smith Two-Way Radio who would give part of their presentation and be available to answer any questions. He noted that they won't be given a very long presentation, as they believe that they have made their presentation and planning staff has examined it thoroughly and came up with some good answers.

Minutes of the Special Meeting of the
Washington County Quorum Court
June 4, 2013
Page 12

- 98.1 Mr. Reynolds stated that he wanted to stress that this application has met all criteria of the State and Federal Government; they have had Geologists, Archeologists, Biologists, etc. to look at this site and believe that there is absolutely no reason not to build a cell tower at this location. He further stated that there are engineers who have designed these towers to withstand all existing codes for cell towers which are much more stringent than normal building codes for houses. He stated that Sabre Towers is the world's largest manufacturer of guyed towers and that both Sabre Towers and their senior designer, who designed this tower, have responded to much misconception about these towers, stating that if there is a catastrophic wind event that causes one of these towers to fall, it does not fall like a tree, but are designed with weight distribution of the guyed wires to the ground, to basically collapse on itself in a very small radius.
- 98.2 Mr. Reynolds stated that they will be bringing the grade of the cell tower up to miss the 100-year storm event and with that, will level it out in the highest point of the site and will only be changing the grade by 3/10 of a foot; they will not be changing the drainage. He noted that there is a small manmade ditch in the field that has allowed this area to drain for several years and they have determined that they can move a small portion of this ditch around the corner of their site and reroute it back into itself which will not change the flow off or on the property in anyway. He stated that they have done some geological boring to look at core samples, supplied the boring logs which are exactly what they would expect in this area of the county with sandy loam, red dirt, and some shale. In one of the anchor holes there was a little bit of water found at 2½ and 2 feet. Our anchors will be 12' deep so at that point they are in shale rock. The anchors themselves are 3' square, 12' long, and 12' down, and they will be imbedded in that rock. They are engineered to be in that type of soil, so there is no wind event that can topple this tower over within the code, other than a catastrophic tornado hits it directly. He stated that Planning Staff went over everything that he would have covered so he would entertain any questions.
- 98.3 R. Bailey asked whether they looked at alternative sites to keep it away from the neighbors to help their concerns; to whom Mr. Reynolds responded that they have and he will let Mr. Kieklak respond to that.
- 98.4 Tom Kieklak stating specifically they talked about moving the tower to be at least the height of the tower away to the closest farm where the chicken houses are, but when they talk about moving it much farther than that, then they are talking about the needs of people not present tonight but need the tower and reengineering their network for them. There is a small area that they thought might be enough to get it back away from there, but as far as

Minutes of the Special Meeting of the
Washington County Quorum Court
June 4, 2013
Page 13

moving it hundreds or thousands of feet, that is not something that they are able to explore. Mr. Kieklak further stated that there has been a lot of communication with neighbors, and they have made a specific offer to move it, but they are about 375' away from most of the property owners, and if you were to lay it down on the ground flat, it would not touch any other property. They have heard this as a concern multiple times so it is something they have tried to address.

- 99.1 A. Harbison asked about moving the tower back to Storms Road, stating that there is no one in the audience that disagrees that they need the tower, but when it is put against property lines and the effect of it has the least effect on the person putting it up, she believes that moving it back some would be more ideal than where they are proposing to place the tower.
- 99.2 Mr. Kieklak stated that when they looked for a place to put the tower, there are criteria that are federal, environmental, Indian artifacts, any other kind of plant or animal that are on the federal register, FAA and FCC requirements that have to be followed, and then there are county regulations. He further stated that Washington County has the finest Planning Staff that he has ever encountered and after all of these other criteria are met, they have to meet the requirements of Washington County, so they cannot just pick a place on the map and drop it because it will make everybody happy. He noted that moving the tower in any direction would move it closer to other property owners and in that case the folks that live along Highway 265 would then also have every right to ask the County to remove it from their property. This is what federal law, more specifically the Telecommunications Act, had to finally address because no one wants this in their backyard.
- 99.3 T. Lundstrum stated that the complaints he has heard are mainly aesthetic and the impact that it will have on people's backyards. Having gone out and looked at the site, if he lived in that closest house, he would not want it there. He stated that this is why he questioned whether it could be moved back a sufficient distance of 350' that would satisfy some of their needs.
- 99.4 B. Fitzpatrick stated that her ex-husband was a navy radar man and has explained to her how this stuff works, so her concern is whether this placement is where it is going to get the best triangulation off of the most number of repeaters which is the point of the 911, and if this is the best location to ping off the most other towers, than this is where it needs to be.
- 99.5 Michael Smith of Smith Communications, LLC, responded to B. Fitzpatrick stating that where they are proposing to place the tower is the best location.

Minutes of the Special Meeting of the
Washington County Quorum Court
June 4, 2013
Page 14

- 100.1 Judge Edwards asked who the offer was made to move the tower; to which Mr. Kieklak responded that they have talked with opposing counsel and have tried to work with those things with optimism
- 100.2 H. Bowman asked them to show him on the map where the 375' setback would be and Mr. Reynolds pointed out the chicken houses in question and noted that they offered to move it 375' from the closest corner of anyone else's property which is 70' higher than the tower would actually be, but it was their understanding that no one wanted to consider this, rather they did not want to be able to see the tower at all.
- 100.3 H. Bowman asked what additional considerations would they have to go through to relocate the tower to that site; to which Mr. Reynolds responded that the process would start over at step one with all the different studies which takes about six months to get back around to this point and they would be looking at thousands of dollars of expense.
- 100.4 H. Bowman asked whether they usually have options of places that they want to place future towers; to which Mr. Reynolds responded that they do and they have had these for several years. He noted another location directly at the end of the chicken houses where the owners had an option and agreed to place a tower there, but they changed their minds and are now opposing the tower wanting to lease the land for agility trails. He further stated that just moving the tower to that location at this point would take them back to step one.
- 100.5 Michael Smith of Smith Communications, LLC, responded to H. Bowman stating that some of these options could be used, but 80-85% would had to be redone.
- 100.6 In response to a request from R. Cochran, Juliet Richey displayed the ATT map; and Mr. Reynolds showed the coverage area filled in that would relieve some of the pressure of the towers currently serving from the Greenland and Prairie Grove area.
- 100.7 R. Cochran asked if the people are experiencing no service available because of the number of cellular devices, capacity and coverage, and the existing tower sites are becoming full most of the time. In looking at the coverage map, most of what he sees is in the best service range with some going into the good and some into the moderate areas, but doesn't see anything going into the shaded or blank for no service available. He therefore questioned who would be receiving service that does not have service currently.

Minutes of the Special Meeting of the
Washington County Quorum Court
June 4, 2013
Page 15

- 101.1 Mr. Reynolds responded to R. Cochran that those who would benefit from this tower who are not receiving service currently are in the hilltop shadows, lobes and corridors will greatly improve from what it is now. He stated that although there is plenty of signals around the Greenland and Prairie Grove areas, by having this tower in-between in the two valleys that connect to cover the roadways, it splits the load from between two to three towers.
- 101.2 R. Cochran stated that he understands the load, but is still questioning who will be receiving service that isn't currently.
- 101.3 R. Aman addressed the possibility of moving the tower south of the two chicken houses and asked if the neighbors approved of that option, whether they would be willing to go back to square one and also whether this would put the tower out of the neighbor's sight; to which Mr. Reynolds responded stating that possibly if the neighbors gave assurance that they wouldn't be back here with the same opposition in six months. He further explained that this is a 300' tower and is already almost ¼ mile away from anyone's house.
- 101.4 M. Spears noted that the proposed tower site is not ¼ mile away from Ms. Scott's house and questioned why they would opt to look right on those property lines for this tower site; to which Mr. Smith stated originally when AT&T surveyed, it was right behind the chicken houses which was close to the property line, but those owners decided not to do this so they had to go across the property line and tried to keep it as close to the center of the search ring as possible.
- 101.5 H. Bowman stated as he drove out to look at this site, he was not able to get AT&T service in that area with either navigation or make calls. He stated that his feelings with this being right on the property line is that apparently AT&T is not willing to be a very good neighbor when they are not more considerate than that. However, the fact that the closest neighbor previously had sold an option to place it in their backyard kind of changed his opinion about that. He feels that moving the site 300' to a more remote site and still maintains coverage would be a good choice if they can get an agreement with the property owners in the area to proceed on that basis. He stated that his opinion about it being out of sight is beyond any kind of expectation, noting that you can't say to an adjoining property owner that they cannot build anything that they can see.
- 101.6 A. Harbison asked for them to point out the search ring or radius of where the tower can be placed to which Mr. Reynolds stated going out ¼ mile from the center of where it is now proposed would still fulfill their minimum needs.

Minutes of the Special Meeting of the
Washington County Quorum Court
June 4, 2013
Page 16

- 102.1 A. Harbison stated that they may need to tweak it some to get the maximum benefit out of it, but she thinks that they need to look at the search ring.
- 102.2 In response to J. Patterson, Mr. Reynolds stated that it would be a very slight difference if moved 300 ft. and showed the location on the map. His point is the tower is over 100' from the property line at the base and not looming over anything. He then showed simulations of the tower looking from Illinois Chapel Road.
- 102.3 B. Fitzpatrick stated that she would like to see a picture or simulation of an actual tower from that distance to see what it would look like and Mr. Reynolds stated that he took a photo of a tower that would be comparable to this one.
- 102.4 R. Cochran asked to see the slide that showed the distance from the tower to the various residences, and stated that they are saying they could move the tower as much as ¼ mile off of that point and asked if this was in the flood plain; to which Mr. Reynolds stated that it was not, but more elevated. R. Cochran questioned whether it would not be more practical to place the tower near the pond, putting the grove of trees in the line of site of the people living to the north where the majority of their opposition is from, that would conceal it to a certain degree and get it off of the property line.
- 102.5 Mr. Smith responded that this would be a possibility if they could get the neighbors to agree.
- 102.6 Pat Storms whose property the cell tower would be built on addressed the Quorum Court to answer any questions.
- 102.7 In response to a question from R. Bailey, Mr. Storms stated that he currently lives in Fayetteville, but has lived on one of their two farms for 50 years. He noted that there are 404 acres on this parcel and their farm is for sale. Mr. Storms stated that he is a licensed real estate broker and knows a little bit about property. He explained that he was asked if the tower could be placed at this site, but he did not pick this site nor is it where he would have chosen to put it. He was asked because on the other side of the fence, the property had already been given an option to the Andersons for 3-4 years and when it was finally decided that the tower was needed due to heavy traffic, instead of having to do all of the preliminary work prior to building a tower, they wanted to place it on the Storms property across the fence a couple hundred feet right in the middle of one of his pastures. He noted that they are currently not cutting hay on this property, but they have in the past. He stated the bottom line is he was never contacted by any of his good neighbors requesting that

Minutes of the Special Meeting of the
Washington County Quorum Court
June 4, 2013
Page 17

they put it elsewhere and he did not know that it was to be built until they contacted him stating that they were having problems with the Andersons and asked if they could build it on his property which he agreed to and took the money.

- 103.1 R. Bailey stated if he wanted to move out into the country and a cell tower was located on property he was looking at, it would be a deal breaker for him.
- 103.2 Mr. Storm responded to R. Bailey that from practical experience personally, 17 years ago the state eminent domain 22 acres to put Hwy. 412 through his property in Benton County. Although they did not want this, it was the best thing that ever happened because he had three kids grow up and drove that safe highway instead of the old Hwy. 68. Today's problem is not the same as tomorrow's problem. Mr. Storm stated that he used to never be able to get cell phone reception with Verizon and changing to AT&T made it better, but it is not always good service and this tower would make good service possible. He noted that his mother lived on this property from 1960 until recently when she had a bad stroke and she could not even get to the phone to call, but her 911 call would not have gotten out from her cell phone. He stated that he is in favor of this cell tower and was in favor of moving it straight to the west, but if it was good enough to have on the other side of the fence prior, it should be good enough to have on his side of the fence presently. Mr. Storm stated that if they do not sell the farm, he will someday probably build a house there and that tower will not affect him one way or the other, other than to give him better phone reception than he currently has.
- 103.3 H. Bowman asked whether having good cell communications in this neighborhood will increase the property values in this area; to which Mr. Storms responded that currently the entire area of the property is depressed as farmland has not jumped back like city property and while he does not know whether this will increase property values, he does not believe that it will make the property worth less. He further stated if they do have good cell reception and are on a tractor at the creek or river, they have something that is more compatible to people who live in the city and have access to cell phones.
- 103.4 H. Bowman stated that 15 years ago he did not know anything about smart phones and little about cell phones, but today his life revolves around a cell phone. He would not build a home in that area unless he did have cell service.
- 103.5 Pat Storms noted that his brother Mike Storms is also here tonight and co-owner of this property where they grew up, now have cattle, having sold their chicken houses long ago.

- 104.1 **A 5-minute recess was taken at this time.**
- 104.2 **Presentation by Appellant against the Project:** Dale Brown, Attorney with the Bassett Law Firm, addressed the Quorum Court stating that he was there on behalf of 6 of the appellants, Kathy and Jerry Caudle, Cathy and Gary Scott, and Mike and Jessica Anderson. He stated that his clients object to the Planning Board's approval of this CUP in violation of Section 11-201, noting that the ordinance reads that the entire board membership must vote by majority and since the entire board was not present, they do not feel that it would be proper approval and he wished on make this clear on the record.
- 104.3 Mr. Brown distributed a copy of the conditional use criteria he will be referring to and showed a video of various cell towers for illustration purposes, noting when he was first contacted to take this case, he had a hard time getting a perspective of exactly how tall the proposed tower was going to be. He stated when they contacted the City of Fayetteville about the process they went through on approving the cell tower on Hwy. 265 that was 150 ft, they were surprised to receive engineering approved drawings with the AT&T logo which he is using primarily to illustrate the point that although it has chosen not to be involved here, that AT&T does get involved with these types of zoning and proposals. He stated that there has been a lot of questions about what type of coverage would be provided and, while he does not believe that either Dave Reynolds or Patrick Storms represent AT&T or have sufficient first hand knowledge to be addressing many of the questions that have been presented tonight regarding coverage area, where the tower can be located and still be suitable, etc. He stated that they need information from AT&T about those questions because he does not have any first hand information and they have to recognize the fact that Mr. Storms and AT&T have entered into some sort of business relationship. He noted that they requested numerous items through a letter dated April 16, 2013, to Mr. Reynolds' office, documents back and forth with AT&T, information on flood plains and co-locations, agreements, how much money is being exchanged and how much financial interest the applicant has in this, but they did not receive a response and believe that this is important for the Quorum Court's consideration and deliberation.
- 104.4 Mr. Brown stated that they believe that it is important that the applicant does not live on the property currently. He stated that there is certainly an argument about, "not in our backyard" and also that this area needs 911 and cell phone coverage. He stated that his clients do not dispute that it would be fine if the county could increase cell phone service, but this body is here to determine whether the Planning Board properly approved this CUP. He referred to the document that he distributed is from a county ordinance that

Minutes of the Special Meeting of the
Washington County Quorum Court
June 4, 2013
Page 19

this body passed years ago in order to provide some certainty for county residents about where they invest life savings to buy property. He pointed out that the subject property is zoned agricultural/residential-1 single family and if this tower was constructed without coming to this body that would be a non-conforming use. Therefore, he stated they believe that only by using these conditional use factors can the Quorum Court find, to determine that the factors exist which either work in favor or either approving or denying the conditional use.

- 105.1 Mr. Brown stated before they get into these factors which he sees as the guiding principals of what they have to go by, he wanted to address the issue of 911 coverage. He addressed the application that Mr. Reynolds filed with the County that applies to the administrative approval of the tower. He noted that it is his understanding once this gets to the administrative approval process, he does not believe that they have a say in the process and that this is their only time to talk. Mr. Brown noted that Mr. Reynolds certified to the County on January 17, 2013, that the proposed tower would not be used for 911 services. Further, he stated that the whole notion that they need this cell phone tower in this exact location to provide better cell service and/or 911 service flies in the face of the only document that he has found directly from AT&T. He referred to the map showing "best, good, moderate" service, stating that he has been told that the areas shown as least to moderate represent tops of mountains and no where on the AT&T map do you see "no service available", so he questioned how much better coverage is needed. Mr. Brown stated that in light of a 320' proposed eyesore is going to be in their backyard, his clients have a hard time swallowing that it needs to be in this location for better cell service and he would respectfully submit that there is no evidentiary basis in front of the Quorum Court to determine that.
- 105.2 Mr. Brown stated that it strikes him as a little bit troubling that at least with the City of Fayetteville's experience, that AT&T will get involved in the nitty-gritty and will provide the body approving or denying CUP, engineered approved maps, specs and drawings. He noted that the applicant referenced a letter from Sabre Industries, the manufacturer of this tower, dated today that references this tower designed for basic wind speed of 90 mph with no ice and 30 mph with one inch radial ice. He stated especially given the recent events in Oklahoma, the tornado that went through Cincinnati years ago, the winds can get above 90 mph and one of their concerns is the safety of the property and citizens around that property, and he noted that the statement simply says that it is likely that the tower would collapse on itself. Mr. Brown stated that he and his clients believe that a cell phone tower needs to be anywhere around residences, people, lives and property.

Minutes of the Special Meeting of the
Washington County Quorum Court
June 4, 2013
Page 20

- 106.1 Mr. Brown addressed the conditional use factors set out in the County's ordinance that determine whether factors exist which either work in favor of either approving or denying the conditional use. He referred to CUP criteria checklist under Sec. 11-200 that reads, "The Board shall hear and decide requests for a conditional use and may authorize such as it finds." or determines "(3) That adequate utilities, roads, drainage and other public services are available and adequate or will be made available and adequate if the use is granted." He noted that he has not seen any engineer drawings or specifications that relate to this proposed tower and its structural integrity and the Quorum Court does not have that information in front of them. He addressed a document provided by the geo-technical folks in Oklahoma that dug in some of the locations where the guyed wires were to be located stating that ground water was encountered at 2½' and at 4½' and a statement that water classifications based on drilling characteristics and visual observation of the core samples would be required for the exact classification. He stated that these folks did not do any testing on the soil, but rather just looked at it and encountered ground water on location. He stated this is a technical review and scientific data of what they thought was in the ground, but there is no analysis to it that it will support this tower.
- 106.2 Mr. Brown stated that according to Planning Staff, the tower base is 465 feet from the flood plain, which calculates to 155 yards and he and his clients would submit that a cell phone tower or something that can break, destruct and fall doesn't need to be within this distance of a flood plain which is exactly what they have here and goes against the criteria about adequate drainage. He reiterated that they do not have an engineer stating that what they propose will effectively deal with the flood plain. He is aware that very recently the Planning Staff brought to the attention of Mr. Reynolds that there were some swales out there and this new information has happened since the Planning Board took its action. Mr. Brown referred to a flood plain map showing how close this tower is to the edge of that flood plain coming from all directions and stated that they respectfully submit that you don't need a cell phone tower that close to a flood plain and particularly given that according to the AT&T provided coverage map, it is unwarranted anywhere on the Storms' property.
- 106.3 Mr. Brown referenced criteria for allowance of conditional uses, "(4) That the proposed use is compatible with the surrounding area.", noting that it will have an effect on the aesthetics and he would submit that a cell phone tower in the middle of an agricultural-family zoned property is not compatible by any definition. He stated that people move to the county a lot of times to get away from things like tall buildings and cell phone towers, and this farm land needs to be protected.

Minutes of the Special Meeting of the
Washington County Quorum Court
June 4, 2013
Page 21

- 107.1 Mr. Brown referenced criteria for allowance of conditional uses, "(5) That the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare." stating that they have to find that this use will not endanger those things and this goes back to public safety that he previously mentioned.
- 107.2 He noted that tornadoes do happen, some worse than others, and showed a video from Dallas and Fort Worth of what tornadoes can do. He stated that this is one reason, if not the reason, to not put this tower anywhere near something that can crumble and move it.
- 107.3 Mr. Brown stated that when they requested information from the County about whether existing cell phone towers were structurally safe, the Planning Staff responded from an administrative process where the county staff can request that engineers or qualified professionals from time-to-time inspect and make sure that towers are safe, are certified to withstand a certain amount of wind, etc. He stated that it is his understanding that the County has not received a single sworn statement saying that any cell phone tower has been inspected that Mr. Reynolds is involved in. He stated that an ordinance is only as good as used for enforcement and so they submit before they add this cell phone tower to the county, that they make sure the existing ones are safe.
- 107.4 T. Lundstrum noted that this states that this cell phone tower can withstand ½" of ice in 70 mph winds and the earlier document he referred to said that this tower would withstand 30 mph winds and accumulation of 3" of ice; to which Mr. Brown responded that it states the above-referenced guyed tower is designed for a basic wind speed of 90 mph with no ice and 30 mph with 1" radial ice.
- 107.5 Mr. Lundstrum stated that the reason this sticks in his mind is that they spent a lot of money a couple of years ago recovering from an ice storm, so ice is not unusual for this area.
- 107.6 Mr. Brown stated that it looks like it is talking about two different scenarios; 90 mph wind with no ice and 30 mph wind with 1" radial ice.
- 107.7 Mr. Lundstrum noted the reference that it will withstand a combination of ½" of ice and a 70 mph wind and he thought that was the specifications on the proposed tower which says that it will withstand a 30 mph wind with 1" of ice and questions which are the standards of this ordinance.
- 107.8 Mr. Brown referred to the criteria for allowance of conditional uses, "(6) That the conditional use will not be injurious to the use and enjoyment of other property in the surrounding area for the purposes already permitted, nor, substantially diminish and impair property values within the surrounding

Minutes of the Special Meeting of the
Washington County Quorum Court
June 4, 2013
Page 22

area.", and he stated that they submit that erecting a 320' cell tower is injurious to property zoned agricultural and residential. He stated that he believes the property value issue is a question open for debate, noting that there was a letter from an appraiser who commented that cell phone towers don't generally adversely affect property values and they simply disagree with that as an unreasonable conclusion. He further noted from the records received from the county, Mr. Butler agreed with that as well.

- 108.1 Mr. Brown showed a view of Kathy and Gary Scott's new screened back porch and where the cell tower would be located. No one would want to pay good money for that view. This is what they will be looking at each morning.
- 108.2 Mr. Brown referred to the criteria for allowance of conditional uses, "(7) That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding area for uses permitted in the zone.", stating that this body zoned this land and all areas surrounding it agricultural-residential. He pointed out that there are two mountains in other directions out there that have cell phone towers and there is not a single one on Stevenson Mountain and frankly whether it would cost them more money to get this tower on Stevenson Mountain is not really his clients' concern, but questioned why not on Stevenson Mountain?
- 108.3 Mr. Brown addressed the proposal to relocate 375' was received at 3:30 p.m. yesterday in his office and frankly 375' does not change the equation of all the issues. He verified that no one came to talk to him or his clients and they rejected the proposal received. He further verified that the first notice his clients had about the proposed CUP was when they received notification from the County about 2 weeks before the Planning Board meeting, so it was not like this has been a long negotiation process.
- 108.4 Mike Anderson, landowner closest to the proposed tower and of the chicken houses referenced, addressed the Quorum Court stating that he would be glad to answer any questions related to his opposition to the tower.
- 108.5 H. Bowman noted that Mr. Anderson at one time sold an option to place a cell tower on that site and he questioned why he had approved of the option of putting a tower there sometime back and take compensation for that and then change his mind now that it has moved across the fence.
- 108.6 Mr. Anderson responded to H. Bowman's question stating that about 6-7 years ago, AT&T came and said that they were going to put a tower in the area and wanted to talk to him about putting a tower on his land. When they told AT&T that they did not want a tower on their property, AT&T advised that they would have to look at a tower on the other side of the fence anyway and

Minutes of the Special Meeting of the
Washington County Quorum Court
June 4, 2013
Page 23

wouldn't be compensated. AT&T told them that it wasn't definitely going in, but he just wanted to have an option to do it and that he wasn't signing an agreement to build the tower, just for them to think about it. He stated that this went on for a few years and then they cancelled it. Mr. Anderson noted that Reynolds contacted them about 2 years ago pitching the same thing and they said that they didn't really want to have a tower on their property and were told the same thing by Reynolds – that they would put the tower on the other side of the fence where they would have to look at it, got upset, and went down the road to talk to the Storms who entered into the agreement. He stated that it was presented to them that they didn't have any options.

- 109.1 H. Bowman questioned that if they accepted compensation for an option, that option is saying that they were going to agree to the tower; to which Mr. Smith responded that it was not an agreement to build a tower, just an agreement to propose placement of a tower. H. Bowman stated that the only option he has every dealt with stated that they had the right to put something there.
- 109.2 Kim Fugit, resident of 10998 Illinois Chapel Road, addressed the Quorum Court stating that he was a licensed architect, building contractor and realtor, so has a little bit of background and experience in these matters. He explained that he purchased his 65 acres about five years ago and the reason that he purchased that property was not based on the lack of sewer, lack of water, lack of cell service, and the lack of gas, but mainly due to a lot of those reasons. He believes that those are the reasons that most of them live in that area – to get away from those types of issues.
- 109.3 Mr. Fugit stated that there were only a couple points he wanted to make in addition to those that have already been made. Related to the coverage map, he stated that he has lived on this property for 2 years and owned the property for over 5 years and has never had an issue with service through AT&T, day or night. He stated that he understands some of those in favor of this tower are in the Hogeye and Strickler areas and based on the coverage map that they have seen, if this area is well-covered which he is proof of and the people in Hogeye and Strickler are not well-covered, it seems to him that common sense would be to put the tower in their communities.
- 109.4 Mr. Fugit stated that the only debate that they have all had is the importance of 911 coverage and if they do have good 911 coverage there, which both personal experience and the coverage map would show, he believes that there is probably more at stake here than 911 coverage to the applicants, and this is something that they should look into. He stated that he knows Mike Smith and hates to be on the other side of the fence from him, but he would like to also see the advantages or incentives to the applicants above and beyond just the 911 possibility.

- 110.1 Kathy Scott, one of the appellants to this case, addressed the Quorum Court stating that she has had several of the JPs come out to her house to see this proposed tower site, so they know what she is talking about when she says she is the closest resident to the site. She stated that it is not just that there is going to be a tower on the other side of the fence close to her house, but she spends a lot of time in her pasture doing dog training and so she will have this 320' blinking light in her workplace to look at. She stated when they talk about the enjoyment and taking away from the pristine area, no one will ever understand how much she enjoys what she does and this will completely take that from her.
- 110.2 Ms. Scott stated that the point was made that there were neighbors in favor of this tower and one of the names on the list that they were given lives south of Hogeeye and when they went to speak to him, he was very confused and did not know what they were talking about, stating that he did not sign anything stating that he was in favor of a tower behind her house. This man said that about 1½ years ago, a large number of people in the Strickler area and south of Hogeeye, got together and signed a petition to AT&T for a tower down in that area. He further knew that at least one of the other people on the list had not signed anything in favor of this tower. Ms. Scott stated that she feels like this was misrepresented on the original information.
- 110.3 Mr. Brown stated that he knows that there are 2, maybe 3 Quorum Court members absent tonight and would request that they delay the vote on this ordinance until the full Quorum Court is present.
- 110.4 AN ORDINANCE RATIFYING CONDITIONAL USE PERMITS GRANTED BY THE PLANNING AND ZONING BOARD: J. Patterson introduced **An Ordinance Ratifying Conditional Use Permits Granted By The Planning And Zoning Board**, and County Attorney George Butler read the ordinance that is on first reading.
- 110.5 R. Bailey stated that he doesn't mind taking the ordinance to second reading, but they have three Quorum Court members absent tonight and he believes that they should all be present for this vote.
- 110.6 County Attorney George Butler stated that the plan was to proceed through three readings, but before they can do that they would have to suspend the rules to proceed to second and final reading by title only before they vote on it and it takes 2/3rds of the entire court to pass.
- 110.7 **R. Bailey made a motion to suspend the rules and place the ordinance on second reading by title only. The motion died for lack of a second.**

Minutes of the Special Meeting of the
Washington County Quorum Court
June 4, 2013
Page 25

- 111.1 H. Bowman stated that based on the statements made by Dale Brown, Attorney for the appellants, it sounds to him that the Planning Board failed to meet the qualifications that he signed in that situation and asked what the options would be to have another look by the Planning Board to make sure that all criteria is met.
- 111.2 County Attorney George Butler stated that the Quorum Court does not have the option to remand the ordinance back to the Board. He stated that they basically hear these matters de novo because the way the Court of Appeals has construed their ordinance, it is legislative in nature and effectively it is a rezoning which cannot be delegated to the Planning Board. The Planning Board does hear it procedure wise initially because most of them do not get appealed, but they always have to ratify them even if the Planning Board turns one down. Therefore, the Quorum Court has three readings to decide whether or not it satisfied the criteria made in the ordinance.
- 111.3 G. Butler stated that they also need to be careful because Federal law says that they cannot advise the advocate that their application is incomplete after 30 days has elapsed and they are now many, many months after that. He stated that they can say that they have not furnished enough information and therefore, the Quorum Court is not going to rule on it or they can remand it back and may find themselves in Federal Court over that. He stated if they want more information, they should ask for it.
- 111.4 H. Bowman stated what if it appears that there are other locations that might still serve the purpose in this area have not been reviewed; to which G. Butler responded that it is not really up to the Quorum Court to consider whether or not there are other locations that are better, but it is up to them to decide whether or not this particular site meets the criteria and satisfies the requirements of the CUP.
- 111.5 H. Bowman stated that he is new on this court, but it appears to him that there are a number of reasons to continue looking at other options for this tower, so what he is hearing from Mr. Butler is that they have the opportunity to vote "yes" or "no" and if we want to look at other locations in this case, then they should vote "no" to which Attorney Butler agreed.
- 111.6 H. Bowman made the comment that when the new hospital was built in Fayetteville a number of years ago, a good friend of his worked for the hospital and it was his responsibility to get everything approved with regard to the location of the hospital. At the time his friend told him the area where the hospital now sits was zoned agricultural and residents threw a fit and didn't want a hospital there. His response to those people was that they had a

Minutes of the Special Meeting of the
Washington County Quorum Court
June 4, 2013
Page 26

proposal from Tyson Foods to locate a hog farm out there that meets the specifications and this was likely to happen if they didn't agree to put the hospital on this property. He made the comparison that Mr. Storm could put a dairy farm or barn or a hog farm, chicken or turkey houses, they would be stuck with it because of the agricultural zoning. Mr. Bowman stated that he has worked around cell towers and hog farms and he believes that they would prefer the cell tower compared to a hog farm.

- 112.1 A. Harbison stated that she would like both sides to try to meet and get this worked out because it puts them in a very difficult situation. She stated that she knows everybody involved and all of them are her constituents and she tries to represent all of them. She thinks that they have some other options and realizes that it will cost some people some money, but urged everyone to try to be good neighbors to each other and see if they can't get this taken care of before the next Quorum Court meeting.
- 112.2 B. Fitzpatrick asked for confirmation that they would read this ordinance again only at the next regular Quorum Court meeting; and County Attorney George Butler continued stating that they would have limited discussion after the second reading and then it would be read for the third time at another special meeting like this where there is discussion before the vote is taken.
- 112.3 B. Fitzpatrick stated that gives 2½ weeks to see if the parties can work things out with each other before they actually have to rule on this. She stated that these people are not her constituents, but she agrees with A. Harbison that she would like to see them agree on something if at all possible.
- 112.4 Juliet Richey stated if there was anyone who wanted to visit this site, they can find some time in the interim that would work for everyone to make a special tour of this proposed tower site. She stated that the aerial maps are a great tool, but do not show the three dimensional spaces as far as the trees and hills, etc. and how that fits in.
- 112.5 Judge Edwards stated that anyone interested in visiting this proposed tower site should call Court Secretary Karen Beeks to set up a time for this.
- 112.6 Citizen Comments: Dr. Mark Hubbard, large animal mobile veterinarian in Northwest Arkansas based out of Springdale, addressed the Quorum Court stating that he does a lot of business up and down that valley off of Hwy. 265 heading back to Prairie Grove. He stated that he has an I-Phone 5S, the latest Apple I-Phone and AT&T service, and when he goes down that road, he does lose his signal every time.

Minutes of the Special Meeting of the
Washington County Quorum Court
June 4, 2013
Page 27

- 113.1 H.A. Fraley, former JP Earvel Fraley's younger brother, addressed the Quorum Court stating that he lives to the very west of where the Storms' property wraps around back to Illinois Chapel, and he can sit in his living room in his steel house and use his phone and his 4G I-Pad. He stated that he worked in the Air Force for 14 years and was medically retired having fallen off of a 56' tower and he believes that some of the information that they are being given with respect to this antenna is not accurate.
- 113.2 Jeramiah Jones addressed the Quorum Court on behalf of John Swenson who wasn't able to make the meeting tonight. He stated with regard to speculation of property value for which there is no way to really measure, from what he understands they can only base it on certain facts like those contained in a letter from Mr. Swenson which he read. He stated in the letter that he wanted to share a personal story that illustrates the negative effects of such a cell tower addition. He reported in late 2009, he and his wife spent many months looking at properties for sale trying to find the perfect location for their sheep ranch and found an idyllic setting just off of Hwy. 170 in Winslow, 80 acres with complete infrastructure, well-maintained, a perfect property except for one thing – there was a cell tower on this property. He stated after doing some research they concluded that it would be poor judgment to purchase this farm and all of their reasons for not purchasing the property evolved around this cell tower, that it would be a poor investment, and they reasonably assumed that the same negative reaction they would have to this cell tower would likely be an issue for other potential buyers should they decide to sell the property later. Mr. Jones stated that being new to this area, he can also state that the presence of a cell tower on such property would make him reconsider such property because the area itself is beautiful and he would be moving out there to get away from things such as towers, blinking lights, etc.
- 113.3 Sam Cornett, resident on Illinois Chapel west of the Caudle's, addressed the Quorum Court stating that he has a trash service and travels all area in that valley, all of Illinois Chapel, Butler Road, Hogeye Road, and he travels Hwy. 265 all the way from the Greenland exit to Coal Creek. He noted that he has AT&T phone service and an I-phone 4 and he has no trouble getting service anywhere throughout that valley until he gets about 1½ miles south of the Hogeye store around CR 29.
- 113.4 Other Business: T. Lundstrum stated that he has visited this cell tower site and he only has a \$49 phone and had three bars on that property. He stated that his grandson shoots trap at Hogeye and he has sent and received text messages and phone calls from Hogeye with his phone.

Minutes of the Special Meeting of the
Washington County Quorum Court
June 4, 2013
Page 28

- 114.1 B. Pond stated that one of the issues brought up by T. Lundstrum is that he noticed the difference in the ratios between the rain and ice; that regulations call for one thickness of ice and certain mph winds and different statistics that came from the tower company, so they probably need to have these calculated out.
- 114.2 In response to a question from B. Pond, County Attorney George Butler stated that there were five Planning Board members present out of seven when this CUP was voted on with four voting in favor and one abstaining. He further explained that he would define "majority" as 50% plus one as the definition is more than half and Roberts Rules of Order state the word majority means more than half. In this case, 3.5 would be half, so they had more than majority voting in favor and it passed properly. He noted that the full Planning Board does not have to be present, just like the full Quorum Court does not have to be present, as long as they have enough members to vote on an ordinance that requires either a 2/3rds or majority.
- 114.3 B. Pond stated that they do know that there is a telephone company provider who is willing to pay so much a month to have reception at that location for the 300' tower; to which County Attorney George Butler responded that they have been advised that AT&T will be handling this. B. Pond stated therefore since they know that AT&T has determined the need and is willing to pay, it is not left up to the Quorum Court to determine whether AT&T needs this and all they have to do is vote in favor or not based on criteria set out in the CUP.
- 114.4 County Attorney George Butler noted that the need for this tower is not a factor in their ordinance.
- 114.5 Pat Storms addressed the Quorum Court stating that he has agreed to placement of this tower on his property and signed a contract, and has listened to most of his neighbor's state that they did not want this cell tower. Unlike the analogy previously made regarding the Washington Regional Medical Center vs. a hog farm, he has no intention of ever placing a hog farm on his property and does not want his neighbors mad at him. He stated that he feels like his family has been made out as bad people, which they are not. He stated that they can make a little money, but he does not go to his neighbor's homes and tell them that they can't raise sheep, chickens, dogs, etc. He stated that he just owns the property and is willing to have the cell tower placed thereon and his neighbors are concerned not only about the possibility of the tower falling, but they just don't want to see it. As a landowner, he feels that he should be able to make an income from something that is not going to be detrimental to somebody else. He stated that this is the United States and free enterprise and that is what he is looking

at. Mr. Storms further pointed out that a tornado can pick something up and carry it for miles before dumping it. He noted that for his neighbors, there is not a good spot for this tower and if it is moved elsewhere, somebody else will complain about it as it is just not possible to have it out of the neighbors' sight. He does not believe it is fair to ask for disclosure of how much money Smith Communications, LLC is going to make or spend as everyone has a right to make money off of their property as free enterprise means free enterprise. He urged the court to come out and look at the proposed tower site.

- 115.1 Dale Brown responded to Mr. Storms, stating that they do not feel that he is a bad person, but they simply want Mr. Storms to comply with the law. He stated that he understands and appreciates free enterprise, but in this instance, Mr. Storms in pursuit of free enterprise is trying to do something that this Quorum Court has said he cannot do without meeting certain criteria. He asked about "transparency" and "full disclosure", stating that everyone agrees that his clients will have to look at an unsightly cell phone tower if it is approved in that location, so why can't they know how much Smith Communications, LLC is being paid by AT&T and Mr. Storms is being paid for the easement to put this tower on his property. He stated that this is a process that has been set not by his clients, but the County sent them a letter saying that they have the right to fight this proposal and they are simply asking for full disclosure, get all facts on the table, and let the chips fall where they may. Mr. Brown stated that just because his clients are trying to hold the applicants' feet to what the law requires does not make them doing anything that is unreasonable or unwise.
- 115.2 With respect to Mr. Storms' statements regarding tornadoes, he concurs that they do not know where a tower would go in the event of a tornado, but why would they do anything in the best interest of this county and comply with these factors to add a 300' steel structure that could be turned into a projectile that would kill or injure people and they reject any notion that it is a safe thing to do on this property. He stated it is about these factors and the law requires them to make "findings", not just consider these things and the law that the county passed does not talk about the need for 911 service.
- 115.3 In response to a question from Mr. Brown, County Attorney George Butler explained that at their next Quorum Court meeting, the ordinance would be on second reading followed by some discussion by the court and citizens comments, and the third reading is when he would need to be prepared to present any information. Attorney Butler did note that there is always a chance that the Quorum Court could suspend the rules and decide to vote on this ordinance at their next meeting.

Minutes of the Special Meeting of the
Washington County Quorum Court
June 4, 2013
Page 30

- 116.1 Tom Kieklak addressed the Quorum Court stating that the Planning Staff and Board have spent five months working hard to make sure that this project meets the CUP criteria and urged anyone with questions to feel free to ask their own Planning Board and Staff who has combed through every regulation that they could find and took extra concerns from both neighbors. He hopes the Quorum Court will pay extra attention to that.
- 116.2 ADJOURNMENT: The meeting adjourned at 9:00 p.m.

Respectfully submitted,



Karen M. Beeks
Quorum Court Coordinator/Reporter