

**MINUTES OF THE
SPECIAL MEETING OF THE
WASHINGTON COUNTY QUORUM COURT**

Monday, June 24, 2013
6:00 p.m.
Washington County Quorum Court Room

BOBBY LAWRENCE
CO. & PROBATION CLERK
WASHINGTON CO. AR

2013 JUL 22 AM 8:59

FILED

- 140.1 The Washington County Quorum Court met in a special meeting on Monday, June 24, 2013. The meeting was called to order by County Judge Marilyn Edwards. She stated that this was a Conditional Use Permit Appeal Hearing for an East Prairie Grove Cell Tower Site and they would have the third and final reading of the ordinance ratifying the Conditional Use Permit which would take eight votes to pass or fail.
- 140.2 PRAYER AND PLEDGE: R. Cochran led the Quorum Court in prayer and in the Pledge of Allegiance.
- 140.3 MEMBERS PRESENT: Ron Aman, Rex Bailey, Harvey Bowman, Candy Clark, Rick Cochran, John Firmin, Barbara Fitzpatrick, Ann Harbison, Eva Madison, Jimmy Mardis, Joe Patterson, Butch Pond, Mary Ann Spears, and Bill Ussery.
- 140.4 MEMBERS ABSENT: Tom Lundstrum.
- 140.5 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.
- 140.6 ADOPTION OF THE AGENDA: Judge Edwards asked if there were any additions or deletions to the agenda.
- 140.7 **A motion was made and seconded to adopt the agenda as distributed. The motion passed unanimously by voice vote. The agenda was adopted.**
- 140.8 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.

Minutes of the Special Meeting of the
Washington County Quorum Court
June 24, 2013
Page 2

- 141.1 **Staff Remarks and Updates:** County Planning Director Juliet Richey stated that she would be giving updates since the last meeting as well as reviewing some applicable Federal Law after which County Planner Sarah Geurtz would give a 10-minute recap on the project.
- 141.2 Ms. Richey reviewed applicable Federal Law in Sec. 704(a)(iv) of the FCC Act of 1996 that prohibits them from making decisions about the possible environmental impacts of cell towers based on radio frequency emissions, etc., that includes health-related concerns in regard to radio frequency emissions. She stated that there is a maximum amount of radiation allowed by federal regulation that comes with cell towers and as long as a tower does not exceed that amount, this cannot be used as reasoning to not allow a tower.
- 141.3 Ms. Richey stated in November of 2009, the FCC issued a Declaratory Ruling clarifying portions of the FCC Act and this clarification states the following: (a) Local governments have 150 days to review and act upon tower siting applications. If the County fails to act in this period of time, the applicant can bring action against us in court, and we will bear the burden of explaining why the delay was reasonable. (b) The County cannot deny any 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 has the effect of prohibiting the provision of personal wireless services." In other words she explained that 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. Ms. Richey stated that they are going to speak briefly about coverage tonight as she realizes that it is tied in part to this location and application; however, as mentioned earlier the FCC prevents local governments the ability to deny a project based solely on a carrier's geographic coverage of the certain market.
- 141.4 Ms. Richey stated of the three general types of cell towers, the proposed tower is a guy-wired lattice-type tower that allows a tower to be tall and thin but requires more room on a property as the guy-wires need to be anchored some distance from the tower. She noted that many of the self-support lattice-type towers are taller than monopoles that are much larger at the base. She noted that a guyed lattice tower will be uniform and the subject tower is 36 inches at the base whereas a self-support lattice tower that they approved a couple of months ago was 28 feet across at the base.
- 141.5 C. Clark asked how tall the guyed-wire lattice tower was in the picture shown; to which Ms. Richey stated that she was not sure as this was a picture being used for general representation. B. Pond stated that the building at the bottom of the tower would be approximately 12 feet tall.

Minutes of the Special Meeting of the
Washington County Quorum Court
June 24, 2013
Page 3

- 142.1 Ms. Richey explained that the third type of tower was a monopole-cylindrical metal pole with antennas located either inside or hanging on the outside used for shorter towers that are wider at the base. She stated from what she understands, you do not see many over 230 to 250 feet tall.
- 142.2 Ms. Richey stated with regard to tower heights, they 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 hill and some might be located within a valley.
- 142.3 Ms. Richey stated that several issues were brought up at the last meeting and these were addressed in a letter to the Quorum Court dated June 14, 2013 wherein they addressed the validity of the Planning Board Appeal, the use of the tower and future antenna on this tower for 911 purposes, tower maintenance as required by county code, the tower's proximity to flood plains, the structural integrity of the proposed tower, and financial agreements between parties. She reported that the appellants' attorney continues to rebut some of the explanations that staff has given; however, she stated that they feel they have taken the appropriate steps to thoroughly answer the questions and the appellants' attorney may just simply not agree with statements that they have made, some of their policies and the level of due diligence that staff requires for processing the project. Ms. Richey stated if there are any questions that the court feels were not answered with that letter or if there is dissatisfaction with the level of information provided, they can provide further explanation.
- 142.4 C. Clark stated that she missed the first hearing and asked whether this is the only location that would improve 911 and emergency response; to which John Luther, Director of the Department of Emergency Management, responded that anywhere a tower is placed in this county that can receive a cellular call or transmit information to a cellular phone is going to help. He further stated that he does not specifically know what the gaps are in this situation and gave the example that in darkness, anywhere you have light helps.
- 142.5 C. Clark stated therefore, placing this tower 250 feet or yards in any direction would still help; to which Mr. Luther responded it can but one of the unfortunate things about that is that it casts shadows and he trusts that the companies that want to put these cell towers in so that they can fill as big a void as possible, no different then they do when they put towers up for public safety. Mr. Luther continued that one thing they know is that when you talk about a grid, they have learned over the last few years with a network of their own public safety radio system that point-to-point, not necessarily what the tower does for the end user, but what the tower has to do to another tower for these transmissions are very critical.

Minutes of the Special Meeting of the
Washington County Quorum Court
June 24, 2013
Page 4

- 143.1 C. Clark responded that her interest is only in this tower in this specific location is critical for that juncture and questioned if they could not show her where the gap is in this particular location, but only that there could be gaps; to which Mr. Luther responded anywhere you place a tower in this county is important. He further stated he has not personally driven in this area to see if there is a gap or not, but if there is not a tower in that area providing signal, there is going to be a gap and he would assume if there is no tower, there is no signal.
- 143.2 In further response, Mr. Luther stated that there is information that they can push out through the cell tower systems, including "Code Red", so that if there is a storm in the area, they do not know where it will go through. He stated in this area of question, this tower will produce signal and as cell phones in that area receive that signal, they will be able to place a 911 call and without that signal, they cannot. He further explained if they send a message out to them, (i.e. "Code Red"), then they can receive it and without the signal, they cannot; and if public safety users such as himself were to get a text message from dispatch that compliments his voice pager to tell him that there is a structure fire in that area, if he is in that area and has no cell phone service, he will not get that call.
- 143.3 C. Clark asked Mr. Luther whether or not he could tell her this area has cell phone service or not right now, noting that the mortality rate should be very high in that area if they do not; to which Mr. Luther responded that he did not know what their grade of service is there.
- 143.4 C. Clark stated that she has not heard that they are without 911 or emergency response in that area and she has driven out there a couple of times and had a good cell phone read.
- 143.5 A. Harbison asked if there was anyone from AT&T at the meeting tonight because they are the ones who are going to put an antenna on this cell phone tower and they are the people who can give the court the information they need. Without AT&T's input, she stated she did not know how they could make a good decision.
- 143.6 Dave Reynolds of Smith Communications stated that there was a letter in the packets from AT&T designating them as their representative and he may be able to answer any questions the court has about the maps, etc.
- 143.7 J. Mardis stated that he has family with property west of this site and you do lose cell phone service pretty quickly when you get west of this area and as you travel south of Prairie Grove after this site. He noted that there is service right at the site, but a mile or so down the road you will lose it.

Minutes of the Special Meeting of the
Washington County Quorum Court
June 24, 2013
Page 5

- 144.1 John Luther added that this is something that they have encountered that it is not always the location where the product sits and with topography being what it is, when they find a location for public safety radio on a mountain top, it is to cover another area. He further reported that the county is currently in the process of looking at their own public safety system and will probably have to have a tower site themselves because they cannot cover everywhere with what they have.
- 144.2 J. Mardis noted that it is how that highway runs and when you drive south that is where the issue is.
- 144.3 Mr. Luther stated with a GPS, as you degrade service, the signal is skewed. He gave an example in Franklin County where there is a lot of National Forest, people wind up lost because their GPS gave them poor directions.
- 144.4 J. Mardis stated that he was not at the first meeting but it is his understanding that they have a window of about one-quarter mile to set this tower. His understanding from the Planning Board is that the application is for the site where it is and it sounds from what everyone is saying, if they can move the site more southerly or in a different location, that would be more acceptable to folks.
- 144.5 J. Mardis noted when the original proposal was made, they had already picked a site and spent money to do surveys, etc., and then the public finds out about it which is when the appeal process started. He stated that he is conflicted with this because everyone would probably like to have better service out there, but the location is not satisfactory for this group of people and if they move this cell tower site, this causes problems for the other entities involved.
- 144.6 C. Clark concurred with Mr. Luther stating that she will keep her remarks specific to this exact cell tower in this exact location and this is where she has issues – with the exact location of this cell tower. She reiterated that she has been out to this site and the proposed tower will be larger than the one that looks like a tree on Crossover Road in Fayetteville.
- 144.7 C. Clark addressed the Federal regulation that the County cannot deny an application because another company has coverage to this area, stating that she has seen something that contradicts that statement.
- 144.8 County Attorney George Butler pointed out that the Federal law also applies to State law and they look at the County's ordinance and want to know what criteria was used if it is turned down and we wind up in Federal court. He explained whether or not the cell tower is needed or not is not one of the

Minutes of the Special Meeting of the
Washington County Quorum Court
June 24, 2013
Page 6

criteria in the County's ordinance which is designed for all kinds of development, not just cell towers, but for a subdivision, quarry, etc.

- 145.1 C. Clark stated that they may need to look more specifically at their cell towers; to which Attorney Butler responded that is not really an issue as far as their ordinance is concerned.
- 145.2 County Attorney George Butler stated that before the Quorum Court votes on this matter, it will be very critical particularly if turned down and goes to Federal Court, they will need to say specifically why they are turning it down and point to the specific provision in our ordinance as to why it is being turned down. He stated that the Federal Statute says if a site is turned down, the evidence must be substantial and be in writing the reasons why the members voted the way they did.
- 145.3 J. Patterson stated that he is questioning why the tower cannot be placed on a hill about a quarter mile west of this location. He stated he realizes that moving it would place it farther away from some towers, but would be closer to other towers. He stated that the terrain will affect a lot of it and questioned why moving it slightly would be a problem.
- 145.4 Ms. Richey responded to J. Patterson and referred to a map, stating that straight west of this site is all flood plain and while technically it could be moved if all regulations were met, she doubts that they would want to place a tower in a flood plain and they would be very hesitant to recommend it. She further stated that the applicant can probably answer many of the questions being posed because they are talking about making calls on radio frequency engineering which is how they site their towers. Beyond that, she stated that they have the constraints of particular networks, different carriers and what they need. She stated that they cannot bias on coverage that one carrier has and another does not, so this is a very complex issue. Ms. Richey concurred with Attorney Butler, stating that they are trying to do is figure out how to site someone's business for them and she doesn't believe that they have all the information, the radio frequency engineering or proprietary information for the different networks of carriers to make that work and their code doesn't call for it. She stated that they just need to concentrate on whether or not this site works for our conditional use application and whether it meets the criteria or not and state why it does not.
- 145.5 Ms. Richey stated that the appellants did propose a couple of alternative sites and any movement away from the proposed site would require a new application. Beyond that, the sites proposed were all on different parcels and would require completely different notification and those folks are probably not at this meeting tonight. She further pointed out that they can place other

Minutes of the Special Meeting of the
Washington County Quorum Court
June 24, 2013
Page 7

conditions on this tower tonight, but a condition cannot be another location and if that is what they believe, they need to just vote against this location.

- 146.1 B. Pond stated that there may be some questioning the county's tower site regulations, and pointed out that they cannot place in their regulations a way that they can determine a developer's or private individual's or private business' need. He pointed out that since AT&T is willing to spend several hundred dollars a month to have an antenna on that tower at that location tells him that they have determined some kind of a need. He stated that he takes some issue with them discussing at this meeting that they have some kind of problem with their regulations because a lot of people spend a lot of hours putting these regulations together and many of those people do not like the sight of a cell tower and got involved in this process because they did not want a cell tower next door to them.
- 146.2 B. Fitzpatrick stated that she trusts that AT&T does not want to spend any money that they do not have to and trusts that they would not say that they needed a tower at a specific site if they did not need it and further that AT&T passed this off to a third party because they wanted someone else to do the maintenance. She stated that she wants to go over her understanding of how this tower got sited the way it did and make sure she is correct in her understanding that when AT&T was going to do this themselves, they got an option for a piece of property at the end of some chicken houses belonging to the neighbor. When they decided not to do it for themselves, that option went away and the neighbors decided they didn't want to do that after all and approached the neighbor who agreed to place it on his property. She stated that they started from that optimal place at the end of chicken houses and essentially sunk the first set of supports where the guy-wires would go from and in order to have the other two 120 degrees each way with the tower in the center which is as close to the optimal place as they could.
- 146.3 In response to B. Fitzpatrick's understanding of how this tower was sited, Dave Reynolds of Smith Communications stated that she was right on in her explanation.
- 146.4 R. Bailey stated that he concurs with J. Patterson and is pretty big on property rights but sometimes you get in situations where you wonder where your rights end and begin. He is struggling in this case between property rights and compatibility.
- 146.5 R. Cochran asked that County Attorney George Butler review the criteria for allowance of conditional uses with the Quorum Court prior to the presentations for and against this project and then against afterwards so that these specific criteria are fresh in their minds. He further stated that he would

like them to focus on the facts of how their conditional use permit ordinance weighs so that they can make the best decision possible.

- 147.1 A. Harbison stated that they are here tonight because they have a CUP that went before the Planning Board and was approved and the optimal position is probably where it has been sited, but we also learned that the optimal line could be within one quarter mile of that site. The reasoning for not wanting to move it is that they would have to start all over again and they have already spent \$10,000 which is unfortunate. However, they are looking at whether it is compatible and although it is very important, a cell tower is a huge structure and she believes that they need to look at the area that it can be placed and not the optimal location. She had hoped that this would be solved before tonight, but apparently they want to stick with an optimal location instead of a reasonable location. She is a big property rights person and they are there to determine whether this CUP is compatible and whether it can be moved to make it more compatible.
- 147.2 J. Firmin asked what this property owned by Mr. Storm can be used for; to which Ms. Richey responded that the property is zoned for agricultural to include a small family farm with different types of livestock, traditional commercial chicken, dairy or hog farm, kennels are allowed by right, and rural crop farming. She further stated that it is also zoned as single-family residential.
- 147.3 In response to a question from C. Clark, County Attorney George Butler stated that there are administrative requirements for a cell tower, but that comes later on if they get their conditional use permit.
- 147.4 Ms. Richey added that they are not looking at that tonight, but that will be step two in the process if they obtain the conditional use permit.
- 147.5 **Presentation by the Applicant in Support of the Project:** Dave Reynolds of Smith Communications, LLC, addressed the Quorum Court stating that Smith Communications, LLC and Smith Two-Way Radio has been in business since 1929, is a third-generation family-owned business for which he has worked 15 years and is one of the newer employees. He explained that Smith Communications, LLC is constructing a series of wireless communication facilities in order to improve the existing cellular service in Central and Western Washington County. He stated that by bringing new wireless facilities and infrastructure to the area, Smith Communications will improve existing services by providing an effective platform for new services to the uncovered areas. This site and others in Washington County at Jackson Highway and Summers have recently gone through this same process and were approved by this body last month. Mr. Reynolds stated

Minutes of the Special Meeting of the
Washington County Quorum Court
June 24, 2013
Page 9

that their design will work with existing facilities and provide better and more reliable coverage overall, and this specific site in Prairie Grove will work to strengthen the existing coverage in that area. He stated that AT&T authorized Smith Communications, LLC to present this to the Quorum Court and they have worked diligently with them everyday to get this right.

- 148.1 Mr. Reynolds explained that this facility will be a 300 foot tall guyed tower and with this conditional use, it is 700 feet off of Storms Road and over 1100 feet from the nearest residence. He stated that they have pictures of the Summers/Cincinnati tower site that was recently constructed a few weeks ago is the exact same size, model and make tower as the one that they are proposing for this site. He noted that this project has received FAA and FCC approval, and Department of the Interior, along with numerous approvals that it takes to get to this point. Mr. Reynolds stated that the applicant has supplied any and all information that the Planning Staff has requested in this process. He stated that there are some things that are proprietary to AT&T that they cannot share, but they can answer questions about this specific site and the specific maps he has provided.
- 148.2 Mr. Reynolds reviewed that this project has been approved by the Washington County Planning and Zoning Board of Adjustments and forwarded to this Quorum Court to ratify the CUP with staff recommendation for approval. He stated that this project was submitted by Smith Communications and they feel that construction of the facility at this location would have minimal impact to the surrounding area while providing greatly improved service to that area of Washington County. He stated that they ask that the Quorum Court ratify this Conditional Use Permit with the conditions as presented by staff.
- 148.3 Mr. Reynolds referred to a technical diagram of the tower stating that it is a 300 ft. tower and is 36 inches wide and the foundation layout that the engineering company designed to go with this tower at this specific location. He noted that the anchors holding the tower are buried about 12 feet down and contain about 10 yards of concrete each.
- 148.4 Mr. Reynolds stated in response to questions raised at the last meeting about ice and wind loading and what the standard was for this tower. Since the development of the Washington County ordinance says it must comply with the latest standards for building towers (G standard) and then later in the ordinance it says it must be able to withstand a 70 mph wind and ½ inch of ice (F standard). He noted that this tower is certified by Sabre's senior design engineer that this tower meets both F and G standards; meeting all standards for construction and strength of a tower. He reiterated that if a catastrophic wind event caused one of these towers to fall, it does not fall like a tree, but

Minutes of the Special Meeting of the
Washington County Quorum Court
June 24, 2013
Page 10

are designed with weight distribution of the guyed wires to the ground, to basically collapse on itself in a very small radius.

- 149.1 Mr. Reynolds referred to a couple of letters from Mr. Lowell Jones, AT&T's Senior Manager-Real Estate/Construction for Arkansas, regarding this tower site and that they understand that these are difficult decisions and that they are here to answer questions.
- 149.2 R. Bailey asked whether or not it was unusual for AT&T to give Smith Communications authority to do this; to which Mr. Reynolds stated that it was not at all unusual and in fact have another one before the Fayetteville City Council at this time.
- 149.3 Mr. Reynolds reviewed maps showing current signal quality of the area, signal quality of area with proposed site, and a Google map listing latitude and longitude. The maps showed areas where you cannot send or receive a call or message with the current signal as compared to the signal quality with the proposed tower.
- 149.4 In response to a question from B. Pond as to what direction Hogeye was from this proposed site; Mr. Reynolds stated that it was to the south of the site. B. Pond stated that he has heard it said several times that this tower was to benefit Hogeye; to which Mr. Reynolds stated that there have been several calls from the Hogeye area regarding poor cell coverage.
- 149.5 Mr. Reynolds showed several pictures of the cell tower constructed at Summers, Arkansas, that sits 1200 feet off of Highway 59 that they just completed about 3 weeks ago and this is the exact same tower being proposed. He further stated that the owner of a house shown in the picture does not own the land that the tower was constructed on and he wanted the tower there and gave a legal easement through his property to access that tower. Mr. Reynolds noted that it is pretty hard to spot that tower in these photos. He showed a map generated by Satterfield Land Surveying from the center of the tower to all the surrounding significant structures anywhere from 299 feet from the chicken houses and residences ranging anywhere from 2400 to 1100 feet away from the tower, reflecting the view that those residences would have. He reviewed a Google map that showed the top of the tower 13 degrees above the horizon from the Scott's home, and a picture of the actual tower superimposed on a photograph and compared it to what the proposed tower would look like from the Scott's home.
- 149.6 C. Clark stated that the picture Mr. Reynolds is showing is from the front of the Scott's house and she stood on their back porch and noted that this tower will be very visible and a sore thumb to them. She referred to the pictures

Minutes of the Special Meeting of the
Washington County Quorum Court
June 24, 2013
Page 11

showing poultry houses that Mr. Reynolds verified were inactive and stood 220 feet from a 305 feet tower with guyed wires and further stated in a catastrophic event, that the tower would not fall over on those houses. C. Clark further verified that all of the pictures that Mr. Reynolds was showing were from the street of the surrounding homes and none from the back yards, but some were taken from the tower site toward the back yards of surrounding homes. She stated that this tower will be the largest that she has been involved in approving and there are no camouflaging requirements in the county like Fayetteville has.

- 150.1 C. Clark asked if AT&T would have the only pods on this tower; to which Mr. Reynolds stated that right now it was open and there was the potential for up to four pods.
- 150.2 Mr. Reynolds further showed pictures reflecting a correct perspective of a shorter 50 foot tower that was more visible to the existing houses appearing much taller than the 300 foot tower that was 1200 feet away from houses.
- 150.3 R. Cochran questioned the picture shown of the Anderson home stating that he did not understand this perspective; to which Mr. Reynolds explained that it is accurate to height only.
- 150.4 Mr. Reynolds showed pictures of stating that they chose a location that meets every setback requirement that the county has and that meets the administrative review process which is much more stringent than with the normal processes.
- 150.5 E. Madison stated that she knows there has been some discussion about possible alternative locations and she realizes the complications associated with starting over, but questioned what progress had been made in that regard.
- 150.6 Tom Kieklak, Attorney for Smith Communications, responded that they went as far as they were permitted to go by AT&T. They offered what they could as an alternative but that was rejected. Smith Communications went to AT&T and said that they understood that towers already in existence could not be moved but asked if there was anything, engineering wise, that they could do to give more distance. AT&T thought that the coverage map was still accurate, but reluctantly offered the maximum that they could which was a couple hundred feet west and south. Basically, it was in the far corner of where AT&T permitted them to go.
- 150.7 E. Madison stated that the map that showed parcels on the other side of this particular property had no comment and asked if there were residences on those parcels; to which Juliet Richey indicated that there were.

Minutes of the Special Meeting of the
Washington County Quorum Court
June 24, 2013
Page 12

- 151.1 Mr. Kieklak wanted to clarify that going through this process again is not a barrier. He knows Mr. Butler has a final legal ruling to make on whether the movement of another couple hundred feet would trigger a new process, but even if it was triggered and they had to do it again, that is not a barrier. It was when they had to notify another dozen or twenty or thirty people that there was a concern because they would have to come right back to the Quorum Court again in a year with the same issues. This would not be beneficial since the same exact questions are being answered. He stated that going through the process again or spending money on the process is not a barrier. It is simply the engineering.
- 151.2 R. Aman asked who else would be affected if they did move the tower and stated that he had talked to Mr. Gifford and Mr. Gifford does not care where it goes; to which Tom Kieklak replied that the limits of movement are on the same parcel. Even if it were to go farther south, that property is not available to AT&T. He further explained that no other new persons would be affected by the regulations to have to be notified as it is the same people who are neighbors.
- 151.3 In response to a question from M. Spears, Mr. Kieklak stated that the homeowners are rejecting the possible new site and Smith Communications has rejected some of what the appellants have offered as well.
- 151.4 R. Cochran stated that his understanding is that they could move the tower up to ¼-mile (1200 feet) and still be in an optimal range; to which Mr. Reynolds responded that they must work within a box that is about 600 feet either side of the center (1200 feet) and about 400 feet each side of it.
- 151.5 A. Harbison asked how close the box is to Storms Road and if it could be moved south where Storms Road is located; to which Mr. Reynolds responded that south of Storms Road was mentioned but AT&T could not use it.
- 151.6 A. Harbison stated that Storms Road was within distance that they were given at the last meeting when they referred to the radius of the center; the field has shrunk compared to what they were told before. She stated that they need evidence because information was not in the letter from AT&T about where it can be sited.
- 151.7 J. Mardis stated that he wasn't at the last meeting, but watched the video and A. Harbison very clearly asked what the radius was and was told that it was ¼ mile and he assumes that it is ¼ mile from the original point and based on that, they understood from AT&T's point of view, they could move the site ¼ mile south or in any radius and now he is saying that is not correct.

Minutes of the Special Meeting of the
Washington County Quorum Court
June 24, 2013
Page 13

- 152.1 Mr. Reynolds responded that he believes that was the way that they explained it, but that is incorrect as it is not a 1200 foot radius but a box.
- 152.2 J. Mardis stated so 600 feet from that site marked gets them to an alternative site; to which Mr. Reynolds responded that this was one of the sites worked with the appellants on and then they proposed an alternative site that put them to their southwest limits.
- 152.3 H. Bowman asked if when this process began whether they were aware that there was considerable opposition to the placement of the tower; to which Mr. Reynolds stated that this process began in 2006 and they were not aware of the opposition.
- 152.4 H. Bowman asked if they were aware of any opposition after they repositioned the tower on Storm's property; to which Mr. Reynolds responded that through the FCC notification process, they are required to run ads in the newspaper and there was no negative response to the placement of the tower at that time from anyone, including government agencies or neighbors, other than Mr. Anderson had decided not to renew his option. He further explained that the neighbors received notification once Washington County started its process.
- 152.5 H. Bowman asked if this happened before all of the technical exploration and geology studies had taken place; to which Mr. Reynolds responded that it all happened at the same time because they had to complete one step in order to get to the next.
- 152.6 H. Bowman stated that he finds himself in a very tough position because he is a very strong believer in property rights, but he is also very opposed to seeing huge corporations come in and exert their will and not regard the neighbors. He is in favor of Mr. Storm using his property like he wants, but believes that AT&T should be considerate of the neighbors and try to accommodate whatever concerns they have and not to minimize their rights.
- 152.7 Mr. Reynolds stated that he completely understands and appreciates this and is why Smith Communications wants the location they pick to meet every setback, requirement, is in excess of everything that the county requires of a cell tower.
- 152.8 In response to a question from C. Clark, Mr. Reynolds stated that they do a lot of towers and when they place the notifications in the newspaper as required by federal agencies, they do not at that point receive feedback from the neighbors, but that occurs once notification is made by the County.

Minutes of the Special Meeting of the
Washington County Quorum Court
June 24, 2013
Page 14

- 153.1 In response to a question from C. Clark, Mr. Reynolds stated that AT&T is going to put one antenna array on this tower, but they can place as many as four antenna arrays on a tower and the ones used by AT&T are approximately 8 feet tall, 1 foot wide, and 6 inches deep and the pictures they were shown did not include any antennas. He further stated that while this does add to the visual impact of the overall tower, but antenna arrays are not included with this permit and come separately and are viewed independently.
- 153.2 C. Clark stated that H. Bowman made a very valid point that technically, the applicant has met all regulations, but there is a compatibility issue and for her this goes straight into the neighbor's perspective. She stated that a few years ago her neighbor decided that he wanted a bird sanctuary and proceeded to push all of his dead trees, bushes and limbs onto her property line, and this bird sanctuary has now become a habitat for skunks and her puppy "got skunked" for the third time last night in his own back yard behind a fence and this is not overly neighborly to her. She said that they are now discussing whether this fits the description of what he might be permitted to do by Fayetteville code, but they have not had a skunk problem in 8 years until last year. She stated that while her neighbor exercised his rights with his property, this has had quite an impact on her quality of life and she cannot separate this from the consideration before them tonight. C. Clark stated that she does not want the neighbors of this proposed cell tower to go to any extremes to try to protect their view or quality of life. She noted that she was under the same impression that J. Mardis had when he reviewed the last meeting, that there was much more latitude in terms of where they could move this tower and that there would likely be a compromise, but she now sees that the compromise window has whittled a little bit.
- 153.3 C. Clark asked if this body can waive the fees or other considerations if the applicant has to go back and propose a new location; to which County Attorney George Butler responded that this would only be possible by ordinance.
- 153.4 C. Clark stated that she believes that quality of life is a very important factor and she did visit the back yards of several of these neighbors to the proposed tower site. She stated that the existing cell tower on Crossover keeps coming to mind because the proposed tower is bigger than that with guyed-wires and the pictures presented don't even have the antenna arrays showing. Further, she noted that of course the manufacturer of this style of tower is going to say that they are the safest available. As far as notification, she believes that people do not complain until they receive an official looking letter because not everybody reads the newspaper.

Minutes of the Special Meeting of the
Washington County Quorum Court
June 24, 2013
Page 15

- 154.1 J. Mardis stated that he has worked for a big corporation in the past and they had issues like this sometimes when relocating, but the problem he finds himself in with this situation is that even though they followed all the rules and regulations on this, the fact that they are not required to notify neighboring property owners sooner than they do sets a bad precedent and that is how they come to a situation with an appeal and the discussions that they are having tonight.
- 154.2 B. Pond stated that since it was touched on by other members of the court, he is curious as to how many of the towers constructed by Smith Communication have fallen; to which Mike Smith, owner of Smith Communications and Smith Two-Way Radio, responded that he has constructed over 100 structures and none of them have fallen.
- 154.3 B. Pond further asked Mr. Smith how much money they have spent so far in the process of acquiring this cell tower site, to which he responded with engineering and attorney fees, they have spent around \$25,000 to date and if the Quorum Court votes against this CUP, the cost to them to start over would be every bit this same amount.
- 154.4 B. Ussery stated that AT&T is just saying what they need, and Smith Communications is just a small business trying to do what both parties want to do and that is a tough spot. He understands and appreciates that but wanted to clarify that it is not the Quorum Court against a big corporation.
- 154.5 **A recess was taken at this time.**
- 154.6 **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 appellants, Kathy and Jerry Caudle, Cathy and Gary Scott, and Mike and Jessica Anderson. With respect to the comments made about the cost of restarting this process and the figure given of \$25,000, Smith Communications made a business decision to not notify the neighboring landowners on the front end before they spent that kind of money and sometimes there are consequences to decisions. He stated for the record that they assert that this appeal is not properly before the Quorum Court because they feel like that 7 out of 7 of the Planning Board members needed to pass a vote or recuse according to Section 11-201.
- 154.7 Mr. Brown stated that he had a lot of interest in the photographs shown by Mr. Reynolds, showing his own picture of the view from the Scott's back porch. He stated that he is unaware of the software used by Mr. Reynolds in his presentation and how he superimposed anything, but believes that the good news is that nearly everyone concerned has been out to this site and have

Minutes of the Special Meeting of the
Washington County Quorum Court
June 24, 2013
Page 16

seen with their own eyes what this area looks like, so the pictures are secondary because they all know how close this proposed cell tower is to his clients' property line. He showed a picture of the Storms' property, a 404 acre tract according to the sign has been for sale and a picture of the cell tower located at Crossover on Highway 265 that is 150 feet tall, noting that the proposed cell tower is 300 feet tall and as he understands, 20 feet can be added for lightning rods, etc. making it an incredibly larger structure. Further, for perspective, he pointed out that there would be guy-wires coming off of the proposed tower which are an eyesore as well.

- 155.1 Mr. Brown stated that the most important words that the Quorum Court is going to hear tonight in the appellants' opinion are not anything that has been spoken that is not written. He referred to the written ordinance 11-200 that was passed out is Washington County law and what the court must follow for criteria in making their decision. He noted that his clients hired him and he has been trained as has Mr. Butler and when they get a case like this, they want to know what the law is, followed by the facts of the case, and frankly anything other than that is irrelevant. He referred to Mr. Butler's statement that there is no mention of the need for 911 in the criteria for allowance of conditional uses in Sec. 11-200. Mr. Brown read from the minutes that were approved at the second reading of this ordinance, "County Attorney George Butler noted the need for this tower is not a factor in their ordinance." He stated that his clients simply ask the Quorum Court to stick to the ordinance, stick to the criteria, and they believe if they follow this criteria and the facts, it will lead them to the conclusion that the applicant has not made the sufficient case to grant a conditional use permit under Washington County law.
- 155.2 Mr. Brown stated that everyone would agree that better 911 cell coverage is a good thing and they are not disputing that, but there are some issues related to this that are troubling. He referred to a letter he sent to the Quorum Court that included the application and certification that Mr. Reynolds signed in January of 2013 wherein he says that this tower is not going to be used for 911 services and he took him at his word. He realizes that things may have changed, but when this process started, 911 was not going to be addressed by this tower and he sees this as important because it was that certification that started this whole process.
- 155.3 Mr. Brown referred to the voice coverage legend from AT&T that was submitted by the applicant early on and noted that they presented new maps tonight. He stated that it was important to talk apples and oranges here, referring to the voice coverage legend that by all accounts is best, moderate or good on submission by the applicant compared to the map presented tonight titled Current Signal Quality. He stated that the voice coverage legend as submitted by AT&T's own map shows that this entire area is best,

moderate or good and therefore, there is no evidence before this body that cell phone service, including 911 services, needs to be enhanced. He stated that he is not disputing what the current signal quality shows, but to him voice coverage and signal are two different things.

- 156.1 Mr. Brown stated that he is unaware of any single instance where a citizen or visitor of this County has complained to the 911 department that they could not get 911 services from this area and therefore, is an indication that 911 services is adequate in this area. All of this being said, that is not a part of this conditional use criteria, but he had to address it because it is front and center in this room.
- 156.2 Secondly, with respect to alternative sites, Mr. Brown stated that B. Fitzpatrick alluded to some of the court members that AT&T will spend whatever to get optimal coverage and he does not dispute that. However, they also know that there are business deals involved here and would be speculating, but we do not know what AT&T would have to pay Mr. Storms for an option on his property vs. what he would have to pay Mr. Giffords ½ mile behind this property for an easement. Mr. Brown stated to say that AT&T picked only this site is a function of numerous things, like how cheap and fast they can get it and he does not believe it is correct to say this is the only site because there are other alternatives out there, namely the Gifford's property which is about ½ mile behind the appellants' property.
- 156.3 Mr. Brown stated in his mind AT&T is sophisticated with all of their satellite imagery and all the ways they can find where the best spot is, but with that being said, the way his mind would work is that AT&T's through their Satellite Imagery Engineering Department would come to the conclusion that these particular spots will work and if they will work, then they would send out a field representative to speak to the landowners, and thereafter, if the landowners are onboard with it, then they would stake out where the tower could go. He stated that Mr. Giffords wrote a letter to this court stating that he met with a man named Larry Price and according to Mr. Giffords, Mr. Price told him that if the Storms tower does not go through, it can go on his property. Mr. Brown referred to a picture provided by Mr. Giffords that show stakes representative of AT&T put up on his property where this tower could go, according to Mr. Giffords, if it did not get approved on the Storms' property. He stated that there is evidence that there are other suitable locations and the fact that AT&T and/or Smith Communications invested a whole lot of money before sending a direct notification letters is a business decision that they made because these landowners could have been notified early on for any objections and that wasn't done.

Minutes of the Special Meeting of the
Washington County Quorum Court
June 24, 2013
Page 18

- 157.1 Mr. Brown stated that in addition to his clients and other folks who have taken the time out of their day to be at these meetings, he presented a list of neighbors and landowners who it is his understanding were notified and opposed to this project.
- 157.2 Ms. Richey responded to Mr. Brown stating that they were all opposed, but not necessarily notified.
- 157.3 In response to a request, the Giffords' property was noted on a map in relation to the proposed site.
- 157.4 Finally, Mr. Brown addressed property rights, stating that he understands that people in general should be able to do with their property what they want to, but Washington County has already addressed and passed ordinances affecting that which is why they have zoning in this county and in cities. He stated that you cannot as a matter of law, just do what you want on your property, but rather have to go through processes like this. Therefore, you can still be in favor of property rights and still go on the side of his clients, because they have equal property rights to use and enjoy their property and that is simply what this boils down for them. He stated that his clients are active on their property with livestock and they have the right to use and enjoy their property. He stated that Ms. Scott does not want to drink coffee on her back porch with this cell phone tower on that property for the rest of her days. Mr. Brown stated that is what this is all about for his clients and why they are so passionate and tenacious about it because they cannot live with this having invested their savings and lives a lot around the certainty that the Quorum Court and the ordinances they have passed allow them to do.
- 157.5 Mr. Brown addressed the criteria for allowance of conditional uses, stating that his clients simply request that the Quorum Court enforce its own law and this law requires that they not just consider or ponder, but shall find that such criteria are met. He referred to (a)(3) on the list of criteria, "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 stated that their problem with this is that they are very close, 465 feet from a flood plain which translates into about 155 yards and his clients do not think that it is good public policy or decision making to put a cell phone tower about ½ football field away from a flood plain when there are other locations such as the Gifford's property. He pointed out that they would have to redo swales out there and change the topography, raising the pad from where it was originally proposed if approved and these things are done to guard against flooding. Mr. Brown stated that he knows there has been an engineer on this site, but he believes there are some serious questions that need to be answered about whether it is wise to put a cell phone tower so close to a known flood plain recognized by FEMA.

Minutes of the Special Meeting of the
Washington County Quorum Court
June 24, 2013
Page 19

- 158.1 Mr. Brown stated that they have some information from a technical scientist about soil testing and they have analysis, but they do not have interpretation of that data. He stated that they dug into the ground and in several holes where the guyed wires were going to be and ran into ground water and he does not know if that is good or bad and they do not have anyone to tell them what that means. He stated that he believes these questions need to be answered certainly before the county can find that adequate utilities, roads, and drainages have been met and if those answers are not before this court, he would submit that they cannot consider it as part of their finding.
- 158.2 Mr. Brown addressed (a)(4) of the criteria, "That the proposed use is compatible with the surrounding area." He pointed out that during Mr. Reynolds' presentation, he did not go through these criteria with the court and he respectfully believes that he cannot make the case based on what is before this court that these criteria are satisfied. He stated that he is making the case that the criteria are not satisfied; no more so than the proposed use is compatible with the surrounding area. A 320 foot tall cell tower is not compatible with agricultural or residential zoned land and 911 coverage is not part of that equation. It would be a 320 foot eyesore.
- 158.3 Mr. Brown addressed (a)(5) of the criteria, "That establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare." He stated that one thing that has troubled him in this process is that County Code Section 11-311 states, "By making an application hereunder, applicant agrees to regularly maintain and keep in a reasonably safe and workmanlike manner all towers, antenna arrays, fences and outbuildings owned by applicant which are located in the County. Applicant further agrees to conduct inspections of all such facilities not less frequently than every twelve (12) months. Applicant agrees that said inspections shall be conducted by one (1) or more designated persons holding a combination of education and experience so that they are reasonably capable of identifying functional problems with the facilities." He reported that they have asked in FOI for information they received from Smith Communications that the towers that have already been approved and been up for years are safe, and there is nothing in the file according to the FOI response. He noted that the Planning Staff responded in a letter that they do not want to require Smith Communications to incur additional expense, but the ordinance itself says that by virtue of getting a tower, they have to do these things. He stated that the bottom line for his clients is that before they approve another tower, let's make sure that the ones already in the county are safe because it was seen fit and wise to pass a law that required an annual inspection; however, he has no information that this has ever been done with any tower that Smith Communications has. He gave the analogy of never inspecting a runway unless you have an issue with a plane taking off.

Minutes of the Special Meeting of the
Washington County Quorum Court
June 24, 2013
Page 20

- 159.1 Mr. Brown noted from criteria (a)(5), that the "comfort or general welfare" of the neighbors to this proposed cell tower is at stake here and only if they find that this tower will not be detrimental, can they even lawfully vote to approve the tower.
- 159.2 Mr. Brown addressed (a)(6) of the criteria, "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 area." He stated that clearly the conditional use of a cell phone tower will be injurious to the use and enjoyment of his clients' properties and other neighbors.
- 159.3 Mr. Brown addressed (a)(7) of the criteria, "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." The zone is agricultural/residential. He stated that a 320 foot cell tower may cause a problem facilitating the normal and orderly development of the area in that zone and further cuts against approving this CUP.
- 159.4 In summary, Mr. Brown stated that the criteria set out in (a)(4), (a)(5), (a)(6), and (a)(7) all go against this conditional use and there is no evidence to find that this goes in favor of the applicant in this situation. He urged the Quorum Court to let the criteria for allowance of conditional uses in Sec. 11-200 be their guide because it is the law. He noted that neither the applicants nor their representatives will have to live with the effects of this cell tower, but it directly affects his clients who will have to live with it.
- 159.5 C. Clark pointed out that Mr. Brown is not working pro-bono and whereas Smith Communications and AT&T may lose some money. Mr. Brown is working for six middle-class couples who want to preserve their quality of life, and win or lose they will be paying Mr. Brown. She stated that the financial argument goes both ways and when she was on the Fayetteville Planning Commission, she saw many cases where objections did not come for large scale development projects including cell towers because they could not afford representation and were afraid of the process. Further, she stated that Smith Communications can bill AT&T for his losses on this project.
- 159.6 Mr. Brown addressed Mr. Reynolds' statements about the FTC and Archeological Society, etc. all approved of this project, this Quorum Court is here to apply Sec. 11-200 to a conditional use granted in this County and he does not believe that the federal bodies and regulations were doing the same thing.

Minutes of the Special Meeting of the
Washington County Quorum Court
June 24, 2013
Page 21

- 160.1 B. Pond stated that he does not believe that Mr. Smith can bill AT&T for his loses on this development. He stated that he does not know when the 911 issue came up, but the way that he was informed that this could be used for 911, was another tool for triangulation to locate somebody that called in. He noted that Mr. Brown has mentioned 911 a few times and he asked if this CUP was approved and the tower went up, if there was an accident in that area and they called 911, would it be possible that this tower would be the one that picked up the call.
- 160.2 Mr. Brown responded to B. Pond stating that he was not a radio frequency engineer and cannot answer his question definitively or competently, but he does recall at the last meeting there was some discussion about whether the ¼ mile buffer that could be used was shrunk down from what they heard tonight. However, his recollection is that for the triangulation, the towers needed to be of the same height to triangulate or connect to one another. He stated that from what he and his clients have found on the internet, the distance or buffer that they are talking about is the height, and using the same above mean sea level was quite a bit different from this proposed tower than the ones that we understand that they are trying to triangulate with. Mr. Brown stated in light of the information that they provided staff, he has not heard that those calculations were incorrect and there is a good chance that this tower will not triangulate with those particular towers that were referenced at the last meeting. He further stated that they have no information that there has been a problem in this area with 911 services.
- 160.3 J. Mardis responded to Mr. Brown stating that he is an environmental engineer and he has already spoken his concern about the notification side of this, but based on what Mr. Brown has just presented to them, he is not sure that they would ever approve any project or program in this county because they are looking for absolute things. He stated his concern when talking about property rights, if they push the issue of being within ½ to 1 mile of a flood plain, they will just continue to diminish the property of anybody and what they can do with their property. He stated this is why the county has regulations and a process to follow and he believes it is pretty rigorous what Juliet Richey and her group go through in order to get to this point. From his standpoint, they have had to do federal reviews on properties and when the state is not delegated to do that, you have to fall back to EPA regulations to do that and this is a very rigorous thing where a state or federal agency basically signs off on it. He stated that he would hope that these folks are experts because we are paying them as if they are experts. He stated that they have gone through the process and met that requirement and his concern with Mr. Brown's discussion is that there has not been more on the idea of looking at a better location, but from what he has said, it does not sound like any better location is not on this property.

Minutes of the Special Meeting of the
Washington County Quorum Court
June 24, 2013
Page 22

- 161.1 Mr. Brown responded that his clients' problem primarily is the view because in this case they are dealing with a 300 plus foot cell phone tower. He understands that there are other ways to do this to get the same effect and be less intrusive on aesthetics and view. If a silo came before them that was not going to stick up 300 feet in the air, he is not sure what his clients' would say, but that is something that would be less traumatic on their view. He stated that there are things that they could live with because they passed the criteria of 11-200, but it is just not this proposed tower at 300 feet in this location. In response to what they have tried to do, he stated that they have proposed a couple of locations right over the access road before turning right to go down Storms Road as alternatives which is out of their view; however, they were told by Smith Communications through Mr. Kieklak that this would not work.
- 161.2 J. Mardis stated that once again, Mr. Brown is protecting his clients' property rights, but they are setting up a scenario where the only thing that would work is to go to someone else's property which is way beyond the scope of what they are trying to do at this meeting.
- 161.3 Mr. Brown responded that he is talking about the Gifford property and he does not know what the other neighbors would do. The Gifford's are not at the meeting tonight but have written a letter about their communication with an AT&T representative.
- 161.4 J. Mardis stated that he is not concerned about the other people because they are not going to be able to resolve that tonight, but his concern is basically the only scenario that the appellants are speaking about tonight is that they have to get off of this property which is not his understanding of the complaint.
- 161.5 Mr. Brown responded saying that after the proposal by the Gifford's was rejected, they went back to Smith Communications and asked if they could give them anything on Storms' tract south of Storms Road and were told by AT&T and Smith Communications that this would not work. He stated that they are trying to stay on Storms' property and noted an area that would get out of his clients' view which is their goal.
J. Mardis stated as far as the site location, they just need to accept the information provided by AT&T that this is where the tower needs to be and if that does not work out, then it will be something different. He has driven in this area several times and his phone service goes out quickly when he gets south and west of that site and based on the maps they saw earlier tonight, there are towers toward the Interstate and from a practical standpoint, it makes sense that it needs to be located more in the center and not more towards the Interstate because there is already a tower over there.

Minutes of the Special Meeting of the
Washington County Quorum Court
June 24, 2013
Page 23

- 162.1 Mr. Brown stated that the only thing that they can go by is what the voice coverage map showed with best, moderate and good; and he too has driven out there and he did not have a problem with his cell phone service. He does not know what to say about each individual's story and whether each cell phone is different, but he just knows that the voice coverage maps provided by AT&T do not show any problem with voice coverage.
- 162.2 J. Mardis stated that he disagrees with the points that Mr. Brown has gone through on the technical review of this process and he sometimes struggles when people are not happy with current laws and try to get in a situation to change them in the middle of a process instead approaching their representative who has the legal authority to change a regulation. He states that he believes the planning staff who has been through this process many, many times, has done everything that they were required to do, and that is the problem he has with Mr. Brown's presentation. He did mention that he thinks it is bad public policy not to contact neighbors ahead of time.
- 162.3 Mr. Brown responded to J. Mardis that it is nothing personal and he too believes that the Planning Staff did a good job, but they just disagree with their conclusions in this case.
- 162.4 Planning Director Juliet Richey stated that staff did not redo much of their presentation tonight, but she does want to reiterate that they go through the conditional use permit criteria very thoroughly in their staff report. She stated that it is a little irritating to her to hear Mr. Brown say that no engineering has been presented for this project when truthfully far more than is required at this point has been presented and it would appear that they just have basic disregard for an engineering stance and what that means as a professional. She stated that these are things that they do not take lightly in their office. She stated that they do some outside engineering reviews from time-to-time, but in this case they would have to call in a specialist and she does not feel that at this point in the game, there has been anything untoward in any of the engineering that the applicant has produced. She pointed out that the boring tests are not required at the CUP level, but they asked them to do that to satisfy questions that were asked and it is irritating to her because she feels that they have gone above and beyond normal CUP procedures to get those questions answered.
Ms. Richey addressed the criteria for allowance of conditional uses, noting that the final criteria which Mr. Brown failed to read states, "If it is determined that there exist conditions that could be imposed by the Board that would significantly lessen the impact of the aforesaid, then the Board has the power to impose said conditions which shall be specifically set forth." She noted that this is something that they implement in almost every CUP that they do and this list presented covers an array of things from aesthetics to

Minutes of the Special Meeting of the
Washington County Quorum Court
June 24, 2013
Page 24

multiple technical issues to fire safety, etc. Ms. Richey stated that she can respect that the appellants can disagree with them, but pointed out that they have done a lot of work and research and all of the CUP criteria were considered by staff and presented to the Quorum Court. She further stated that they always encourage applicants to contact property owners ahead of time, but it is not required.

- 163.1 A. Harbison stated her understanding is that since they have gotten to this point and have not found an alternative location, their position is to either vote for or against the CUP at this location. She stated that this is a hard decision for them to make because they have people who would be living right under this tower. She stated that the applicant has done everything that they were supposed to do except really notify and communicate with the neighbors before they did all of the technical work. She stated that everyone would like to see improvement in 911 or in cell coverage in the southeast part of the county because they know that there is not good coverage in this area, and while this tower would improve that to some degree, that is not the issue. She stated that the issue is property rights of those who will be living under this tower and she believes that those property rights need to be considered. A. Harbison stated that they need to send a message for future towers that applicants need to do community work before they put this much money into a project.
- 163.2 J. Patterson stated that he concurs with A. Harbison that the applicants could have done a better job in notifying the neighboring property owners. However, he does not agree with the idea that these towers will fall down if they are not safety inspected every year. He pointed out that this court represents 200,000 people and he does not believe that they can do a lot when they are talking about six families. He stated that he has had property condemned twice in his life in Kansas. Fish & Game took 160 acres, and when they owned land below the Kansas City Power and Light Plant for expansion of the dam, he requested and was approved to keep the family home from being destroyed, so he would like to see this CUP work out. J. Patterson stated that he has a problem with the county getting involved with where the tower is going to go as far as who owns the land.
- 163.3 Dale Brown stated that they will listen to anything AT&T tells them will work on the entire ¼ acre tract, but the best they can tell, they are boxed in right where they have it, give or take a few hundred feet which is right in the appellants line of sight.
- 163.4 C. Clark asked if the Planning Board visited these properties before they met; to which Ms. Richey responded that they did not visit these properties as an organized group, but some members went out on their own.

Minutes of the Special Meeting of the
Washington County Quorum Court
June 24, 2013
Page 25

- 164.1 C. Clark stated that they have heard a variety of arguments, but verified with County Attorney Butler that this court can not look at any other provisions, issues, problems, concerns, or comments other than the seven criteria listed for allowance of conditional uses, and urged them to stay on this criterion.
- 164.2 R. Aman stated that he talked to Mr. Gifford today and he has no problem with this tower being on Storms' property. It would also be great if they could agree to make something work if possible as he is for the tower going up.
- 164.3 B. Pond verified that there is just a little box area where AT&T has indicated this tower would be usable for them, and asked if there was anywhere in that little box where the tower would not be in the appellants' view; to which Mr. Brown responded that he did not believe so stating that AT&T and Smith Communications have rejected all of the alternative sites that they have proposed with the last being the south side of Storms' property just out of his clients' line of sight.
- 164.4 Kathy Caudle, one of the appellants in this case, addressed the Quorum Court stating that they have not been trying to get this tower moved onto Mr. Gifford's property, but rather they have been trying to say if AT&T would go over and build a tower on Mr. Gifford's property, why is Mr. Reynolds saying that this little box is the only place that the tower can be placed.
- 164.5 Cathy Scott, an appellant in this case, addressed the Quorum Court stating that she trains dogs for a living and goes to sheep herding trials and competes on a national level and spends most of her time out in this pasture. She stated that this 300 foot tower will be a lot closer to her everyday than it will be to anybody because she will be out there under it. She stated that they were really trying to find another location and have talked to the neighbors in the area to find out how they feel about it which is one reason they thought that south of Storms Road would be a good compromise. She reported that they received an e-mail this past weekend that they could not move the tower any further west or south than what was proposed, it felt like they had been handcuffed and are unable to make any progress.
- 164.6 Gary Scott, an appellant in this case, addressed the Quorum Court stating that he is a Master Degreed Engineer in the daytime and a sheep farmer in the evenings. He stated that he has spent about 30 years as an engineer, briefly with the electric power industry and for the last 20 years with Pratt and Lambert. He stated that he will be retiring in two weeks and his goal is to live out his life on this property that he has owned for 13 years. He addressed the issue brought up about business risk, stating that his company invests hundreds of millions of dollars in engine development and hopes that somebody buys that engine and this is a business risk that they take. He

Minutes of the Special Meeting of the
Washington County Quorum Court
June 24, 2013
Page 26

stated that there is not a business out there that does not have risks. With regard to prenotification beforehand, he stated while that would be a nice gesture, it is not real or required and there is no way that Smith Communications could have decided who they needed to talk to before they started planning for this project.

- 165.1 Mr. Scott stated as far as the location, his biggest issue is going back to the beginning when the Planning Commission originally approved the CUP, the main reason it was approved due to health concerns for 911 as stated in the minutes, even though it now being stated that it is not for that purpose. Therefore, he sees it as being kind of falsely approved around what was not the purpose of it and of course 911 is going to attach to every tower out there because they will get better coverage every time they do that, so that is not the issue.
- 165.2 Mr. Scott stated that there is not a person in this room who feels stronger about property rights than he does and he is in no way saying that Mr. Storm should not be allowed to put a cell tower on his property no more than he would not expect someone to tell him he could not do something on his property. However, he does want to be considered as he would not want to offend somebody else with something that he is doing. If property rights is the issue, than he does not understand why they need a Planning Commissioner because if a business can come in and just do what they want and there is not an eminent or critical need to support the welfare of this community, then there is nothing to stop them from doing whatever they want and sooner or later, people will have no say in what happens around them and what gets built next to them.
- 165.3 Mr. Scott stated that he has heard the legal side from both sides, the business side, and as a property owner, he is asking the Quorum Court to consider what they will have to look at if this cell tower is constructed. Regarding the pictures shown earlier, he does not believe they were accurate because you can drive down any highway or interstate and see towers a lot farther away than 1100 feet and questioned whether they just took pictures of the tower from 1100, 1340, and 1850 feet. He stated that he is in an industry where they deal with facts that have to be correct.
- 165.4 Mr. Scott noted that a statement was made by the Planning Staff at the last meeting that they felt this tower was compatible to this area and he guesses that must be a personal thing and what is compatible to him may not be compatible to others. He noted that there are cell towers built to look like silos, church steeples, flag poles, or planting trees, so there is something that this court could do to make this more compatible with the area by putting conditions on it for concealment.

Minutes of the Special Meeting of the
Washington County Quorum Court
June 24, 2013
Page 27

- 166.1 Mr. Scott addressed the box stating that he did some research today and of the three towers that they want to link up to, they had been told by Mr. Reynolds that one of the three is the one along the Interstate coming into Fayetteville from Greenland and the other one is out west of Prairie Grove on State Road 402. The proposed cell tower this is approximately six miles from the one west of Prairie Grove and four miles from Greenland so something just does not make sense with their facts or that they could not move it a few hundred feet.
- 166.2 Mr. Scott requested that the Quorum Court consider everything they have heard and that the property owners in no way, shape or form are opposed to denying Mr. Storms' tower, but just want it to be in an agreeable place and if it has to be located in that box, that they conceal it in some manner so that it is compatible with the country.
- 166.3 Judge Edwards stated that she did not believe that Mr. Storms had a problem with where the tower goes up, but rather has made the statement that the tower could go different places on his property. Is the problem not with AT&T; to which Mr. Scott responded that at the last meeting both Mr. Reynolds and Mr. Storms indicated that they would be cooperative with moving the tower ¼ mile. He stated that AT&T in a letter regarding the alternate site proposed was that it was a very restricted area.
- 166.4 E. Madison asked if the maps that Mr. Reynolds showed on the signal coverage were considered within the criteria of 11-200, to which County Attorney George Butler responded he did not see how they are and that goes to the need issue and that is not a criteria in their ordinance.
- 166.5 Mr. Brown stated that his clients just ask that before this Quorum Court casts its vote, to read the criteria and ask what specific information they have that leads them to believe that this is an acceptable use under 11-200.
- 166.6 County Attorney George Butler stated that they will next have reading of the ordinance, motion, deliberation, and 20 minutes of public comment before the Quorum Court votes. He stated because of the way the federal law reads and from cases he has read, anyone who votes "no" or against the ordinance needs to tell him specifically what their reasons are and specifically state which criteria in their ordinance they are relying on in making their decision.
- 166.7 Tom Kieklak, Attorney for the Applicant, addressed the Quorum Court stating there is a letter from AT&T that makes the situation absolutely clear with regard to the Gifford's. He stated that there has been a lot of innuendo and casting doubt, but they have tried to make certain things very clear; they are not to try to move the tower which is utterly irrelevant. He stated that they

made an application that they believe is not only appropriate, but the location has a need for telecommunication providers. He noted with regard to trying to move within that box per the county's instructions, they have been unable to reach an agreement. He pointed out that they have listened to the appellants' comments just now; they said it is all about one thing – the view.

- 167.1 Mr. Kieklak noted that respectfully there has been a lot of lip service given to property rights tonight, but he would respectfully submit that only Mr. Storms owns the view and he can put whatever he wants on his property as long as it is within the zoning ordinance. He stated when they call of the aspects of the CUP criteria into question as if nobody has ever looked at them, he would direct them to the voluminous amount of material that they have in the record that went before and was vetted by the Planning Board. He stated he was at that meeting and they asked hard questions of the applicant and Planning Staff and approved this CUP because it meets the criteria in the ordinance and it was the appropriate thing to do as it is tonight. He stated that staff made it very clear that every single one of those criteria was investigated and they documented the same and asked the Planning Board to adopt conditions to mitigate any of those criteria that were not absolutely met with confidence which was adopted by the Planning Board which is before the Quorum Court now with the ordinance. Mr. Kieklak stated that they have heard comments such as, "I'm not an engineer," "I don't know about towers or whether they are safe", but someone is an engineer, someone did dig in the soil and all of that was sifted through by staff who produced their reports and were vetted by the Staff, the Planning Board and now the hard facts and real evidence are before the Quorum Court.
- 167.2 R. Bailey addressed Mr. Kieklak stating that they understand that this is the way it works; that they have the final say and nobody respects their staff anymore than they do; however, the reason for going through the process is that they may come to a different conclusion and this does not make the staff wrong. He stated that the insinuation upsets him that the Quorum Court should not disagree with their staff because that is why they are put in this position as elected officials.
- 167.3 Mr. Kieklak stated that the only reason for his comments is felt their staff was being denigrated tonight, not by the Quorum Court. He agrees that the buck stops with the Quorum Court because this is an appeal process.
- 167.4 R. Bailey stated that just because the Quorum Court comes to different conclusion does not mean that they do not respect their staff; to which Mr. Kieklak responded that he just wanted to make the point that staff has prepared for you all of the items that they have been told did not exist and were not reviewed. He stated that these documents are the result of a lot of work and actual real evidence behind each element.

Minutes of the Special Meeting of the
Washington County Quorum Court
June 24, 2013
Page 29

- 168.1 C. Clark stated that Mr. Kieklak is telling her that the overwhelming amount of evidence presented is on the applicant's side and he is looking at the criteria for allowance of conditional uses and there are all kinds of judgment calls that have to be made. She is not sure that their Planning Board had the Supreme Court's criteria for compatibility.
- 168.2 County Attorney George Butler stated that the criterion is addressed in the status report.
- 168.3 C. Clark concurred, but stated that she went out and looked at the same property and came to a different subjective conclusion. She stated that she spent three years on the Planning Commission for the City of Fayetteville and she has more respect for the County's Planning Board than anybody and thinks that Juliet Richey and her staff does it better than most. However, as R. Bailey points out, they have to look at this with whole new eyes and form their own conclusion. She stated that she wants this process to remain civil and non-combative and the Quorum Court needs to look at what is before them and be objective and draw their best conclusions based on what they have seen and experienced taking into consideration of the evidence from both sides.
- 168.4 H. Bowman verified with County Attorney George Butler that the Quorum Court has to make a determination based on the criteria for allowance of conditional uses as set out in Sec. 11-200. He noted that he has reviewed those criteria and can easily spot one that he can vote no for and document it by one of those reasons. He stated one of his concerns is in looking at the information from Mr. Gifford's property is it is removed from or farther from the area where they have been told that there is an option to place the tower. He noted that he sees stakes that were probably not driven by the property owner and does not understand if there is misrepresentation or misunderstanding because there appears to him to be a very different perspective based on AT&T continuing to talk to prospective owners of property in this area for a tower, plus the information documented by Mr. Gifford that they did approach him about putting a tower on his property.
- 168.5 County Attorney George Butler responded to H. Bowman stating that whether or not this tower is needed in this particular location is not one of their criteria, so he would urge him not to base his vote on that.
- 168.6 H. Bowman stated that apparently Mike Smith, or Smith Communications, is the representative for AT&T and he does not understand why they are having the follow-up questions of neighbors and why the letter from Mr. Gifford; to which Mr. Kieklak responded that when he saw the letter from Mr. Gifford he had that same question and they asked AT&T directly and there is a letter

Minutes of the Special Meeting of the
Washington County Quorum Court
June 24, 2013
Page 30

that addresses that specifically. He noted that the letter states, "With respect to any field search for a potential antenna site in the area of East Prairie Grove, AT&T has no current or previous lease/purchase options with Mr. Gifford and has no current lease/purchase options with anyone else. The only other previous option in association for this site was with Michael Anderson and has expired. AT&T is waiting for approval of antenna site being developed in the area and will be installing on that site."

- 169.1 H. Bowman pointed out that the letter does not say that AT&T does not have interest or have not discussed this with other property owners. He stated that the letter states that there are no agreements, but that does not mean that they could not be at the same time approaching other people about placing a tower on their property.
- 169.2 Mr. Kieklak responded that he was not in a position to disagree with him, but the letter indicates where AT&T intends to place the tower.
- H. Bowman asked why the location differs so completely from the box that they had described to them; to which Tom Kieklak stated that when the Gifford letter was written in March, he does not know what the shape of the radio frequency promulgation from each tower was at that time. He stated that in dealing with these folks over the years, these things get engineered and when they begin to make a move somewhere over in Oklahoma, it can make a difference all along the network causing moderations. He stated that he does not know if it has changed since then, but that he asked and received coverage maps and in that letter, they made very clear that the site they are interested in is the site that they are discussing today.
- 169.3 H. Bowman stated that he feels like there are a tremendous amount of unanswered questions that he would like to have answered before voting on this ordinance and would like to defer a vote if there is any way possible.
- 169.4 County Attorney George Butler responded stating that by federal law the Quorum Court has until July 9 to make a ruling on this and questioned what further information he is seeking that is relevant to the criteria.
- 169.5 H. Bowman stated that he does not know whether continuing questions by AT&T representatives going to different property owners validates the box that they talked about that the tower has to be placed within; to which Attorney Butler reiterated that it is not relevant to the criteria.
- 169.6 Dale Brown stated that he thinks H. Bowman is onto something because they have AT&T's authorized representative here tonight and he still cannot get answers to his questions; he personally has asked for specific information

early on including financial, with no response. With respect to the Gifford's, he stated that the letter from AT&T was dated June 17, 2013, and the Gifford's letter was written in March which is the same month that this went before the Planning Board. He stated that his clients were a little confused about this at first, but are not contending that the Giffords have a legal option to put this tower on their property, but are contending exactly what Bill and Gladys Gifford wrote in their letter and this makes sense. He questioned why AT&T would enter into a binding, legal contract with Mr. Gifford while they have one with Mr. Storms. He stated that they know there are stakes on the ground and he submits that they were put there by AT&T because that location is suitable. Mr. Brown stated that the problem with the applicant is that Smith Communications to his knowledge does not have a contract with the Gifford's.

- 170.1 Mr. Brown noted that Mr. Kieklak said that Mr. Storms "owns the view" and he would submit that no landowner owns the view, or the air, or anything that would unreasonably interfere with their neighbors' or adjoining landowners' right to use and enjoy their property and that is why they have the "nuisance law."
- 170.2 Mr. Brown stated with respect to Planning Staff, he thinks the implication by Mr. Kieklak was that he has been taking a shot at them. He stated that he believes the Planning Staff do good work and he has a lot of respect for them. He noted that they have been very responsive to his FOI requests. He pointed out that this is a contentious matter and those who don't like to be disagreed with should not be in this business, but it is nothing personal. He states that he resents the implication that his comments indicate that the Planning Staff are bad people and do not know how to do their job. He stated that they believe that the Planning Staff got it wrong in this particular instance.
- 170.3 Mr. Brown responded to the implication that someone pressured Mr. Gifford to write the letter, stating that he would be shocked if his clients did this and he will not go there except to say that they asked for financial information about what is going on here and received absolutely no response. He noted that there is an AT&T representative at this meeting and frankly stated that they cannot have the good without the bad.
- 170.4 County Attorney George Butler addressed Mr. Brown stating that this is totally irrelevant and should not be considered at all.
- 170.5 B. Fitzpatrick stated that she was once married to a "radar man" who used radar equipment, so is somewhat familiar with radio frequency promulgation, etc. and she would like to have it confirmed whether AT&T was during the months of March and April going around asking various sundry folks whether

Minutes of the Special Meeting of the
Washington County Quorum Court
June 24, 2013
Page 32

they would be willing to have a tower. She noted that they had three towers come before the Planning Board of which two were approved and built without any appeals, questioning whether they are now locked into this box because they are no longer dealing with where to place three towers but with the fact that two have already been placed.

- 171.1 David Reynolds responded that he does not want to say that those two towers make this different because they all interact with each other and factor where those are placed do make a difference in the overall network. He stated that where they are located, how they interact with the tower next to them, how that spacing works is how they do it.
- 171.2 Mr. Reynolds addressed H. Bowman's previous questions, stating that back in March when they came before the Planning Board is when they found out about the opposition that they truly were not expecting and of course, they went back out and double checked what was available and not available for this tower placement. He stated that another company hired by AT&T did place those stakes in Mr. Gifford's yard and they are about three feet from a barbed wire fence. He explained the way this process works is that they send contractors and site agents out to areas to see what is available, to see who is for this and willing to talk to them and who is against it and not willing to talk to them. In the case where they get somebody who indicates a willingness to place a tower on their land, they will then drive a stake into the ground and ask if the tower could be placed at that location, take a picture of the same and return it to the engineers who may say that the location will not work and that is why an option is denied and not taken. Mr. Reynolds stated just because they went out and checked if they could place a tower there or not does not mean that it can be done.
- 171.3 In response to a question from J. Mardis, County Attorney George Butler stated that under Section 11-200(b) the "Board" stated therein does refer to the Quorum Court.
- 171.4 J. Mardis asked if there was a possibility to impose a requirement to look at relocation; to which George Butler responded that it has to be a condition placed on the proposed location.
- 171.5 J. Mardis stated his objection is the proximity to the property line of the neighbor, so if they removed that objection, then he would not have an issue with Mr. Storm placing the antenna on this site; to which George Butler responded stating that the only problem with moving it is that they cannot move it someplace that requires the possibility of additional notification, but rather they would have to start from scratch.

Minutes of the Special Meeting of the
Washington County Quorum Court
June 24, 2013
Page 33

- 172.1 J. Mardis stated his understanding was that as long as they stay on the northern part of the Storms' property; to which George Butler responded that they would have to be sure of where they are talking about moving it but that has already been deemed objectionable by the opposition, so that would not solve anything.
- 172.2 J. Mardis stated that he is saying beyond what AT&T is saying where they put in the situation and let them decide whether or not they can do that; to which County Attorney George Butler responded that they cannot move around the location because that is not a condition and any condition that they place on the CUP has to be for the current proposed location. He stated that this is what was intended when the ordinance was drafted and added that the language used in Sec. 11-200(b) was actually taken from another ordinance that had gone up to the appellant court.
- 172.3 C. Clark stated that this is complicated, but explained that Sec. 11-200(b) meets conditions on the location that they are looking at right now and if they move the tower somewhere else, they would have to start the process all over again. She stated the type of condition they could look at would be to make it a silo, camouflage it somehow, etc.
- 172.4 R. Cochran questioned what the residents in the area would think about a 300 foot silo, clock tower or tree camouflaging the cell tower, to which they indicated they would not be in favor of that either. He stated that he has placed himself in the situation of living in and enjoying the sights of this beautiful valley and then all of a sudden, there is a 300 foot spike. He stated that this would not be compatible with him wanting to buy such property either and he cannot support this ordinance.
- 172.5 B. Pond stated especially for those neighbors who live so close to the tower, that since they can require some conditions, suggested that they require that evergreen trees be planted around the tower as close as possible without interfering with the tower, even though it would take some time to make a difference. He stated that they do this in Fayetteville all the time and he does not see it as unreasonable.
- 172.6 E. Madison stated that she wants to hear citizen comment before she is at the stage of debate where they have to state why they are voting a certain way because she does not want to state her opinion until she hears from everybody.
- 172.7 County Attorney George Butler responded to E. Madison, stating that they would have another citizen comment period before they vote for final passage to include the applicant and appellant. He stated that if they were to amend

the ordinance adding a condition, that would place them back on first reading so they would have to suspend the rules and forward it through to third reading.

- 173.1 **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 third reading.
- 173.2 **B. Pond made a motion to adopt the ordinance with a CUP to plant trees around the site.**
- 173.3 County Attorney George Butler further explained that this would be a substantive amendment to the ordinance, and would place the ordinance back on first reading.
- 173.4 **B. Pond withdrew his motion.**
- 173.5 B. Pond questioned whether the Planning Board could add this condition to their existing conditions; to which County Attorney George Butler responded that they have gone beyond that stage.
- 173.6 Juliet Richey stated that the Fire Marshal had asked them to add a condition as well, so they were actually going to ask if they could amend to add it. She explained that the access road from Storms Road was required to be 26 feet wide by the Fire Marshal and Storms Road is a residential drive because they usually do not require widening a county road; however, he requested that Storms Road residential drive also to be 26 feet wide.
- 173.7 County Attorney George Butler stated that to add that condition would place the ordinance back on first reading also.
- 173.8 Ms. Richey further stated that they also discussed adding a privacy fence around the compound which would also be a new condition.
- 173.9 H. Bowman asked what would happen if eight members were to abstain from voting on this ordinance; to which County Attorney Butler responded that an abstention would count as a "no" vote because it takes a majority or 8 yes votes to pass the ordinance.
- 173.10 **B. Pond made a motion to adopt the ordinance. B. Fitzpatrick seconded.**

Minutes of the Special Meeting of the
Washington County Quorum Court
June 24, 2013
Page 35

- 174.1 County Attorney George Butler stated that the court members can deliberate and talk among themselves at this point, but before they cast their final vote, they will have citizen comments, 10 minutes for each side of the issue.
- 174.2 **C. Clark made a motion to go straight to citizen comments. The motion was seconded. The motion passed unanimously by voice vote.**
- 174.3 Citizen Comments: Ken Fuggit, of 10898 Illinois Chapel Road, addressed the Quorum Court stating that they bought their property that was a junkyard about six years ago, cleared off the property, built a house and moved out there three years ago. He stated that they did not move out there for the cell service, sewer lines or gas lines, and there are no Starbucks or bike trails, but rather they moved there because it is a beautiful and remote area. He noted that he is there every day, uses his phone every morning and night and has never had any problems with his cell service. He questioned why they just do not place the tower in Hogeys where they are in need of cell service. As an architect, he stated he has been before a lot of bodies such as the Quorum Court, City Councils, Planning Commissions, etc., and he has rezoned over 35,000 apartments in eight states and this is the first time that he has ever seen a government body like this have any compassion for the applicant and the investment of the fees that they have spent in the process of applying for their request. He stated that he would only hope that they will have the same compassion for those in opposition to this cell tower site.
- 174.4 Mr. Fuggit stated that they have talked a lot about property rights and as Americans, we are all probably for property rights, but all that property rights mean is that each of us can do whatever we want to do with our property with no controls whatsoever then he does not understand what this body is doing here tonight. He stated that this Court has a process, job and obligation to protect those rights of others as well.
- 174.5 Patrick Storms, owner of the property where the tower is being proposed to be placed, addressed the Quorum Court stating that his family has owned this property over 50 years and presently it is for sale. He stated that he had two sons born while they lived on this property and he would be living there presently, but when his house burnt, his mother lived in the only livable house. He stated that after his mother had a stroke she moved in with him and he put his house up for sale and it is still for sale. He stated that this farm is his retirement, where he has put blood, sweat and tears into it and he has heart for the place. He noted that his neighbors have done the same thing and he is not against his neighbors opposing this tower, but he has a right to do with his property what the law allows and as far as he knows, every application needed has been filled out, they are not breaking the law, and the county, state and federal guidelines have been met by Smith Communications.

- 175.1 Mr. Storms stated that he was in Washington, D.C. last week and met with two Senators and four Representatives that represent all of our people in Washington and everything starts up there about the people. He noted that there are 20 people opposing this tower site in the room tonight, not counting the Quorum Court and there are probably 200,000 other people in Northwest Arkansas who do not care if the tower is placed on his property or the Gifford property. He stated what he needs to know is whether the complainants are more interested with the top of the tower or the bottom of the tower because if it is the top of the tower, everyone would see it whether it was placed on his property or the Giffords' property. He noted he does believe that the Giffords have a contract and he does, but that can be broken like all contracts. He stated that this would not have been a choice location for this tower if he was picking it, but AT&T stated that it could not be where he wanted it and in that case, nobody could see the bottom of it.
- 175.2 Ellen Leen Felder, of 10976 South Highway 265 across the street from the Anderson's, addressed the Quorum Court stating that she is a Doctor of Research Methodology at the University of Arkansas and wanted to speak to the point of how do they operationalize the idea of an eyesore. He stated that there is a lot of literature pertinent to this issue and they can in fact quantify this perspective. She stated if they look at the data, there is not very much on cell towers that they can draw from the high voltage lines and the data suggests that it is complicated. She stated that a lot of people would like to have a cell tower by their house because it increases the convenience factor and if you live in a very dense residential area, most people do not mind. However, she stated that the data clearly suggests that a conflict that is called "visual disseminity" or an eyesore, if it significantly disrupts the view of individuals, not only does it lower property values in ways that they can in fact quantify and show with very good sophisticated methodology, but also there is this sort of property stigma. She stated that this data is consistent with what folks have been talking about – placing a large tower in the middle of a pastoral view where the resident drinks coffee and has her sheep. She stated that while many people want to move forward and have great technology, this is a different and unique instance where the visual disseminity will in fact impact the day-to-day experience of these neighbors and affecting the general welfare of the psychological experience, as well as reduce property values and it speaks to compatibility.
- 175.3 Tim Smith, resident of a rural community west of this area, addressed the Quorum Court stating that although he is not directly impacted by this tower, as a member of this community, he is in opposition to the same. He stated as a public health professional for the past 28 years, he wants to speak to the criteria referring to endangering public health. He stated that there is a lot of information coming to light only over time.

Minutes of the Special Meeting of the
Washington County Quorum Court
June 24, 2013
Page 37

- 176.1 County Attorney George Butler stated that they are prohibited by federal law from hearing evidence of the health and environmental effects of radio frequency transmission.
- 176.2 Mr. Smith stated that this is not evidence, but is his personal opinion to which George Butler stated that they still cannot hear it in this particular proceeding.
- 176.3 Mr. Smith stated that he would not speak of radio frequency potential health consequences, but rather would speak to some of the other things that our federal government has talked to us about in the past – Dioxin, Whirlpool in Fort Smith, MTBE, Agent Orange – all consequences that came to light years later. He stated he does not understand what the federal government thinks they are doing telling us what we can and cannot talk about, but he promises that there are serious issues in our public health that are not being addressed. He stated for us to think that we can stick our head in the sand and it will not affect us because it will be the next generation is wrong. He stated that this property owner has rights, but when his rights interfere with his neighbors rights, there has to be a coming together and he believes that is what this body is about and this body should look at unintended consequences. He stated that the law is set up to design a conversation about what is acceptable, but that law cannot cover unintended consequences and he believes that there are unintended consequences not only from the view shed, but their decision as individuals to come out into a rural area and be adversely impacted by the changes that a neighbor makes. He believes that the Quorum Court should weigh public opinion which is what really matters in the bottom line.
- 176.4 Jessica Anderson, of 10885 Gifford Road, addressed the Quorum Court stating that she is opposed to this tower. She stated that she is a little confused with the information sent by Ms. Richey that in effect stated on November 8, 2007, the Washington County Quorum Court passed countywide zoning in unincorporated areas of Washington County. Unincorporated areas are areas of the county that lie outside of city limits. As development continues to bloom in the more rural areas of the county, it has become evident that there needs to be some protection for people's sense of home and the ability to enjoy their rural and residential property. Zoning also provides some way to ensure that the property values of the surrounding areas can be taken into consideration when new and non-rural uses are proposed within the county. Ms. Anderson stated her understanding that this Quorum Court is their body of protection and she spends a lot of time with her nine children outside enjoying the outdoors and working with organic gardening. She stated that she has had two AT&T representatives come to their house in March following the Planning Board meeting on March 7, Larry

Minutes of the Special Meeting of the
Washington County Quorum Court
June 24, 2013
Page 38

Pierce and Mike Marr, both presented her with options to have a tower anywhere on her property which was conflicting information from the March 7 meeting.

- 177.1 With the conclusion of citizen comments, County Attorney George Butler reiterated that during the roll call, any JP voting "no" to this ordinance needed to state specifically their reason and particular criteria which they are relying on and it will take 8 votes to pass. In the alternative, those opposed could state their reasons and criteria prior to the roll call.
- 177.2 E. Madison stated that she would like to hear the other members' rationale for their votes.
- 177.3 County Attorney George Butler responded that would be deliberation and they have moved past deliberations to the voting.
- 177.4 E. Madison stated that she understood that they would give their rationale before voting after public comment.
- 177.5 A question was asked if they go ahead and take a roll call vote, if the ordinance passes, the "no" votes would not have to state their reasons and if it fails, they could go back around and have the "no" votes state their reasoning. County Attorney George Butler stated that they could possibly do it that way.
- 177.6 C. Clark stated when she made the motion to proceed to "public comment," she intended for them to deliberate at the end of public comments. She stated that she would also like to hear what the other JPs are thinking before she casts her vote.
- 177.7 **There was a call for the question, and a second.**
- 177.8 **Judge Edwards called for a roll call vote on the call for the question.**
- 177.9 **VOTING FOR: A. Harbison, B. Pond, M. Spears, B. Ussery, R. Aman, R. Cochran, J. Firmin, and B. Fitzpatrick. VOTING AGAINST: E. Madison, J. Mardis, J. Patterson, R. Bailey, and C. Clark. ABSTENTION: H. Bowman. **The call for the question failed with eight members voting in favor, five members voting against, and one member abstaining.****
- 177.10 E. Madison stated that she has heard from a lot of people about this issue and with the exception of one call from Mr. Reynolds, everyone was opposed to this tower. She stated that she lives in the City of Fayetteville and as the President of her Property Owners' Association, she has always been on the

Minutes of the Special Meeting of the
Washington County Quorum Court
June 24, 2013
Page 39

neighbors' side of many issues just like this. She stated that it feels like they have been invaded from all of their borders, the Highway Department on one side and developments on other sides and she always finds herself before a body like this making arguments very similar to those made on this tower. She stated one of the most stressful issues for them was that they learned that the City of Fayetteville wanted to put a trail along the creek in their back yard which would basically invite the public into their back yard and it was at that point in time she realized how sacred your back yard is. She noted that the pictures provided of the front yard, the tower does not look so offensive, but what it looks like from the back yard is what they care about when they are outside playing with your children, running with your dogs, enjoying the view.

- 178.1 E. Madison stated when she looks at this ordinance and questions what is compatible – to the very reason that Ms. Anderson read about why the county has zoning – people move to the county like Mr. Fuggit did, not for self-service, but for the enjoyment of having a rural way of life that is not that existent anymore. She stated that she doesn't believe that rural way of life where you might expect to look at and see a chicken house or cattle involves seeing a 300 foot cell tower. She stated that she lives very close to the 150 foot fake tree tower and every time she drives by she laughs at because it is so much taller than any other tree and looks nothing like a tree. E. Madison stated as much as she respects the work the Mr. Smith and Mr. Reynolds have done on this, they have to understand that there is risk in this process.
- 178.2 E. Madison stated as someone who has been on the neighbors' side in this, she is with them in opposition to this ordinance. She stated that as her reasoning for opposing this tower, she cites Sec. 11-200(a)(4), (5), and (6) of the criteria for allowance of conditional uses. She pointed out what they look out and see outside their back doors is very important and the enjoyment of their life. She does not believe that a cell tower is compatible with agricultural use. She does not believe that a cell tower is harmonious with the comfort or general welfare of the people who live in this area and she sees Mr. Storms' love of the land as somewhat inconsistent with the desire for a cell tower and she does believe that it will diminish enjoyment of the land and the property values.
- 178.3 B. Fitzpatrick stated with all due respect to everyone, she is probably the only member of this court who is going to vote in favor of this ordinance because of what her conscience says. She stated she will admit some of the things that she is considering are things she is not supposed to consider, including phone calls from people in the Hogeeye area who want to ensure that when they dial 911, they will actually get a person on the line. She stated that you can essentially see the mountain and view through a lattice-type tower. She

does not see anything that is not compatible; a cell tower will not prevent anyone from farming. She stated that everyone uses cell phones and there is absolutely nothing about putting a cell tower there that will keep people from using cell phones. With respect to this being just one more thing of "here we go again progress," she imagines 60-70 years ago people were making the same complaints when power lines went in and now people are grateful for the use of electricity or when roads were built to replace paths that were thought to be absolutely good enough. She stated for the way that their society is moving and the fact that cell towers have to knock off of each other in order to get good coverage. She noted that the best cell coverage is not going to come from the cell tower in your back yard, but will come from the tower in someone else's back yard.

- 179.1 B. Fitzpatrick stated that this cell tower is not injurious; it does fit with the way that life is right now. She stated that the Planning Board has gone through every one of the seven criteria and have made sure that all forms have been completed and everything has been done the way it should be done that if the roads and drainage, etc. are not adequate as it stands, that it will be before a tower is built. She stated that they have the reasoning about what the legal definition is as far as "enjoyment of your property" and that can be the type of enjoyment that they are talking about here as far as drinking coffee and playing with their kids and pets, but the other definition of enjoyment is whether someone can use their property for what they intend to use it for and there is nothing about the cell tower that will keep anyone from running sheep, mowing hay, training dogs, etc. B. Fitzpatrick stated that she sees nothing in the seven criteria that this use does not conform to. She stated that everyone will get more freedom if everybody gives up a little freedom than if a couple of people have to give up a whole lot of freedom so that other people can have more freedom which is usually the way they try to do things in America – have everybody give up the least amount of equal freedom so that everybody can have the most amount of equal freedom.
- 179.2 C. Clark stated that she could not disagree with B. Fitzpatrick more – she just does not see that cell towers are compatible with farm land. She stated that she stood in the Scotts' back yard and could see the stake where the cell tower is going to go and the thought of trying to enjoy property with that looming over her was not aesthetically pleasing to her in the least. She stated that some of these criteria on what they should and have to look at are subjective. She agrees with the neighbors in this instance and it would be great if another compromise could be found, but they cannot even look at that. She stated that she does not have a problem with Mr. Storm using his property for a cell tower, but she is looking at the aesthetics, the viewshed, and the rights of the other property owners. C. Clark stated that this is an absolutely drop-dead gorgeous valley that people have moved out there to

Minutes of the Special Meeting of the
Washington County Quorum Court
June 24, 2013
Page 41

enjoy. She stated that she wants to protect the rights of the other property owners, especially when looking at the county and all the property that is out there that would afford itself to a cell tower.

- 180.1 C. Clark stated that she will be voting against this ordinance and stated that Sec. 11-200(a)(4), (5), and (6) were the criteria she used to make her decision. She stated that she did not believe that a cell tower was compatible and she believes that educated heads can come up with a better option and still meet everyone's needs. She stated that both sides have been very professional, given the court a lot of information to look at, and she sincerely hopes in the future that they look at the benefit of everyone.
- 180.2 R. Cochran stated that he appreciates being contacted by both sides that asked him questions, gave him information, and helped him to understand this situation. He stated when he looks at Sec. 11-200(a)(4) and deal with compatibility of the surrounding area, he has to go with the people who live there and have to live with it and it is resounding to him not to do this. He addressed Sec. 11-200(a)(6) when you look at the enjoyment of the property, that is truly subjective, but the folks who live there say no. He stated also with the criteria, there is a situation when people go to the country to buy property and see something that is objectionable to them; they are not likely to even make an offer on the property. He stated when you look at this area out there, it will develop in time and to have this cell tower out there will decrease property values to the other owners and reduce the number of people who would consider buying their land. He thanked both sides for their time and stated hopefully if this ordinance does not pass, something else can be resolved and the principals will check with all neighbors first and make sure that they find the right spot.
- 180.3 R. Bailey first stated that he has known Mr. Kieklak for a long time, has the highest respect for him, and apologized for his previous comments. He stated that he will be opposing this ordinance and noted Sec. 11-200(a)(4) and (6) were the criteria that he used in making his decision.
- 180.4 M. Spears stated that she will also be voting against this ordinance and cited Sec. 11-200(a)(4) and (6) as the criteria she used in making her decision.
- 180.5 J. Firmin stated that he has thought a lot about this and struggled with it and this meeting has helped him make his decision. He stated he wishes the system was a little better, which may be unrealistic, but he does not feel like the criteria is that well defined which makes it difficult for them on their end. He stated the one thing that he struggles with to vote no is that based on a vote like this, in a certain sense they are saying that no one can have a cell tower if there is any opposition and he believes there is a problem with that.

Minutes of the Special Meeting of the
Washington County Quorum Court
June 24, 2013
Page 42

He suggested that they may want to get better criteria. He stated that he would vote against this ordinance tonight based on Sec. 11-200(a)(4) and (6); that it is not compatible with the current land use and also believes that it would diminish property values.

- 181.1 B. Pond stated that he made the motion to adopt this ordinance; however, for the very same reason that J. Firmin mentioned that the criteria that they have listed for which they could vote no, you might say that no one can have a cell tower. He stated that he is a farmer and enjoys living on a farm in a very rural community and his cell phone reception is really not very good, but most of the time their calls will go through; however, if some kind of emergency happens, you may not be able to make a call out for 2-3 days. He believes that he can see four different towers from where he lives, but unfortunately they must not be close enough and too many other people have moved in around them who use cell phones. B. Pond stated that he will be voting in favor of this ordinance noting that a tower going up where he lives would not totally destroy his view and he would continue to enjoy his farm, and they might be able to have a little bit better cell phone reception, even when there are emergencies when there are a lot of people on the phone.
- 181.2 A. Harbison stated that she will be voting against this ordinance and is upset that they could not come to an agreement before this hearing occurred. She stated that you cannot tell her that they do not have the technology to move towers and make them work where they put them. She concurs that they need cell towers and 911 service, but for some reason both sides hit a solid wall and that is where they are. She made a prediction that Mr. Storms will get a cell tower and it will be out of the neighbor's view. A. Harbison stated that she based her vote on Sec. 11-200(a)(4) and (6).
- 181.3 J. Patterson stated that it appears to him that they need to work on their zoning because if it is agriculture, do it and if it is anything else, they are on their own because they have not set a lot of perimeters. He stated that he did not vote for zoning and there are many of these issues that they have been avoiding now for about five years. He stated that based on criteria set out in Sec. 11-200(a)(6), he would be voting against this ordinance.
- 181.4 R. Aman stated that he has learned a lot through this process and believes that the terminology used in the criteria is too vague, such as "injurious to the use and enjoyment," "substantially diminish or impair," etc. He personally wishes that Mr. Storm and Smith Communications did not even have to ask for our permission to do this and believes that government is too involved in our lives already. Therefore, he stated that he would be voting in favor of this ordinance.

Minutes of the Special Meeting of the
Washington County Quorum Court
June 24, 2013
Page 43

- 182.1 J. Mardis stated that he disagrees that there is not a need for more cell phone access out of this area just from his experience. He recalled an incident when his teenage son was out in this area one night and at 2:00 a.m., they had not heard from him. He had stayed at a cousin's house in this area, but he could not let them know because the cell phone did not work. He stated that he wishes he lived in a world where he did not need a cell phone, but for he and his family it is very necessary to have these things in the world he lives in. However, his biggest concern is the location of the tower being so close to another property owner coupled with the fact that AT&T was out there talking to several people and getting opinions about where a tower could be placed or not. J. Mardis stated based on the criteria set out in Sec. 11-200(a)(6), he would be voting against this ordinance. He stated that if they can work out a better situation, he will definitely support Mr. Storm being able to have a tower on his property.
- 182.2 H. Bowman stated that the reason he will be abstaining from this vote is because he does not believe they arrive decisions based on other factors such as the location of the tower and for that reason does not believe it is appropriate to vote either way. He stated that he is very sympathetic to the property owners who do not want this tower out their back door, and he is also very sympathetic to the people who need the cell phone coverage in this area. He stated that he has traveled in this area and had lousy service the entire time. He stated that he was able to receive a call, but most of the time he could not use the phone and would not work with GPS.
- 182.3 B. Ussery stated that he would be voting against this ordinance. The Planning Board did a great job and followed the law, but that is what the Quorum Court was all about as backup. He stated in this particular case he believes that the location is the main issue and he will not be supporting the ordinance based on criteria set out in Sec. 11-200(a)(4) as this is not compatible.
- 182.4 **With no further discussion, Judge Edwards called for a vote on the motion to adopt the ordinance.**
- 182.5 **VOTING FOR: B. Pond, R. Aman, and B. Fitzpatrick. VOTING AGAINST: A. Harbison (Criteria 4, 6), E. Madison (Criteria 4, 5, 6), J. Mardis (Criteria 6), J. Patterson (Criteria 4, 6), M. Spears (Criteria 4, 6), B. Ussery (Criteria 4), R. Bailey (Criteria 4, 6), C. Clark (Criteria 4, 5, 6), R. Cochran (Criteria 4, 6), and J. Firmin (Criteria 4, 6). ABSTENTION: H. Bowman. ABSENT: T. Lundstrum. **The motion failed with three members voting in favor, ten members voting against, and one abstention.****

Minutes of the Special Meeting of the
Washington County Quorum Court
June 24, 2013
Page 44

- 183.1 Judge Edwards thanked the public for their patience in this process and complimented the children on how well behaved they were at this meeting.
- 183.2 ADJOURNMENT: The meeting adjourned at 10:15 p.m.

Respectfully submitted,



Karen M. Beeks
County Judge Executive Assistant