

MINUTES
WHITLEY COUNTY BOARD OF ZONING APPEALS
REGULAR MEETING
November 26, 2019 7:30 P.M.

MEMBERS PRESENT

Elizabeth Deckard
Sarah Lopez
Danny Wilkinson
Doug Wright

ATTORNEY

Dawn Boyd

STAFF

Nathan Bilger
Mark Cullnane

MEMBERS ABSENT

Tim Denihan

VISITORS

Fourteen visitors signed the guest list at the November 26, 2019 regular meeting of the Whitley County Board of Zoning Appeals. The original guest list is kept on record in the Columbia City/Whitley County Planning & Building Department.

CALL TO ORDER/ ROLL CALL

Mr. Wilkinson called the meeting to order at 7:33 p.m. Mr. Cullnane read the roll call with all members present and absent listed above.

CONSIDERATION AND ADOPTION OF THE SEPTEMBER 24, 2019 AND OCTOBER 22, 2019 REGULAR MEETING MINUTES

The minutes for the September 24, 2019 and October 22, 2019 regular meetings were presented for approval. Mr. Wilkinson asked the Board if it had corrections or additions to either of the minutes. Mr. Wright stated that on pages eight and nine of the October 22, 2019 meeting minutes, petitioner Amie Oliver was referred to with the wrong name.

Mr. Wright made a motion to approve the September 24, 2019 and the October 22, 2019 minutes as corrected. Ms. Lopez seconded, and the minutes were approved by a vote of 4-0.

OATH TO WITNESSES

Approximately 10 guests were sworn in by Ms. Boyd.

OLD BUSINESS

Mr. Wilkinson stated the procedures for voting since only four members were present. He further reviewed the procedures for public hearing of a petition. Mr. Wilkinson stated that he was reserving the right to limit discussion.

19-W-SE-10

New Cingular Wireless PCS, LLC requested a special exception approval to permit a communication tower at 10800 S. 700 East, Roanoke. The property is located on the west side of S. 700 East, approximately ¼ mile north of State Road 114 in Section 35 of Jefferson Township, and is zoned AG, Agricultural.

Mr. Bilger presented the staff report. He stated that this project requires a special exception because new telecommunications towers require special exception approval to be located on property zoned AG.

Mr. Bilger briefly reviewed aspects of the project. He stated that the project as submitted includes a 199' foot monopole tower, with the height including a lightning rod and antenna. The tower would be located approximately 290' from the north property line, exceeding the 249' minimum setback. The setback from CR 700 East is 588'±.

Mr. Bilger stated that the tower would be located on an 80'x80' leased site on the subject property. Access to the leased site would be achieved through an ingress/egress easement approximately across CR 700 East from the driveway cut for 10865 S. 700 East. The tower and ancillary equipment would be located on a 70'x70' area in the leased site. The remaining area of the leased site would be used for a chain link fence and perimeter landscaping. Mr. Bilger added that the landscaping plan as submitted by the petitioner meets the requirements of the Zoning Ordinance.

Mr. Bilger presented aerial images of the property and surrounding area, and discussed dwellings, outbuildings, and other features found on the images. Mr. Bilger presented the site survey and other sheets from the project plan as submitted by the petitioner, and discussed features found thereon. Mr. Bilger presented an aerial image with topographic contours and identified the approximate tower location. He stated that the leased site is approximately 30' higher than CR 700 East and approximately 60' higher than U.S. 24. Mr. Bilger stated that, due to the topography of the subject property and surrounding area, small changes in location can result in significant changes in elevation.

Mr. Bilger presented additional sheets from the project plan and discussed features found thereon.

Mr. Bilger presented the review criteria for special exceptions. He stated that there are no additional review criteria specific to communications towers.

Mr. Bilger discussed the proposed tower in relation to criterion number three ["The special exception shall produce a visual impression and environment that is consistent with the environment of the neighborhood."]. He stated that this tower would be significantly taller than the existing buildings in the area, but that, as a utility structure, it is unlike most other buildings in the area.

Mr. Bilger discussed the proposed tower in relation to criterion number five ["The special exception shall preserve the purpose of this ordinance as stated in Section 1.4."]. Mr. Bilger

stated that the purposes listed in Section 1.4 of the Zoning Ordinance direct the Board to strive for high aesthetic value and the promotion of public comfort and convenience as the primary considerations for this criterion.

Mr. Bilger stated that, in the event of approval by the Board, staff suggests the condition that the special exception be granted as presented and per the site plan. He added that staff recommends that the Board formally move to delegate authority to staff and legal counsel to cause findings of fact to be prepared in support of the Board's decision.

Mr. Wilkinson called the petitioner or the petitioner's representative to approach the podium.

Matt Price, 10 W. Market Street, Indianapolis, Indiana, approached the podium. Mr. Price stated that he is an attorney for Bingham Greenebaum Doll LLP, and that he represents the petitioner AT&T Mobility d/b/a New Cingular Wireless PCS, LLC. Mr. Price distributed to the Board a handout that he prepared for his presentation. A copy of the handout was entered into the record.

Mr. Price reviewed the location of the proposed site and stated that he and the petitioner agree with the proposed location of the tower as described in the staff report. He stated that this site was chosen because of its unique attributes:

- the elevation;
- the manner in which it is withdrawn and screened from existing land uses, particularly to the south and west by an existing stand of trees;
- the amount of tree cover along CR 700 East.

Mr. Price stated that the trees along CR 700 East would provide additional screening for the proposed site.

Mr. Price stated that the elevation of the site was an important factor in its selection. He stated that the elevation of the proposed site allows the petitioner to meet its radio frequency (RF) objective of filling a substantial gap in coverage in the surrounding area. He stated that the tower is not being proposed in order to go through the siting process, but to fill a need in the network. Mr. Price added that this site has been proposed to meet that need with a monopole tower. Mr. Price stated that a monopole design has been proposed because it is aesthetically less obtrusive and safer than a guyed tower or a lattice tower. Mr. Price stated that a typical lattice design results in a tower greater than 200' tall. Mr. Price stated that the height of the proposed tower (199') was purposefully chosen for this location because it meets the RF requirements for network coverage, it is below the height at which lighting is required by the Federal Aviation Administration (FAA), and it is within the design criteria for a monopole. He added that structures above 200' are typically lighted and typically use a lattice tower design. Mr. Price stated that the monopole design was selected to be compatible with the surrounding area.

Mr. Price reviewed the handout that he prepared for the hearing.

Mr. Price stated that section two of the handout contains a site plan for the proposed tower. The site plan shows a 12' wide gravel drive for ingress/egress from CR 700 East. Mr. Price stated that the traffic generated by the tower would likely be once per month for routine maintenance.

He stated that there may be more traffic generated in the event that something breaks or a service issue arises.

Mr. Price stated that there would be no lighting, noise, or odor generated by the tower.

Mr. Price stated that section three of the handout contains the compound plan, and noted that this plan demonstrates that petitioner has met fencing and landscaping requirements. Mr. Price stated that the compound plan also demonstrates that the tower has been designed to anticipate that the tower will be required to be made available for future co-location with other service providers. He stated that the tower and the compound have been designed to accommodate three additional users. Mr. Price added background about the practice of equipment co-location on communications towers.

Mr. Price stated that section 4 of the handout contains an elevation sheet with details about the tower and antenna mounting platform. He stated that this sheet provides an example of the visual impression of the tower and displays the balance between aesthetic impact and public convenience sought by petitioner.

Mr. Price stated that he is from Zionsville, Indiana and is familiar with equestrian land uses. Mr. Price presented photographs of a tower site not far from his home near the intersection of Ford Road and Hunt Club Road. He stated that equestrian uses have existed along Hunt Club Road for many years, and that the photographs demonstrated the capacity of a monopole design to balance the need for critical infrastructure, in this case a communications tower, with the aesthetics of the surrounding area. Mr. Price stated that communications towers, such as the one proposed in this petition, provide the public with the ability to call for help in the event of an emergency and the ability to contact family members and others.

Mr. Price stated that the Zoning Ordinance does not require camouflaging of communications tower sites or to conceal them in any way, and that a monopole design is the least obtrusive option available to petitioner. He stated that petitioner has made an effort to propose a design that is as aesthetically consistent as possible with the surrounding area while fulfilling the importance of meeting the public safety and public convenience objectives of improving network coverage.

Mr. Price stated that he observed multiple locations throughout Whitley County with commercial uses related to agri-business and agri-tourism. He stated that these type of uses require some level of infrastructure so that people visiting and traveling to and from those locations have the ability to stay connected, and that petitioner's license mandates it to provide this service to its customers. He stated that this makes the placement of a tower at the proposed site to be consistent with the character and supportive of the economy of the surrounding rural areas. Mr. Price concluded that these considerations demonstrates that the petitioner has achieved balance between respecting the aesthetic qualities of the area with the public convenience of improved network coverage as contemplated under the ordinance.

Mr. Price stated that communications towers do not need to meet specific criteria, but are judged by the same criteria applied to other types of special exception uses. He stated that the tower

does not present any elements or conditions that are harmful to adjoining properties, such as light, odor, or excessive traffic. He stated that the tower as proposed is located in a manner that is harmonious with the surrounding properties, and that it achieves this by being removed from those properties and through the use of a monopole design and landscaping. He stated that petitioner feels the tower design presents a visual impression that is consistent with the surrounding area. He stated that tower will enhance the surrounding land uses and allow for further investment. Mr. Price stated that petitioner believes that the tower, as proposed, preserves the purposes of the Ordinance as stated in Section 1.4 in the way it balances aesthetic impact with public health, safety, comfort, and convenience. Mr. Price added that petitioner is not seeking a development standards variance with respect to the proposed tower, and that he has additional information relative to property values that he would reserve until the rebuttal period.

Mr. Wilkinson asked the Board if it had any questions for the petitioner.

Mr. Wilkinson asked Mr. Price if there would be any lighting at the site.

Mr. Price stated that there would be no lighting at the site, and that the tower, as proposed, is below the height at which lighting is typically required by the FAA.

Mr. Wilkinson asked if petitioner would be opposed to a condition stating that there would be no lighting on the structure or the leased area.

Mr. Price asked Steve Carr if he could respond to Mr. Wilkinson's question.

Steve Carr, 2894 Aldersgate Drive, Greenwood, Indiana, stated that, in regards to the top of the tower, they have already been through their FAA approvals and that there are no lighting requirements for the top of the tower. Mr. Carr stated that, when a technician visits the site, there will be a light activated on an equipment cabinet to improve visibility. Mr. Carr added that the technician would turn the light off after completing required maintenance or other tasks on the equipment.

Mr. Wilkinson asked if it would be similar to a porch light. Mr. Carr confirmed that it would be similar to a porch light.

Mr. Wilkinson asked if this light would be activated only when a technician was on site. Mr. Carr confirmed that it would only be activated when a technician was on site.

Mr. Wilkinson asked if there would be any small lights halfway up the tower or anything similar. Mr. Carr stated there would not be lights of that sort on the tower.

Mr. Wilkinson asked the petitioner why they did not chose to locate the tower closer to the lessor. Mr. Price stated that the site was chosen so as to meet RF network objectives. He said that the topography of the selected site is critical to meeting these objectives, and that the alternative would be to move the site and be forced to build a different style of tower that would adversely impact the balance petitioner has sought between aesthetics and public convenience through the use of a monopole design. Mr. Price stated that one site on the subject property is not equivalent to another due to the topography of the subject property and surrounding area.

Mr. Carr stated that the site was chosen to avoid degradation of the signal from the tower, and stressed the importance of the elevation at the proposed site.

Mr. Wilkinson asked about the difference in elevation between the proposed site and a high point on the south side of an existing fence on the subject property that is closer to lessor's residence.

Mr. Bilger presented an aerial image with topographic contour lines of the subject property. Mr. Wilkinson and Mr. Price examined and discussed the potential of using a high point on the south side of an existing fence on the subject property for the site.

Mr. Wilkinson again asked what the difference was in elevation between the proposed site and a high point on the south side of an existing fence on the subject property. Mr. Price stated that he did not know the answer at this time, but that petitioner could look at the possibility of siting the tower at the location proposed by Mr. Wilkinson.

Mr. Price asked Mr. Wilkinson if he would support the proposed location with a lattice structure and light at the top of the tower. Mr. Wilkinson stated that he would like to hear from remonstrators in the audience before making a decision. Mr. Price asked Mr. Wilkinson if he was suggesting that the Ordinance can be applied in a manner that a taller structure with a lattice design is preferable to that put forward by petitioner. Mr. Wilkinson stated that he was not suggesting a taller structure, but the same structure at a different location. Mr. Price stated that this structure at a location with a lower elevation will not suffice from a RF standpoint.

Mr. Wilkinson asked the Board if it had any additional questions for the petitioner.

Mr. Bilger reviewed a comment letter received from Jon Myers, President of the Whitley County Economic Development Corporation. Mr. Bilger referred Board members to the third paragraph of page two of the comment letter in which Mr. Myers stated that the Manitou Trail Homeowners Association, located approximately 1/2 mile east of the subject property, has been showing interest in obtaining broadband infrastructure in that area. Mr. Bilger stated that, based on this, the question becomes would this tower location permit broadband at fairly high connectivity speeds available to that area of Jefferson Township and what would those speeds be.

Mr. Price stated that this tower would add additional infrastructure that would fulfill one of the goals of the Comprehensive Plan: making affordable broadband connection available throughout the county. Mr. Price stated that the tower would contribute to the infrastructure that could improve the reliability and the speed of the network, but that situations would vary for individual customers. Overall, these upgrades are being made to increase speeds by up to ten times.

Mr. Wilkinson asked if the Board or Mr. Bilger had additional questions for the petitioner. Hearing none, Mr. Wilkinson stated that, at this time, remonstrators would be allowed to ask questions of the petitioner. He added that general statements would be allowed later in the hearing.

Larry Gerig, 6049 East State Road 114-92, Roanoke, Indiana, asked petitioner if they received permission from the FAA to construct the proposed tower. Mr. Gerig added that it is within a

quarter mile of the end of his runway, and that he questioned the safety of placing a communication tower so close to a runway. Mr. Gerig stated that the runway has been at its current location for 20 years, and that it is an emergency runway for Baer Field [sic].

Mr. Price asked the Board if it would like for him to address remonstrator questions one at a time. Mr. Wilkinson stated that it would be best to address questions one at a time.

Mr. Price stated that petitioner does have FAA approval, and that FAA did not identify any navigable hazards. He added that, in his experience, FAA review involves detailed examinations.

Mr. Gerig stated that he believed he heard Mr. Price say that FAA approval was granted for no lighting. Mr. Gerig stated that the runway in question is on the map, and that he has struggled to consider how petitioner can consider placing the tower at the end of the runway.

Mr. Price stated that the FAA identify whether there is any threat to aviation that would require lighting.

Mr. Gerig stated that he guarantees that there is a threat.

Mr. Price said that he can only report what was stated by the FAA.

Mr. Gerig again stated that the runway has been at its current location for 20 years and that it has been approved by the FAA as an emergency landing airport for Baer Field [sic]. Mr. Gerig stated he is unsure whether petitioner has obtained necessary approvals from FAA.

Mr. Wilkinson asked if other audience members had questions for the petitioner.

Maxine Stoval, 10865 S. 700 East, Columbia City, Indiana, stated that her property is across CR 700 East from the proposed location of the access drive to the site. Ms. Stoval stated that Mr. Price claimed that the site would be screened on the south and west. Ms. Stoval asked the petitioner about screening for houses to the north and east. She claimed that existing houses to the north and east are not screened from the site.

Mr. Price asked Ms. Stoval if she lives directly across CR 700 East from the proposed site. Ms. Stoval stated that she lived across CR 700 East from where Mr. Bilger stated the access drive would be located.

Mr. Price stated that the site plan showed that the site would be approximately 600' off the roadway. Mr. Price stated that there is a line of trees along the western edge of CR 700 East that effectively screens the tower from her property. Mr. Price stated that this, however, does not mean that the tower will never be visible.

Ms. Stoval stated that the tower will be almost 200' tall and will be visible.

Mr. Price stated that he is not claiming that the tower will not be visible. Mr. Price stated that there are towers all across the county, and that these towers provide critical infrastructure that allow people to stay connected. Mr. Price stated that this area is no different from any other in the county in that it needs infrastructure to ensure a reliable network, and added that this part of the county suffers from a gap in coverage.

Ms. Stoval asked why the tower could not be moved into the stand of trees that lie directly to the west of the proposed site, as was suggested by Mr. Wilkinson. She also asked why it could not be placed on a platform to raise it to whatever elevation necessary to achieve the desired network coverage. Ms. Stoval stated that placing the tower in the stand of trees directly to the west of the proposed site would provide for a better screen for properties to the north and east.

Mr. Price stated that he believed that Mr. Wilkinson had in fact suggested the site potentially be moved to the south and east.

Ms. Stoval stated that this would place the tower inside the tree line and closer to the lessor's residence.

Mr. Price stated that the tower would have to be moved to the west to place it within the tree line. Mr. Price stated that he interpreted Mr. Wilkinson's suggestion to mean that the tower could be placed to the south and east of the proposed site, and added that placing it within the tree line would require it to be moved to the west.

Mr. Price stated that the location was purposefully chosen to be located near the woods to take advantage of natural screening to the west and south. Mr. Price stated that homes tend to be placed closer to the county road, and that this site was intentionally chosen to be removed from the county road and homes in the area and take advantage of the existing tree cover.

Ms. Stoval stated that her suggestion is to move it further into the tree line directly to the west of the proposed site because, as proposed, the site will not be screened to the north and to the east. Mr. Wilkinson asked Ms. Stoval if she had any further questions. Ms. Stoval stated that she had no more questions.

Kelsey Schwartz, 10680 S. 700 East, Roanoke, Indiana, stated that she resides and works at the property directly north of the subject property. She stated that the proposed tower sight is in a direct line of sight from the residence and barn on 10680 S. 700 East, and asked what attempts were made to minimize the tower's impact on that property. She stated that the tower could not be more obvious from her property if it is placed at the site being proposed.

Mr. Price stated that a monopole design along with the elevation of the proposed site allows for petitioner to construct a tower that is under 200' tall and would meet the RF requirements to improve network performance. Mr. Price stated that the locations of existing towers dictate where new towers or co-locations are needed, and that this site was proposed because a willing lessor offered a site for lease that allows petitioner to meet the RF requirements needed to improve network performance in the surrounding area while also minimizing the impact on surrounding property owners. Mr. Price stated that this proposal does not include a development standards variance and that petitioner is entitled to approval of the special exception being requested so long as they meet the review criteria.

Ms. Schwartz stated that petitioner has minimized impact for everybody except for the property where she resides. Ms. Schwartz stated that petitioner claimed there would be no noise created by the tower, but that everything she has read stated that there would be a low hum coming from the tower.

Mr. Price stated that the tower would not generate noise above that typically associated with a residential use.

Ms. Schwartz stated that her residence is set back from CR 700 East and SR 114 and that the only noises she typically hears are those typical of a rural area. Ms. Schwartz asked petitioner if he is saying that she will not hear any noise coming from the tower.

Mr. Price stated that she could hear a noise similar to that generated by an air conditioning unit, but that the noise would not be greater than that typically associated with residential uses. He stated that any noise generated would not be comparable to that generated by a wind turbine or high tension power line.

Ms. Schwartz stated that she had no more questions.

Fred Vandeman, 10680 S. 700 East, Roanoke, Indiana, stated that he owns the property directly north of the subject property. Mr. Vandeman stated that petitioner claimed that the proposed site is ideally suited for the tower, but that virtually every other property on that stretch of CR 700 East received a solicitation from petitioner to lease a tower site. Mr. Vandeman asked petitioner to explain why this occurred if the proposed site is ideal for the tower.

Mr. Carr stated that his team receives a recommendation from the RF engineer to place a tower in an area so as to meet RF requirements, and that after receiving the recommendation reaches out to property owners in the area to gauge interest in entering into a lease agreement. He stated that he has to receive a level of interest from the property owner in order to fully investigate a property, and that once that level of interest is obtained, he communicates with the property owner about the possibility of locating a tower on their property. He stated that at that point he brings his team out to the property to investigate potential sites for the tower that would best fit the needs of the network. Mr. Carr stated that he then speaks with the property owner to determine where they would allow for the tower to be sited on their property and where they would allow an access drive to the tower site to be placed. Mr. Carr stated that he then provides the location of a potential site to the RF engineer to determine if the location meets the RF requirements to improve network performance.

Mr. Wilkinson asked Mr. Carr if the reason that so many properties along CR 700 East received solicitation letters was because Mr. Carr needs to find a location to place the tower.

Mr. Carr stated that was correct.

Mr. Vandeman stated that, previously in the hearing, aerial images with topographic contour lines were presented. He asked petitioner why other areas on the subject property with similar elevations were not considered. Mr. Vandeman stated that petitioner's claim that the tree cover along the western edge of CR 700 East was substantial enough to screen the tower was hilarious. Mr. Vandeman stated that he has lived for a number of years and that there is one sparse row of trees along the western edge of CR 700 East, and that this row of trees will not be sufficient to screen the tower along this stretch of CR 700 East.

Mr. Wilkinson stated that petitioner's claim of tree cover sufficient to screen the tower along the western edge of CR 700 East was a general statement.

Mr. Vandeman asked petitioner if they have looked at other sites on the subject property with similar elevations to the proposed site.

Mr. Price reiterated Mr. Carr's statement concerning the steps taken to identify potential lessors and potential sites. Mr. Price stated that petitioner is entitled by state and federal law to be treated in a nondiscriminatory fashion, and that other communications tower operators in the County have not been asked to locate 1600' or 1800' access drives through swales to have reasonable access to their facilities.

Mr. Price stated that this site meets petitioner's criteria and does so in a way that is responsible and is well-removed from CR 700 East. Mr. Price stated that, although others may disagree, he believes there is a great deal of tree cover along CR 700 East, and believes that it contributes to the screening of the base of the structure from properties along that stretch of CR 700 East.

Mr. Wilkinson asked if any additional audience members had questions for the petitioner.

André Stoval, 10865 S. 700 East, Roanoke, Indiana, approached the podium. Mr. Wilkinson stated that Mr. Stoval needed to be sworn in prior to speaking during the public hearing. Ms. Boyd administered the oath to Mr. Stoval.

Mr. Stoval asked petitioner if the existing opening from CR 700 East to the field where the tower site has been proposed is going to be used for the access drive, or if petitioner intends to remove more trees to place an access drive.

Mr. Carr stated that the access drive would be approximately located at the same place where the public hearing notice sign was placed.

Mr. Stoval stated that the exiting opening is typically where tractors access the field.

Katy Scheer, 526 Commercial Street, Roanoke, Indiana, stated that she boards her horse at the farm located directly north of the subject property. Ms. Scheer asked petitioner if the property in Zionsville which petitioner presented photographs of and discussed earlier is privately owned or is owned by the city. Mr. Price stated that the facility is privately owned.

Ms. Scheer asked petitioner if they spoke with the owners. Mr. Price stated that he did not.

Ms. Scheer asked petitioner if the property value was affected after the tower previously discussed by petitioner was constructed.

Mr. Price stated that he has prepared approximately five different sets of materials relating to the impacts on property values of properties located next to or near towers that he intends to present during the rebuttal phase of the hearing. Mr. Price stated that petitioner has prepared their own property value study in Whitley County that examines the impact of towers on the values of adjoining properties. Mr. Price stated that this survey found an over eight percent increase in property values after the construction of a tower. Mr. Price stated that this finding has been validated by materials submitted by remonstrators. Mr. Price stated that one of the materials

submitted by remonstrators was an appraisal study done by Valbridge, and that this study found that there was no impact on property values relative to construction of a tower in five different markets across the United States. Mr. Price stated that the Whitley County property value study prepared by petitioner and the Valbridge study both demonstrate no impact of a tower on property values. Copies of petitioner's Whitley County study and the Valbridge study were entered into the public record.

Ms. Scheer asked petitioner if the Whitley County property value study prepared by petitioner stated that property values were not affected within a certain radius of a tower.

Mr. Price stated that the Whitley County study demonstrated no discernible impact on property values when a willing buyer and willing seller exchange property that is adjacent to a cell tower. Mr. Price stated the methodology used to select properties for inclusion in the Whitley County study was if a property adjoined another property on which a tower was located. Mr. Price reiterated that this study found no impact on the values of properties after construction of a tower. Mr. Price stated that towers are ubiquitous and that they fade into the background once they are built, and that the only communications petitioner receives after construction of a tower is from customers who notice an improvement in their coverage.

Ms. Scheer stated that this may be the case, but she is skeptical of the impact on businesses such as that conducted on the property directly north of the subject property.

Mr. Price stated that towers are necessary for businesses such as that conducted on the property directly north of the subject property. Ms. Scheer stated that towers are not necessary for an equestrian facility.

Mr. Price stated that a recent emergency in Zionsville involving a person being kicked violently by a horse, and that the ability to make a call to 911 was critical to that business.

Ms. Scheer stated that the manager of the equestrian facility located on the property directly north of the subject property was attacked by one of the subject property owner's dogs, and that she was able to get emergency facilities out there immediately.

Ms. Scheer stated that horses are skittish, and that something so much as a plastic bag could frighten them and cause harm to humans. Ms. Scheer stated that petitioner has claimed that the tower would generate no smell, no noise, or nothing or the sort. She stated that, despite this, the presence of the tower could scare an animal.

Mr. Price provided clarification that the equestrian facility in Zionsville he has referred to repeatedly throughout the hearing is at the corner of Hunt Club Road and Ford Road and that this location is the epicenter of the equestrian community in Zionsville. Mr. Price stated that the horses found in a picture in section four of the previously described handout are in the shadow of the tower pictured in the same section of the handout.

Ms. Scheer asked petitioner if the farm that is close to the tower pictured in the handout has lost customers due to the presence of the tower.

Mr. Price stated that he does not know if it lost customers due to the presence of the tower.

Mr. Wilkinson asked if any additional audience members had questions for the petitioner.

Diana Vandeman, 10680 S. 700 East, Roanoke, Indiana, asked petitioner if there is a home located within 290' of the Zionsville farm that petitioner has referred to previously.

Mr. Price stated that the nearest house is probably closer than 290'.

Ms. Vandeman asked petitioner if the residents of this house are associated with the facility. Mr. Price stated that they are not.

Ms. Vandeman asked if the location where the horses ride is within the vicinity of the tower. Mr. Price stated that he did not know. He stated that he has seen horses being ridden in that vicinity, and more specifically in the meadow pictured in section four of the handout. Mr. Price stated that he passed by the location earlier today and that the horses did not appear to be frightened by the tower.

Ms. Vandeman stated that she does not believe petitioner can guarantee that the tower does not frighten the horses unless he can provide a clear answer. Mr. Price stated that the objective manifestations of a tower are not things that typically frighten other creatures. He stated that towers, in fact, enhance public safety and public convenience. Mr. Price stated that there is a direct correlation between the ability to make a cell phone call and a reduction in crime rates.

Ms. Vandeman asked petitioner if land lines do the same thing as cell phones. Mr. Price stated that they do, except that the majority of people in the United States no longer have a land line.

Ms. Vandeman asked petitioner if he is certain that the majority of people in agricultural areas no longer have land lines. Mr. Price stated that he does not know, but that he does not think that people who live in rural areas would like to be less connected to their families or public safety officials than people who live in a city. Mr. Price stated that this desire to be connected to family and others is driving demand for the services provided by entities such as the petitioner.

Ms. Vandeman asked Mr. Price if he is a pilot. Mr. Price stated that he is not a pilot.

Ms. Vandeman asked Mr. Price if it was correct that he has never had to fly a plane in a situation where the landing was critical. Mr. Price stated that he has not.

Mr. Stoval asked petitioner how far the tower could be moved relative to the site that has been proposed. Mr. Carr stated that the proposed site was identified based on several aspects, including, but not limited to, federal regulatory guidelines. Mr. Carr stated that, in addition to going before the Board, the petitioner has conducted an environmental assessment and been in communication with the state historical preservation office during the siting process.

Mr. Stoval asked petitioner if the location of the stakes on the subject property is where the tower is proposed to be located. Mr. Carr stated that the stakes represent the four corners of the lease area, and that the tower is proposed to be located within that area.

Mr. Stoval stated that his driveway approaches CR 700 East at an angle and, as proposed, the access drive and tower site would be in direct view from the end of his driveway. Mr. Price stated that, as proposed, the access drive is offset from the tower site relative to CR 700 East.

Mr. Stoval stated that when the owners of the subject property host events they typically use an existing opening in the tree line that is at approximately the same location as the proposed access drive. Mr. Price stated that Mr. Stoval's view of the tower from the end of his driveway should be screened because the tower site is northwest, not directly west, of the point where the access drive meets CR 700 East.

Mr. Stoval asked petitioner what corner of the intersection of Ford Road and Hunt Club Road in Zionsville were depicted in the pictures in section four of the handout. Mr. Price stated that those pictures depict the southeast corner of the intersection.

Mr. Bilger asked Mr. Stoval for more information regarding his previous statement describing events. Mr. Stoval stated that the owners of the subject property occasionally host parties and that they have asked him and his wife a couple of times if attendees could park motorcycles on their driveway.

Mr. Wilkinson asked Mr. Stoval if he was referring to the lessor's property. Mr. Stoval stated that this was correct.

Mr. Wilkinson asked if any additional audience members had questions for the petitioner. Hearing none, Mr. Wilkinson stated that general statements from the audience regarding the petition would now be heard by the Board. Mr. Wilkinson added that petitioner would be afforded an opportunity to rebut general statements after all interested audience members had been heard.

Ms. Schwartz stated that she is the barn manager of the equestrian facility at the property directly north of the subject property. She stated that some of her responsibilities include showing the property and facilities to prospective boarders. Ms. Schwartz stated that the proposed tower site is in a direct line of sight from the hot and cold water wash stall at the equestrian facility. She stated that equestrian facility customers spend thousands of dollars annually to board their horses, and that these customers will believe what they want, regardless of petitioner's claims or the conclusions of research presented by petitioner. Ms. Schwartz stated that boarders will believe there is noise emitted from towers such as the one proposed if they read something on the internet that states as much. Ms. Schwartz reiterated her claim that these towers do emit noise and added that RF emissions can be dangerous. She stated that she would not comment on the long term health effects of exposure to RF emissions, but that potential boarders will take into consideration the potential impact of towers in close proximity to their horses.

Ms. Schwartz stated that current boarders greatly appreciate the existing rural character of the property and surrounding area, and that placement of the proposed tower could negatively impact their opinion of the property. Ms. Schwartz stated that there are opinions on the internet that will influence how people think about the proposed tower.

Mr. Wilkinson asked if any additional audience members would like to make a general comment.

Mr. Vandeman thanked the Board for listening to presentations from audience members. He stated that the infrastructure needed to support cellular service is valuable to the community. He stated that there is a responsibility to make sure that the requirements of the zoning ordinance are

met when zoning exceptions are required to place such infrastructure. He stated that comments can be made on either side of an argument, for example, concerning whether towers emit noise or whether they present health risks. He stated that Ms. Schwartz's comments concerning public perception were important to this discussion.

Mr. Vandeman stated that research supporting either side of the argument can be found online. He referenced a comment letter he submitted to Planning staff that highlighted research showing negative impacts of towers on neighborhood aesthetics and surrounding property values. Mr. Vandeman stated that the Valbridge study referenced by petitioner does support the position that towers have no impact on surrounding property values, but that the study also cites other studies that found a 2-20% decrease in property values.

Mr. Vandeman stated that he spent a lot of time searching and considering properties when he made the decision to purchase the property directly north of the subject property and start a farm. He stated that he was delighted with the location and the aesthetics of the surrounding area.

Mr. Vandeman presented a document with a representation of the proposed tower superimposed on a photograph of the proposed site submitted to Planning staff by Ms. Schwartz. Mr. Vandeman stated that it is misleading for petitioner to claim that the proposed site is the only suitable location in the area, and that there are aesthetic advantages to placing the tower further to the west. He stated that the tower, as proposed, would project 34 degrees into the sky from the property line that adjoins his property and the subject property, and that, for comparison, the tree line projects maybe 5-10 degrees into the sky from the same vantage point.

Mr. Vandeman referenced comment letters that he submitted to Planning staff documenting negative impacts of towers on surrounding property values, and stated that he disagrees with petitioner's evidence demonstrating no impact or positive impact of towers on surrounding property values.

Mr. Vandeman reiterated his statements that perception is important and that evidence can be found supporting either side of an argument. Mr. Vandeman claimed that there are many examples of communities in which towers have been taken down because of proximity to facilities such as schools or day care centers. Mr. Vandeman stated that his preference would not be to relocate the tower to another property, but to not allow for the tower to be located on the subject property at all because it is close to other properties that could be negatively impacted by the presence of the tower.

Ms. Stoval stated that the tree line along the western edge of CR 700 East does not screen her property when the owners of the subject property hold events during the summer. She stated that her primary concern is for the aesthetic implications of placing the tower at the proposed site.

Ms. Scheer stated that her horse is boarded at the property directly north of the subject property. She stated that she understands the expense involved with excavation and placing a drive and with petitioner's concerns finding a site with a suitable elevation that is removed from CR 700 East. She stated that she understands the need for improved coverage and that people who live in

the surrounding area desire better cellular service, but that the tower, as proposed, impedes the surrounding property owners' ability to enjoy the rural setting of the area.

Mr. Wilkinson asked if any additional audience members would like to make a general comment.

Adam Cox, 1816 Forest Park Boulevard, Fort Wayne, Indiana, stated that petitioner claimed that there is a coverage gap in the area. Mr. Cox stated that he frequently visits the equestrian facility at the property directly north of the subject property and his phone works fine. Mr. Cox stated that it is possible that AT&T has a coverage gap in the area, but he does not believe there is a coverage gap in the area in an absolute sense. Mr. Cox questioned whether construction of this tower would actually serve Whitley County, but rather is an attempt by AT&T to make money. Mr. Cox stated that what is good for Zionsville may not be good for Whitley County. Mr. Cox stated that petitioner's arguments fall flat when they claim to meet a need in coverage through placing a tower in such a unique part of the county. Mr. Cox stated that there are rural areas of Whitley County that have coverage gaps, but that this and the surrounding area are not one of them.

Ms. Stoval stated that an area with poor coverage is located further west along SR 114, not in the area around the proposed tower site. Ms. Stoval stated that the tower would be better placed further west on SR 114.

Mr. Gerig stated that the Board should table this petition until remonstrators have a chance to take legal action because someone is going to get killed as a result of this tower being placed so closely to Gerig's Field. He stated that the tower, as proposed, sits directly in the middle of the traffic pattern for the airport. He stated that petitioner should co-locate on the WOWO radio tower approximately 1/2 mile away. He stated that the placement of the tower at the proposed site would present a danger to public safety because it is difficult to see towers among trees and that night landings will be hazardous because the tower would not have lights.

Mr. Wilkinson asked Mr. Gerig to clarify what his opposition is about.

Mr. Gerig stated that his opposition to the tower is not about aesthetics so much as it is about public safety. He stated that he does not think that petitioner knew Gerig's Field existed, and so did not consider it when determining a potential site for the tower.

Mr. Vandeman stated that he is a pilot and that the takeoff and landing ends of a runway are very dangerous areas of an airport, and that the proposed site of the tower is very near to the takeoff and landing end of the runway of Gerig's Field Airport.

Mr. Wilkinson asked Mr. Vandeman to point out the location of Gerig's Field on an aerial image, but the aerial did not include the location of Gerig's Field.

Mr. Bilger stated that according to Beacon GIS the eastern end of the east-west runway at Gerig's Field was approximately 2,800' west-northwest of the proposed tower site.

The Board, petitioner, and audience members engaged in discussion concerning the distance of the proposed tower site from Gerig's Field.

Mr. Price stated that petitioner has already submitted an affidavit that indicates that the tower facility complies with FAA regulations.

Mr. Wilkinson stated that Mr. Price can present that document to the Board during petitioner's rebuttal period.

Mr. Wilkinson asked if any additional audience members would like to make a general comment.

Ms. Vandeman stated that there are two sides to every story. She stated that this petition is all about perception, aesthetics, and life. Ms. Vandeman stated that when you're in a plane and running out of gas or experiencing a problem, that tower would be right in the way. Ms. Vandeman stated that she cannot imagine trying to take care of the plane and then trying to miss a tower that does not have a light on it.

Ms. Vandeman stated that the aesthetics from her farm are a real concern for her. She stated that people do not like cell towers. She stated that whether or not it is right or wrong, it is their perception and perception is what is right in the eye of the beholder, not ours. Ms. Vandeman encouraged the Board to not allow this tower to be permitted.

Mr. Vandeman stated that the orientation of the airstrip is in direct line with the proposed location of the tower.

Mr. Wilkinson asked if any additional audience members would like to make a general comment.

Ms. Schwartz stated that an aerial image showing the proposed location of the tower does not match the location of the stakes on the subject property. She stated that the aerial makes the proposed location appear to be further into the trees than the staked out area.

Mr. Wilkinson stated that the location is close to the tree line, but it is not in the trees.

Ms. Schwartz stated that this was correct. She stated that it was not against the trees and that she was unable to provide a distance in feet from the trees, but that it is not as close to the trees as is represented on the aerial image.

Mr. Gerig stated that he had to bury overhead power lines at the end of the runway to avoid an accident at Gerig's Field. He stated that previously to being buried they were approximately 20' in the air. He stated that he could not imagine a 200' tall tower not being a problem. He stated that the proximity of the proposed tower to Gerig's Field is a real issue. He stated that somebody is going to get in trouble here, and that the tower, as proposed, is too high and too close. Mr. Gerig stated that the tower should not be built at the end of a runway when petitioner could co-locate on the existing WOWO tower that is 1/2 mile away.

Mr. Stoval stated that there is a guyed tower across SR 114. Mr. Stoval asked Mr. Price if he knew the height of this tower.

Mr. Price stated that he believes that tower is 100' tall.

Mr. Stoval asked Mr. Price if he would rather locate the tower closer to SR 114.

Mr. Price stated that the precise location of the tower is critical.

Mr. Wilkinson asked if any additional audience members would like to make a general comment. Hearing none, Mr. Wilkinson stated to petitioner that he could now make rebuttal statements.

Mr. Price stated that he counted three references to adverse health effects relating to a tower. Mr. Price stated that he reviewed all the data that was included in staff report from remonstrators, and that there is not a single study that was submitted that stands for the proposition that there are any adverse health effects associated with a cell tower. He stated that, in reference to cell phones not cell towers, an organization referenced in one of the studies was intending to declare cell phones as a Class 2B carcinogen, which is a distinction they share with pickles, aloe vera, and being a carpenter. Mr. Price presented to the Board a summary of articles submitted by remonstrators.

Mr. Wilkinson asked Mr. Price to give a copy of the article summary to Planning staff to include in the record.

Mr. Price stated that the siting of telecommunications structures is a balance between federal and local interests, and that the federal law prohibits local boards from considering health effects during the approval process. Mr. Price stated that this has been the law since 1986 and that it is the law today. He stated that he is happy to have the discussion because the evidence resoundingly supports a finding of no discernible adverse health effect associated with cell towers, and that there are physical reasons why this is the case. Mr. Price stated that this is why the Federal Communications Commission has issued its guidance and why the federal law, the Telecommunications Act, says health effects cannot be a consideration when approving or denying a site.

Mr. Price stated that several remonstrators claimed that people believe what they read on the internet, and that perception is a big deal. Mr. Price stated that what is more important are facts. Mr. Price stated that the Board is charged with making a finding of fact, not a finding of perception. Mr. Price stated that there has been no evidence presented tonight that suggests these towers adversely affect property values. Mr. Price stated that the only that has been said is that some people may have a negative perception of a cell tower. Mr. Price presented to the Board and Planning staff a copy of the Valbridge property value study referenced earlier and a study of property values near cell towers in Whitley County prepared by petitioner. He stated that the Whitley County study demonstrated an 8% increase in property values after tower construction.

Mr. Carr presented to the Board and Planning staff a property value study prepared by petitioner that examined assessed values before and after tower construction at multiple locations in Hamilton and Hendricks counties. Mr. Price referred the Board to an aerial image near the end of the study depicting a monopole tower on a property in 1999. Mr. Price asked the Board to turn to the next page and examine an aerial of the same area from 2016. Mr. Price stated that the aerial from 2016 shows the development around that tower that occurred between 1999 and 2016. He stated that petitioner's view is that one can get people to say there is a perception problem with cell towers, but that the reality is that people vote with their feet and with their pocketbooks, and that cell towers do not have an adverse effect on property values. Mr. Price stated that this

conclusion is supported by the Valbridge study and by petitioner's studies for Whitley County and Hamilton and Hendricks counties.

Mr. Price presented to the Board and Planning staff a document showing an aerial image of the tower located near the corner of Ford Road and Hunt Club Road in Zionsville.

Mr. Price stated that petitioner tried to locate the tower site in a manner that is reasonably removed from CR 700 East. He stated that the site plan does show the lease compound running along the edge of the tree line in order to take advantage of the screening it provides to the south and west. He stated that the standard petitioner is attempting to achieve is not that one could not see the tower from any vantage point, and added that not being able to see the tower from any vantage point is not a standard petitioner is asked to meet under the Zoning Ordinance and is not a standard that is applied to other telecommunications carriers who do business in the community. He stated that petitioner is entitled to be treated in the same manner that other carriers are treated. Mr. Price stated that the claim that AT&T is simply trying to make money is not true, and that the implication of that claim is that it is acceptable for AT&T to not provide adequate service so long as some other provider does so. He stated that this is not the law, and that petitioner is required to provide adequate and is entitled to be treated equally under the law. Mr. Price stated that this requirement is in place to ensure competition so that these services are provided to people at a reasonable cost. He stated that the Comprehensive Plan contemplates that there is wireless infrastructure and available broadband internet connections throughout the community, and added that this tower contributes to achieving that end.

Mr. Price stated that the Zoning Ordinance does not require petitioner to provide a site that is invisible, concealed, or made to look like something other than a tower. He stated that the Zoning Ordinance asks telecommunications carriers to achieve the best balance that they can between providing a service while also being mindful of the surrounding community. He stated that petitioner has done this, in terms of this location, by siting this tower at location that could utilize a monopole design. Mr. Price stated that there is often a desire at tower siting hearings to enter into a discussion about locating a tower at any number of different sites. He stated that state law prohibits the requirement that petitioner submit information about their own network decisions, and that this is the case because those are decisions made by RF engineers, not by individual members of the public. He stated that this could result in a situation where no siting decision could ever be made, and that this is why petitioner submitted an affidavit from its RF engineer that is part of the public record. Mr. Price stated that the only thing the RF engineer is required to do is to demonstrate that there is not an existing tall structure that can provide the exact same coverage, and that he thinks that this was provided to the Board as part of the packet.

Mr. Bilger stated that he is unsure if the affidavit was part of the packet sent to Board members, but that a copy of the affidavit is included in the petition file.

Mr. Price stated that he can provide a copy of the affidavit to the Board, if desired.

Mr. Price stated that petitioner takes very seriously its compliance with all laws respecting the construction of tall structures, and that there is no industry that is more sensitive to such laws. He stated that petitioner has to take precautions because it does not want to pose a threat to anyone,

including those using the airways for navigation. He stated that part of the protocol that precedes a local hearing such as this is to obtain FAA approval. Mr. Price stated that he is prepared to make a commitment that petitioner will supply its FAA approval letter and make a commitment that supplying its FAA approval letter is a condition of issuing any building permits relative to this site. Mr. Price stated that petitioner follows the protocols and that this was determined to pose no threat to aviation. Mr. Price stated that, in his experience, those are thorough examinations done by individuals who are trained professionally to ascertain whether a structure would or would not pose any threat to navigation.

Mr. Price stated that petitioner believes it has met all the required findings, and that it has presented a very compelling site. He stated that, with regard to seeking another location, one of the things he does is to provide a map that shows the zoning of the subject property along with that of the surrounding properties within the area that petitioner needs to have a site located to satisfy its RF requirements. Mr. Price presented an aerial map to the Board and Planning staff showing the zoning of the subject property and other properties in the surrounding area. He stated that petitioner would be required to seek the same relief from the Board no matter where it attempted to locate a tower, and that petitioner did its level best to arrive at a site that balances the interests of the Zoning Ordinance and complies with all the development standards.

Mr. Price stated that he believes petitioner's proposal warrants approval with the conditions and commitments that have been offered. He stated that there is not some immediately available alternative that would not require a special exception to permit construction of the tower, but that a special exception would be required anywhere in this area.

Mr. Price presented to the Board and Planning staff an affidavit from petitioner's RF engineer that demonstrates compliance with FCC rules as well the engineer's evaluation of tall structures in the general vicinity. He stated that this evaluation of other tall structures in the general vicinity includes the WOWO radio tower mentioned by a remonstrator along with an AEP tower in the area. He added that the RF engineer determined that the AEP tower, because of its distance from the area needing improved coverage, could not provide substantially equivalent coverage.

Mr. Price stated that petitioner respectfully requests approval, that he welcomes any questions that the Board may have, and that he appreciates the way the meeting has been conducted.

Mr. Wilkinson asked the Board if it had any questions for the petitioner. Hearing none, Mr. Wilkinson asked the Board if there were any conditions it would like to place on the petition.

Mr. Wilkinson stated that the Board would like to see a condition stating that the special exception is granted as presented and per the site plan.

Mr. Wilkinson asked the Board if it would like to add a condition concerning the FAA letter that petitioner has suggested.

Ms. Deckard said that she is fine with it either way, but, if petitioner is willing to provide the letter as a condition, it would satisfy the issue.

Mr. Wilkinson asked the Board for any other comments, conditions, thoughts, or further discussion.

Mr. Wright stated that the Board needs to delegate authority to Planning staff and legal counsel to cause findings of fact to be prepared in support of the Board's decision.

Mr. Wilkinson asked the Board for any further discussion.

Hearing none, Mr. Wilkinson stated that, as a special exception, the Board would need a motion.

Mr. Wright made a motion to approve 19-W-SE-10 with the following conditions:

- The Special Exception is granted as presented and per the site plan.
- Petitioner shall provide to Planning Staff the Federal Aviation Administration (FAA) letter concerning FAA regulations.

Ms. Deckard seconded the motion, and the motion passed by a vote of 4-0 with all attending members voting in favor of the petition.

NEW BUSINESS

There was no new business.

OTHER BUSINESS

REVIEW OF 2020 MEETING DATES

Mr. Bilger presented to the Board proposed 2020 meeting dates. Mr. Bilger stated that the Board could approve the meeting dates by formal motion or by consensus. He stated that there were no meeting dates that had to be moved as a result of holidays.

The Board approved the proposed 2020 meeting dates by consensus.

Mr. Wilkinson asked if there were any further discussion items. Staff confirmed there were no other items for discussion.

ADJOURNMENT

Mr. Wilkinson adjourned the meeting at 9:30 P.M.