

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46

**MINUTES**  
**BOARD OF ADJUSTMENT**  
**JUNE 8, 2015**  
**REGULAR MEETING**

**MEMBERS PRESENT:** Larry Wright, Full Member (Chair)  
David Blankfard, Full Member (Vice Chair)  
Karen Barrows, Full Member  
Samantha Cabe, Alternate Member  
Mark Micol, Alternate Member  
Jeffrey Schmitt, Full Member

**STAFF PRESENT:** Michael Harvey, Current Planning Supervisor  
Patrick Mallett, Planner II  
Debra Graham, Board Secretary  
James Bryan, Staff Attorney

**AGENDA ITEM 1: CALL TO ORDER**

Larry Wright called the meeting to order.

Larry Wright: Annually, the BOCC Chair and Vice Chair meet with chairs of Advisory Boards and committees and the purpose of that annual meeting is to gather the chairs of all the advisory boards and ask them to talk about their coalition they have with other boards to give a sense of balance and harmony in moving the county ahead. This is one aspect the county strives to touch base with the grass roots. They held one in March for advisory boards. The nature of this board is really not advisory. Donna Baker asked Michael Harvey to represent this board. Mr. Harvey did represent this board and I would like to thank him for doing so.

Larry Wright: A few days ago I learned Debra Graham will retire on July 31<sup>st</sup> from 30 years of Orange County Public Service. I am at a loss to find some superlatives to convey Ms. Graham's excellent dedication and service. I wish her the upmost joy as she settles into her new life.

Larry Wright: I would like to open the floor for nominations for chair.

Jeff Schmitt: I would like to nominate Samantha Cabe.

Mark Micol: Seconded.

Larry Wright: Unfortunately, she is an alternate member.

Michael Harvey: That is about to be corrected. The board is about to move her to a full member.

Larry Wright: Other nominations?

**MOTION** made by Jeff Schmitt to nominate Samantha Cabe. Seconded by Mark Micol.

**Vote:** Unanimous

1 Mark Micol: Nominated David Blankfard for Vice Chair.

2

3 Larry Wright: Any other nominations?

4

5 Jeff Schmitt: Move to close the nominations.

6

7 **MOTION** made by Mark Micol to nominate David Blankfard as Vice Chair.

8 **Vote:** Unanimous

9

10 Larry Wright: As a point of order, what do we do for Clerk or Secretary?

11

12 Michael Harvey: My honest answer is that will be addressed at the appropriate time when either the county hires the  
13 new senior admin person or the staff will have to be appointed as clerk at a future meeting.

14

15

16 **AGENDA ITEM 2: CONSIDERATION OF ADDITIONS TO AGENDA**

17 There were no additions to the agenda.

18

19 Karen Barrows: We talked after the shooting range thing about making a motion to the BOCC about the noise  
20 ordinance or defining shooting ranges... we didn't want to lose track of that. Do we want to do that tonight?

21

22 Michael Harvey: The county planning staff has already received approval by the BOCC to initiate an ordinance text  
23 amendment dealing with recreational facilities so we believe we accomplished what the board has asked.

24

25

26 **AGENDA ITEM 3: APPROVAL OF MINUTES**

27 **A. DECEMBER 8, 2014**

28

29 Mark Micol: On page 14, line 19 should read, "And the activity..."

30

31 David Blankfard: On page 34, line 8 should read, "He is not here". Line 10 should read, "He is not here exactly". On  
32 page 51, should line 21 and 22 be stricken since the female was unidentified?

33

34 James Bryan: I don't believe the board based its conclusion on that evidence so I would keep it part of the record.

35

36 **MOTION:** Karen Barrows made a motion to approve the minutes with corrections. Seconded by Jeff Schmitt.

37 **VOTE:** Unanimous

38

1  
2 **AGENDA ITEM 4: PUBLIC CHARGE**  
3

4 The Board of Adjustment pledges to the citizens of Orange County its respect. The Board asks its citizens to  
5 conduct themselves in a respectful, courteous manner, both with the Board and with fellow citizens. At any time  
6 should any member of the Board or any citizen fail to observe this public charge, the Chair will ask the offending  
7 person to leave the meeting until that individual regains personal control. Should decorum fail to be restored, the  
8 Chair will recess the meeting until such time that a genuine commitment to this public charge is observed. All  
9 electronic devices such as cell phones, pagers, and computers should please be turned off or set to  
10 silent/vibrate.

11  
12 The Board of Adjustment is a quasi-judicial administrative body established in accordance with the provisions of  
13 local regulations and State law to perform specified functions essential to the County's planning program.  
14 Action(s) taken by the board are based solely on competent, substantial, and material evidence presented during  
15 a previously scheduled and advertised public hearing on a specific item. As detailed within Section 2.12.2 of the  
16 UDO the Board chair reserves the right to exclude evidence and testimony that is deemed: 'incompetent,  
17 irrelevant, immaterial, or unduly repetitious' and therefore fails to reasonably address the issues before the Board  
18 of Adjustment. While it should be noted there is no time limit on the presentation of evidence, the Chair asks that  
19 the presentation of evidence be consistent with established policies, rules of procedure, and acceptable levels of  
20 decorum to ensure a fair and equitable hearing for all parties.

21  
22 Larry Wright: I have just been presented with a point of order and that is we are going to have to....we have two  
23 alternates here tonight and we are going to have to determine which one is part of the quorum.  
24

25 Mark Micol: Samantha will be voting.  
26

27 **AGENDA ITEM 5: A-1-15 – Class B Special Use Permit application proposing to erect a telecommunication**  
28 **facility at 5022 Kerley Road**

29 In accordance with Section(s) 2.7 *Special Uses*, 5.2.2 *Table of Permitted Uses*, 5.3.2 *Application of Use Standards –*  
30 *Special Uses*, and 5.10 *Standards for Telecommunication Facilities* of the UDO Skyway Towers LLC and T-Mobile have  
31 submitted a Class B Special Use Permit application seeking a permit to erect a 129 ft. tall (125 ft. tall tower with a 4 ft.  
32 lighting pole at the top for a combined total height of 129 ft.) monopole telecommunication facility (i.e. a  
33 telecommunication tower) on a parcel of property located at 5022 Kerley Road, further identified utilizing Orange  
34 County Parcel Identification Number (PIN) 0801-15-4533. The parcel, owned by Leah Bergman, is zoned Rural Buffer  
35 (RB), is approximately 5.8 acres in area, and is located at the intersection of Mt. Sinai Road (SR 1718) and Kerley  
36 Road (SR 1717) near the border with Durham County (hereafter 'the property'). As detailed within the application, the  
37 applicant wishes to erect a telecommunication tower within a 100 foot by 100 foot leased area on the aforementioned  
38 parcel. There will be an equipment cabinet at the base of the tower to house equipment for the various communication  
39 providers utilizing the tower within a 60 foot by 60 foot fenced compound. Access to the facility shall be through a  
40 proposed 20 ft. wide access drive off of Mt. Sinai Road.  
41

42 Michael Harvey: As this is a quasi-judicial hearing, all parties intending to offer evidence or sworn testimony need to  
43 come up front to be sworn. Attorneys representing applicants do not have to be sworn in.  
44  
45

1 Secretary Debra Graham swore in the following individuals:

Thomas H. Johnson, Jr.	Nancy Willson	Carolina Dielt	Harriet Sayre McCord
David Smith	Susan Sachs	Joanie Yeargan	William Ray
Graham Herring	Judy Martell	Megan Moore	Jane Norton
Robert (Bob) Hill	Susan E. Suttons	Judith Bishop	Luis Gulley
Lee Kerlin	Rick Bartram	Randy Bishop	Katy Phillips
Robert Hornik	Judson Edeburn	Yesica Poou Martinez	Scott Walden
Brack Hall	Mary Edeburn	Carrick Goldner	Daniel T. Gauss
Ann Hall	Lyn Gould	Richard Goldner	Patricia C. Smith
Sue Wilkins	D. Kulousel	Tristran Ottwason	Elia E. Villanueva
Jeffrey Fisher	Michael Nicosia	Nicole Chemla	Ben Philpot
Faye Olive	Elizabeth Rusnak	Susan Schneider	Jamie Barnhill
Mark Waller	Pam Waller	C. Randolph Bishop	Joy Martin
Jon Blitz	Cristen PennindocPeir	Judith Snyderman	Denise Olson
Beth Bega	Madison Dietz	Lucas Moore	
James M. Gibson	Michelle Dietz	Judith E. Dearlove	
Vicki Gibson	Margie Dietz	Joan G. Peck	
Lois Madden	David Pierce	Janet N. Ray	
David J. Madden	Cristina Pierce		

2

3 Michael Harvey: My name is Michael Harvey with the Current Planning Department for Orange County. I have been  
4 sworn. I am going to briefly summarize the memorandum I have prepared for you and allow the applicant to present his  
5 case. As has already been indicated, we are here to review a Class B Special Use Permit proposing the development  
6 of a telecommunications facility at 5022 Kerley Road. In your packet, you have attachments. Most notably, on page  
7 60, you have a Property Vicinity Map, on page 61 through 109; you have notification materials and certifications that  
8 include balloon tests as well as the public hearing. Beginning on page 110, you have the Special Use Permit Findings  
9 of Fact completed by staff. You will note there are a couple of places that staff did not make a determination. We will  
10 get to that in a moment. Attachment 4 beginning on page 127, you have staff comments. You have an application  
11 packet delivered by the applicant with a May 29 letter responding to some of the staff's comments. You also have a  
12 letter offered by Carolina Telecommunications Services, LLC, our telecommunications consultant, Jackie Hicks. You  
13 have an email written by Mr. Patrick Young, a planner for the City of the Durham. The City of Durham reviewed the  
14 telecommunication application as a courtesy. In this email, they have no comments on the proposal. You have a  
15 notarized statement from me indicating the posting of the signs for the balloon test. Mr. Chairman, at this time, I would  
16 like to enter the Abstract which includes Attachments 1, 2, 3, 4, the application package including an 11x17 and full  
17 color copy of the site plan, the Carolina Telecommunications consultant's recommendation, the email from the City of  
18 Durham, my certification of signed posting as well as copies of the Unified Development Ordinance, the 2030 Adopted  
19 Comprehensive Plan, into the record.

20

21 **MOTION** made by Jeff Schmitt to accept. David Blankfard seconded.

22 **VOTE:** Unanimous

23

24 Michael Harvey: I will summarize the information on pages 52 through 59. You have a proposal to build a 129 foot tall  
25 monopole as a 125 foot cell tower with a four foot lightning rod at 5022 Kerley Road with an Orange County parcel  
26 identification number of 0801154353. This is the map showing the property and the anticipated location of the tower.  
27 That is there for illustrative purposes only. It does not represent the actual location of the proposed tower. The  
28 applicant is proposing as summarized on page 54 will be to erect a cell tower within 100 by 100 foot leased area of this  
29 parcel with a \_\_\_\_\_ of the tower and a 60 by 60 foot compound with access to the facility proposed from Mt. Sinai  
30 Road. We have provided a brief breakdown of comments relating to this tower application we have received.

31

1 I would like to call you attention to page 54 and 55, we have staff and neighborhood comments arising out of the  
2 balloon test and the neighborhood information meeting that was conducted at the same time. The concerns staff heard  
3 was that the tower would be visually intrusive to the area, it would have a negative impact on adjacent property values,  
4 and several property owners expressed concern that it was unnecessary development. Several local residents  
5 expressed concern of electromagnetic radiation being generated from the towers. A general feeling that the tower was  
6 just unwarranted in this particular area of the county. The applicant, who was at the neighborhood meeting, will  
7 respond with their responses to these various concerns. I will remind the board that this is a quasi-judicial decision;  
8 your decisions will be made from the sworn testimony and competent material evidence into the record.  
9

10 Larry Wright: I have a couple of questions. On page 54, in the first paragraph, it states, "permit to erect 129 foot tall  
11 tower with a four foot lighting pole". That is not a pole with a light but a lightning rod?  
12

13 Michael Harvey: As we also pointed out in this abstract, measurement for required setbacks is from 120 foot monopole  
14 not the lightning rod.  
15

16 Samantha Cabe: We will have the ability to ask you questions?  
17

18 Michael Harvey: Most certainly. The only time in this hearing you don't get to ask questions is when you close the  
19 public hearing.  
20

21 Larry Wright: Item 3 on page 56, the plan to be submitted in harmony with the area in which it is to be located and the  
22 use is in compliance with it. Could you define that?  
23

24 Michael Harvey: If you are quoting Section 5.32. (a) 2 which are the general standards that all Special Use Permits  
25 must adhere to, these are the standards that the staff does not make recommendations on as they come based on  
26 evidence and sworn testimony provided at the hearing and they are specifically that the use will maintain or promote the  
27 public health safety or general welfare. The use will maintain or enhance the value of contiguous property and the  
28 location, character, use if developed according to the plan submitted will be in harmony in which it is to be located and  
29 the use is in compliance with the plan for the physical development of the county involved in these regulations. What  
30 you will have to ascertain is that the tower, as proposed, will not be out of character with the area, is consistent with the  
31 overall growth and development plan of the county, it's in harmony with the area in terms of it not being visually  
32 intrusive. I will remind the board that the telecommunication facilities are permitted in every residential zoning district of  
33 the county subject to higher criteria established in Section 5.8 of the UDO and on the issuance of the SUP, either Class  
34 A or Class B depending on the height.  
35

36 Samantha Cabe: In Section 5.10.8 (b) specifically subsections 4(b) 4 that you had referenced in your notes on page  
37 55; I believe this particular proposed tower is within the half mile of an existing monopole, is that correct?  
38

39 Michael Harvey: Correct.  
40

41 Samantha Cabe: In the UDO, do we have a definition of what "adequate coverage" means? Whether the coverage by  
42 locating the service on an existing wireless telecommunication support structure is adequate?  
43

44 Michael Harvey: There is no technical definition in the Ordinance. Part of the reason is because state law no longer  
45 permits us to require evidence on business decisions. As you recall, maybe four years ago, section 5.10(a) was much  
46 more extensive and expansive.  
47

48 Samantha Cabe: Is the adequate qualifier in that paragraph, adequate to meet the business decision or adequate to  
49 meet the county Comprehensive Plan and purposes we have defined in the UDO?  
50

1 Michael Harvey: I would look at it from the standpoint that you allowed to locate towers as defined in the UDO within  
2 one half mile of each other if the existing tower cannot address your needs or if you would have to, for example, you  
3 would have to elevate a tower to accommodate your need. While I know I am giving general answers, part of that is  
4 because it's part of the applicant's testimony as to why this particular facility won't meet his need.

5  
6 Larry Wright: On page 56, 7D, "Objective PS-T-7, "preferred" as to whose preference?  
7

8 Michael Harvey: As you know the county has adopted a Master Telecommunications Plan identifying approximately 14  
9 sites that the BOCC has identified properties that were a primary choice for the location of a telecommuting facility.  
10 There is no property in these areas that is a preferred choice.

11  
12 Larry Wright: So this happens to be the preferred location of Orange County?  
13

14 Michael Harvey: I wouldn't say that, I would say there is no preferred property that has been identified in the Master  
15 Telecommunications Plan that serves the applicant's needs, therefore, he is coming to petition this board for a SUP to  
16 erect a tower on this property and it is his belief that he has sufficient documentation and evidence proving that the  
17 issuance permitting this property is consistent with the UDO.  
18

19 Jeff Schmitt: In several pieces of correspondences, you have indicated some initial deficiencies in filing the applicant  
20 and then in a letter on May 15, the fourth paragraph you say, "Previous correspondence, specifically a letter dated  
21 March 30 identified deficiencies for the most part, these have been corrected". So the package we have in front of us is  
22 complete in all of the various technical requirements that the county needs to approve this?  
23

24 Michael Harvey: In Attachment 4, on March 30, we rejected the application outright identifying several deficiencies.  
25 The applicant submitted a revised copy of the application. With that offer, a letter on May 15, on page 137, indicating  
26 that while the applicant had met the submittal requirement, we believed there were issues that needed additional  
27 clarification. We have identified those herein. In your packet you have a letter dated May 29, from Mr. Thomas  
28 Johnson, the attorney for the applicant where he responds to our correspondence.  
29

30 Tom Johnson: Attorney with the law firm of Nexsen Pruet in Raleigh and I represent Skyway Towers and T-Mobile in  
31 connection with this application for a special use permit for a tower on Kerley Road. I appreciate your time tonight and I  
32 would like to thank your staff and Michael. The entire staff has been good to work with. There were challenges earlier  
33 on with this site. We had to do a balloon test under your ordinance. We attempted to do that at an earlier time but the  
34 weather would not cooperate. If it is too windy, it won't set up like it's supposed to and it didn't but Michael was nice  
35 enough that he went out there to meet with any members of the public that were there. The neighborhood meeting was  
36 in conjunction with the balloon. We then rescheduled the balloon test and had a balloon test at another community  
37 meeting in conjunction with that balloon testing, got it successfully completed and it is part of your package you have  
38 with those pictures and I will go over those in a moment. So we did go through that process and in this case ended up  
39 having two community meetings so we have met more than would ordinarily occur because of the way it came out in  
40 terms of not being able to do the balloon test. A question earlier that was asked on page 124 of your record, it does say  
41 that staff has concluded that we comply with the standards that are set forth in the ordinance so that clearly states that  
42 we have worked out, we have worked through the earlier issues and gotten the information together to the point that  
43 staff agrees that we meet the standards that are set forth in the UDO. Obviously that decision making in the final  
44 issuance of the SUP is up to you as a board and you make that determination based upon what the staff has  
45 recommended. As part of that process and not to confuse matters and to help a little bit of the understanding, I know  
46 Ms. Cabe asked some questions regarding looking at an alternative location and what that means. The way the law  
47 exists now in North Carolina, there are two standards, not really two standards but you have your state law, Wireless  
48 Communications Act that has very specific requirements within it and you have your local UDO. Those aren't always in  
49 harmony with each other but the way we operate in North Carolina, the state law controls to a degree the local law, it is  
50 in conflict, there is a priority in terms of state law first and the local ordinance second. I have a copy of the state law;

1 there is a Wireless Telecommunications Act for both counties and cities. I would like to pass it out to you so you have  
2 that because it does add clarification that is not in the local UDO.  
3

4 Larry Wright: Do I have a motion to enter this into the record?  
5

6 **MOTION** made by Jeff Schmitt to enter (applicant Exhibit #1) into the record. Seconded by David Blankfard.

7 **VOTE:** Unanimous  
8

9 Tom Johnson: I would like to talk about some of the standards and some of the things that are mentioned within this  
10 act. If you look, once you get your copy, I will start with 153A-349.51A and it basically outlines what is within the  
11 purview of the local board in making a decision on an application for a tower. It says a county may plan for and  
12 regulate the sizing and modification of wireless support structures and wireless facilities in accordance with land  
13 development regulations and in conformity with this part and accept as expressly stated within the state statutes,  
14 nothing in this part shall eliminate the county for regulating applications to construct, modify or maintain wireless  
15 support structures. The definition of a wireless support structure is contained in this statute to the tower. It specifically  
16 says it is a tower whether it is a monopole or lattice or to construct, maintain, modify or co-locate wireless facilities on a  
17 wireless support structure that is on existing structure. Based on consideration, land use, public safety and zoning  
18 consideration; those include aesthetics, landscaping, structural design, setbacks, fall zone or state and local building  
19 code requirements consisting with provisions of federal law and this referred to here. Again, it is the typical zoning  
20 decisions that is yours to consider as a board, aesthetics, setback, and those kinds of things you are used to  
21 considering. The part of this that helps clarify this more is when you get into 153A-349.51A is a little more detail. It  
22 says, "Information regarding the applicant's business decisions such as its design service, customer demand service,  
23 the quality of its service to or from a particular area, the specific need for the wireless support structure. Those are  
24 considerations that are business decisions of the applicant. The best comparison I can come up with is the franchise of  
25 McDonald's decided to build a McDonald's on a corner in Hillsborough, the decision about whether or not there is a  
26 need for another McDonald's in Hillsborough in not part of your decision but the setbacks, aesthetics, things like that  
27 which deal with McDonald's is within the zoning purview of the county. That is the first clarification in the state statute  
28 brings to the picture. The other clarification is you get into Subsection C of 153A-349.52 is case point somewhat that  
29 there can be no existing or previously approved wireless support structure that can accommodate the need. The  
30 second part of that is necessary to provide the applicants design service. In other words, that co-location cannot  
31 function to provide the support the applicants design service. You can require the county, the applicants to evaluate the  
32 reasonable feasibility of co-locating new antennas and equipment on existing wireless support structure within the  
33 applicants search ring. When I say search ring, it is in your packet and it is the area in which the carrier, let's say T-  
34 Mobile has decided we need a tower in this area in order to be able to match up with other existing towers to improve  
35 our service. That is what the service ring is. It is roughly a one half mile radius search ring for this location in order to  
36 be able to match up with the existing towers so what the carrier does is have that search ring they give to a real estate  
37 consultant who goes out and finds properties within that search ring that may or may not meet the requirements of T-  
38 Mobile in this area and comes up with options for T-Mobile to look at and that all depends upon not only location but  
39 also a willing land owner. Is there someone out there who is willing to lease a site for a tower? But they also look at  
40 the existing towers. The key point in the state statute is co-location on an existing wireless support structure is not  
41 reasonably feasible if co-location is technically or commercially impractical or the owner of the tower will not allow you  
42 to go on the tower for some reason. That is not the case here. Our focus here tonight will be on the technical or  
43 commercial impractical and I do have a radio frequency engineer from T-Mobile, Lee Kerlin, who will go into that and  
44 explain why there is an existing American Towers site in Durham County on Kerley Road, not far from this one. We  
45 fully admit that and you saw that in your packet and the information has been provided but it's at an elevation that will  
46 not meet the objectives that T-Mobile has for this location. Again, the detail will come from the radio frequency  
47 engineer. Those are the main points so what you take away here is we have a search ring, we have to look at options  
48 within that search ring, that is what state law says and you see whether or not there are any opportunities on other  
49 wireless support structures. Not utility poles, not other structures, wireless support structures under the same statute

1 which are towers as defined in the state statute so that is what you are looking at and that is the comparison. In this  
2 instance within the search ring, there was only one other tower in that area and that is the one we will focus on tonight.  
3

4 Samantha Cabe: I know this is a relatively new statute that has been in effect less than two years. Has the court  
5 considered the application of this statute yet, do you know?  
6

7 Tom Johnson: I do not know of direct cases taking a look at particular provision of this statute and what it means.  
8 There are obviously tower cases. There was one recently in Durham County and it came down within the past several  
9 months regarding the [REDACTED] and what that meant and what was considered to be readily identifiable as a tower but  
10 that was the most recent case that I am aware of but some of these other provisions have not because they have really  
11 evolved from federal law and they have been around a long time and what happened is there was a move back in 2011  
12 to amend the state statute to more closely match federal law which is the Telecommunication Act of 1996. Getting into  
13 the ordinance and some of the things I want to break it down and simplify it a little bit. Of course there was discussion  
14 earlier about the general standards for Special Use Permits. We will address those provisions and those particular  
15 items but there is also specifics for towers, specific requirements for towers that y'all went into with the state statute and  
16 what that means. Again, the first things, the use will maintain or promote public health safety and general welfare if  
17 located where proposed and operated, that the use will maintain or enhance the values of contiguous properties. I do  
18 have an appraiser who will testify to that effect, Mr. David Smith and the location and character of the use if developed  
19 according to plan submitted will be in harmony and in accordance will the Comprehensive Plan and the other plans that  
20 are set for in the County Ordinance and within the Comprehensive Plans. A couple of things I want to point out  
21 because there have been some discussion and comments from the neighbors about the rural character of this area.  
22 Some may want to point that these goals or policies listed on page 56 in the staff report as well as 5.10.1 which is the  
23 intent of this ordinance and I think it does provide a good backdrop for getting into specifics. The intent of the ordinance  
24 in 5.10.1 speaks to the regulations contained herein are designed to promote for the safe and efficient integration of  
25 facilities necessary for the provision of advanced wireless communication services through the community with a goal  
26 of establishing reliable, wireless service to the public, governmental agencies and first responders in a manner that  
27 provides for the public safety and general welfare of its citizens. That is the guiding light for this ordinance and for why  
28 we are here tonight but the other goals listed in number seven on page 56 are very helpful as well. Provision of  
29 adequate services and facilities for a high quality of life, efficient and effective public safety including police, fire,  
30 telecommunications and emergency services, developing a mechanism for cooperation among telecommunication  
31 providers. Again, that is why I will address the co-location issue with the adjoining tower. And number 7E says the  
32 expansion of affordable high speed internet access to rural and underserved areas. Wireless is widely becoming the  
33 way we are getting our internet especially in rural areas where you often times may not have Time Warner Cable and  
34 others that have cable run to it so that is one of the ways you are getting access to that service and then reliable  
35 notification and oversight of emergency assets. This presentation will help you understand where the industry is and  
36 why we are here tonight. Number one, consumers are more often than not relying exclusively on wireless devices for  
37 their communications. We used to have landline phones; still do have landline phones but the move is away from that  
38 and these are some United States and North Carolina figures that show this. There are 32% of the households in the  
39 United States that are wireless only. That is they drop their landline phone for economics; they just don't use it for  
40 whatever reason. In North Carolina, that is 33%. Those that are mostly wireless on top of that, another 16% in the  
41 United States, 13% in North Carolina is where you may have a landline phone but what do you pick up to use most of  
42 the time and that is the wireless device. Why that becomes important is the challenge here, nationwide 70%, I think is a  
43 little less in Orange County by only average 70% of the calls to 911 are from wireless devices so it is important to have  
44 a signal strength that is strong enough that not only when you are outside you can use your device but when you are  
45 inside a commercial building with thicker walls or a home that the signal is strong enough and when you pick up that  
46 phone to dial 911 you can dial 911 and get the assistance you need. But this also show some graphs regarding the  
47 number of wireless subscriptions, the number in the U.S. population with a wireless device and again the number of  
48 wireless only households is growing tremendously since 2000 or 2002. Data traffic has gone up tremendously since  
49 2007 and particularly the advent of the introduction of the iPhone when we started using more smart devices to access  
50 data and not only do we have our handheld devices, our iPhone, our iPad, our tablet and wireless in our laptop

1 computers, more and more, that is where everything is going. Data traffic is driving the demand to have more so than  
2 voice. They need to have more towers in order to have more capability and when you get in a public world's 4G speed,  
3 they need 4G speeds and again, that is what I showed in 2007 when the iPhone was released. By 2016, the estimate  
4 will be 1.4 wireless devices for every person in the world. That is because you have got your iPhone and iPad or your  
5 computer and you will have more than one. Again, a good number of us use those multiple devices. Demographics  
6 affect this; the younger generation is using wireless more and more. It is used for eLearning, eHealth, eCommerce,  
7 that is why the goals are in your ordinance and the user expectations have changed. What we used to view as an  
8 option has now become a necessity in terms of wireless. This is the result of the Balloon Test and I want to address  
9 that in terms of looking at aesthetics. This is a more accurate location of where the tower is supposed to be. You might  
10 ask in this location, why did we not go up against the trees that are on the property line here. The reason we can't is  
11 because the ordinance has a required setback of 110% of the tower height which is what Mr. Harvey mentioned earlier  
12 of the 125 foot tower. Therefore in order to meet that we had to move further out into the property in order to be able to  
13 do that. This is just a map of the different locations that pictures were taken of the balloon on the Balloon Test and Mr.  
14 Graham Herring is here tonight to answer any questions about this. He actually did photo simulations based upon  
15 these photographs. When you see NV that means the tower was not visible or the balloon was not visible at those  
16 locations. This is a view from Location 1 from the south on Kerley Road toward the site. You can see the red balloon  
17 there. This is the tower as it would be superimposed for a traditional monopole tower simulated from that location. As  
18 you can see perspective does a lot of things. The tower, in this instance, looks closer than the power pole that's closer  
19 to where the photograph was taken. You can see power lines going back and forth at this angle are taller than the  
20 tower. In this location, you can barely see the balloon, that is why we have the yellow arrow to show where the balloon  
21 was and this is further down Kerley Road from the site. This is from the adjoining subdivision. Again, you could barely  
22 see it in the trees. That is what the yellow is pointing out where the balloon was. From this location, again, all this was  
23 done from public rights of way; we do not have permission to go onto private property so these were all public rights of  
24 way in the area. This location in the cul-de-sac, it was non-visible. Again, it was not visible here because of elevation  
25 and vegetation. The view from Location 7, this is the intersection from Kerley and Mt. Sinai Road again looking straight  
26 at the site. Obviously there are no trees here and it is flatter but look at the other parts you see. What do you see at  
27 this intersection; you see massive power lines that pre-exist this tower and the balloon from this perspective is within  
28 this power line. It doesn't look unlike the utility pole holding up those wires but from this location that is the perspective.  
29 Again, this is a view from looking back at the site along Mt. Sinai Road a little further down. It is above the power lines;  
30 the power lines are still there and this is what it would look like if it were superimposed.

31  
32 Samantha Cabe: Can I ask you a question about the previous picture? I know that your picture does not superimpose  
33 the fencing and enclosure that will go around; would that be visible from that?

34  
35 Tom Johnson: Yes, it would be visible from this location but we have a landscape requirement and basically there is a  
36 barn here that you can see that will be removed to get it out of the setback. I think you may have seen that referenced  
37 in the materials. This barn is going to be removed and there will be a fence and vegetation as required by the  
38 ordinance, landscape buffer around the base of the tower, that is mainly covering the ground equipment and in this  
39 case T-Mobile uses utility cabinets not unlike the power cabinets you see around the right-of-way in various locations.  
40 They do not use an actual shelter but some carriers in the future may use a shelter which is like a small utility building.  
41 The purpose of the landscaping is predominately to cover that equipment so you can't see it. This is from around the  
42 curve on Mt. Sinai going away from the site. You can barely make out the balloon. This is down Kerley Road, a set of  
43 apartments, you can see the balloon in the power lines and this is where the tower superimposed from the apartments  
44 and again, from the perspective, the power lines look bigger. This is from the driveway of the Senior Living Home that  
45 is across from the site on Mt. Sinai Road at the site. Literally, this is the most direct view that you can see but if you put  
46 the tower here, again, perspective tells you a lot. This is a light pole from the parking lot at the Senior Living Facility  
47 and at this location it looks to be the same height and again you still have power lines showing on the site. This is from  
48 the adjoining property owner on the other side of the grove of trees that I spoke to saying, you know we could have  
49 moved the tower toward that group of trees but for the setback the tower gets lost in the trees and they not really even  
50 in full leaf at this time because of when we took the picture. As you can see the balloon right here from the tower when

1 it will be shielded by the trees on the property line. I know there has been a lot of discussion and comments made and I  
2 want to offer this up front as options and we are willing to accept either one. It is in this board's prerogative to decide  
3 which one but there was the issue about stealthing and hiding the tower. There are two things we are offering to help.  
4 One, with the monopole, we can agree to put the antennas in a close mount. There would be about 2 foot arms sticking  
5 out from the tower so you wouldn't be sticking out this far but sticking up against the pole more so. We are willing from  
6 an aesthetic point of view to offer that as one option and the other option is like the tower further down Kerley Road that  
7 we are going to address now. We are willing to make this be a pine tree and that has been mentioned by some of the  
8 public and comments. We are willing to do that consistent with the other one that exists if the board feels like that is  
9 where we need to go in view of the ordinance. Some folks feel the pine tree can be more apparent that is something  
10 different. The flush mount antennas are close to the pole and it looks like a single pole and it doesn't stick out as much.  
11 Those are the two options we will put on the table and I'm glad for this board to determine which way they feel like,  
12 should they decide to approve it, to go with that.

13  
14 Jeff Schmitt: Do you have a picture of this looking like a pine tree?

15  
16 Tom Johnson: If I had internet service I can pull one up. It will be similar to the one down the road. This is just a little  
17 taller than that. The one down the road is 115 feet; this will be 125 feet so you are adding 10 feet but basically the  
18 same as the one down the street.

19  
20 Larry Wright: You are talking about the panels that go up on the pole and some would be closer proximity of the pole.  
21 We have a telecommunications tower very close to our property and they keep adding. Will you be adding panels on to  
22 this over time?

23  
24 Tom Johnson: Over time, up and down the pole with other carriers but as a tower owner, which I represent Skyway  
25 Towers as well, you can do it as part of the ordinance, you could say they need to be close mount. When I say close  
26 mount, they are two foot long arms that would mount to the antennas so it would be closer to the pole. They were  
27 required of the ordinance to provide for co-location as well. If you will look at the design in the packet, the tower design  
28 that actually came from the tower manufacturer that provides for up to four co-locations. We are willing to stipulate that  
29 we use the shorter arms on here because it makes the antennas more blend in with the pole.

30  
31 Larry Wright: Do you co-locate on the stealth tower?

32  
33 Tom Johnson: What I consider to be stealth is the two things I am offering up. The shorter arms because that moves  
34 them in closer to the pole so others can mount on that. Tower design is Tab 9. The Monopine does the same thing. It  
35 is considered a stealth and it tries to make it look like a tree to blend in with the surroundings but also uses the limbs to  
36 hide the antennas and the reason you would close mount those antennas because we tried to get those within the  
37 branches so they would not be readily apparent. As I mentioned the case in Durham County, Durham County's  
38 Ordinances readily identifiable as a tower and the core case found that a pine was not readily identifiable as a tower but  
39 again the standard was that particular language in the Durham County Court.

40  
41 Larry Wright: Did you bring this up in your neighborhood meetings?

42  
43 Tom Johnson: In terms of offering that, no. I had to get permission from my client but I saw...my client likes to listen to  
44 what is happening in the community. The feedback we got from the neighborhood meeting was pretty strongly. One of  
45 the comments was to stealth it more, maybe do a monopine, so I got permission from my client to make that offer to the  
46 board based upon those comments from the neighborhood meeting. Again, some like the regular monopole better.  
47 What we were getting from the community is from some of the comments, they might like the monopine better which will  
48 make it stealthier the closer on the monopine we do so we took that to heart so tonight I am authorized to make that  
49 proposal to this board.

1 Karen Barrows: This might be more for Michael. This letter from Jackie Hicks, who is Jackie?  
2

3 Michael Harvey: Jackie Hicks is our telecommunications consultant.  
4

5 Karen Barrows: Is her concern met with what Tom is telling us?  
6

7 Michael Harvey: I would argue that the applicant should finish their presentation and we will get to Ms. Hick's letter of  
8 recommendation or he may want to address it.  
9

10 Tom Johnson: The standards mentioned in this letter largely equate to the ordinance regarding stealth and that is why I  
11 am offering it up because it addresses the consultant's primary concerns in terms of [redacted] from the ordinance. There  
12 are other items mentioned in here that is why I went over the state statute earlier. It talks about using other types of  
13 facilities such as utility poles, billboards, other things such as that. Number one, those are very short, which won't meet  
14 the objectives but under state law, as I pointed out, the standard under the state statute is whether or not a carrier can  
15 co-locate on existing towers. They are called wireless support structures. I point to the definition of a section of the  
16 state statute which is 153A-349.51, number 10 is the definition of wireless support structure. This is a new or existing  
17 structure such as a monopole, lattice tower or guide tower that is designed to support or capable of supporting wireless  
18 facilities so it is just feeding to a tower and it does specifically state that a utility pole is not a wireless support structure.  
19 Basically, the way the state statute views it is if your tower is available, you have to examine those but if other  
20 structures, utilities are not part of that analysis so that is why I disagree with what is in the consultant's letter but the  
21 large part of that is stealth. I have been talking to Ms. Hicks consistently over the entire process. The main concern I  
22 was hearing is the stealth of the towers so that is why I decided to come back with these offers because that was the  
23 primary things. Again, I am going to have the engineer come up now and speak to the need, why the tower here, the  
24 search ring, but also comparing the existing tower and why it will not to work to meet the business design and objective  
25 that T-Mobile had. I think this is important for you to know and that is where this gets into, in terms of the coverage.  
26 This again is a map that shows the location. Lee if you could come up I would like for you to talk to what these colors  
27 mean, what these maps, what these three towers are and if you could... This is Lee Kerlin; he is an RF Engineer with  
28 T-Mobile. He can speak to the colors on this map, what it means and what the objectives of this sign are.  
29

30 Lee Kerlin: Good evening, Lee Kerlin, 1421 Bearmore Court, Raleigh, N.C. I have been sworn. I am an RF Engineer  
31 with T-Mobile. I am here for your questions. To point out the need for the tower in this location, what we are attempting  
32 to do is provide coverage on Mt. Sinai, on Erwin Road and the surrounding neighborhoods and commercial structures  
33 in the area. The obvious choice is in this area and that is why the search ring was put here. The candidate that we  
34 have identified does meet our needs. If we want to speak about the co-location opportunity of the ATC, it is my opinion  
35 that the available height on that does not meet the needs or objectives of the search ring and that is why we are not  
36 pursuing that. The difference in height, while only 15 feet on the tower itself, the ATC tower is approximately 50-60 feet  
37 lower in ground elevation so we are actually talking a difference of around 70 feet in actual difference in the center line  
38 of the antennas and that is why the propagation is so much different between the two locations.  
39

40 Samantha Cabe: Would you say that it is technically impractical to mount your devices on the existing American  
41 Tower's tower?  
42

43 Lee Kerlin: We certainly could mount antennas and radios at that site. It would not meet our objectives for this search  
44 ring and not provide the coverage requirement.  
45

46 Samantha Cabe: It is commercially impractical; does it cost too much to mount that there?  
47

48 Lee Kerlin: Not commercially impractical in that sense. Commercially impractical in the sense that the location will not  
49 provide the coverage we are seeking for our current customers and for future customers.  
50

1 Mark Micol: Can the tower be modified to add an additional 70 feet?  
2  
3 Lee Kerlin: I doubt that. I couldn't say, but I doubt that.  
4  
5 Tom Johnson: As I understand that was a recent tower approved in Durham County and it is just a restriction on height  
6 because it was a monopine and the height was restricted as part of that process. I do want to show this. It is what is  
7 called the propagation map from the site we are proposing. Lee just described what that does for you with the existing  
8 site so you can see the coverage here is the RTP and this is the receive signal, code power, this is the pilot channel of  
9 the site. What we are receiving on a handset and this is a propagation so this is a tool we use to estimate the  
10 coverage. You can see we get a lot of coverage on Mt. Sinai Road out into the county which is what we are looking for.  
11 We also make a firm connection back to our existing network towards northeast. We definitely connect towards the  
12 south back to 40 and I have good coverage moving into my neighborhoods to the southeast which is also important.  
13  
14 Jeff Schmitt: My phone does not show me all these numeric things so you could assist me with bars?  
15  
16 Lee Kerlin: It is difficult to say that would vary by model handset, mapping, each handset and/or carrier maps different  
17 bar levels to different signal strengths. It is really difficult to say and I wouldn't want to say something that isn't true.  
18  
19 Jeff Schmitt: I guess generally, the palest green is the poorest communication?  
20  
21 Lee Kerlin: Yes, you would have the lowest level of signal there. We are talking about outdoors there, less likely in  
22 building coverage in that situation but possibly in a car and that keep us running down the road. If there is an accident,  
23 someone is able to raise the tower from those cover levels.  
24  
25 Samantha Cabe: I have a question, is north actually the top of the page?  
26  
27 Lee Kerlin: Yes. That would be true north to the top.  
28  
29 Tom Johnson: On the next slide, this is the American Tower slide; just describe what you are giving up in terms of that.  
30  
31 Lee Kerlin: If you can remember the one before, you can see the big difference in coverage out Mt. Sinai Road towards  
32 the county. Also, a reduction of coverage of Erwin, my fear is that I would not make a good connection to the other site.  
33 Part and parcel of cell towers and using the cell phone is mobility and that is the ability to move from one cell to the next  
34 cell. A hold between the two sites would be every time you drove down the road, you would drop a call there so we are  
35 looking to make that continuity there. Also, you could see the reduction in coverage to the southeast which is towards  
36 the neighborhoods I am trying to cover there as well.  
37  
38 Jeff Schmitt: Mt. Sinai Road is.....  
39  
40 Lee Kerlin: That is moving out towards the county to the west, to the left.  
41  
42 Jeff Schmitt: Northwest.  
43  
44 Lee Kerlin: And Erwin running northeast. This is the site as proposed and this is the American Tower site. You can see  
45 the difference in terms of what you are losing between those two.  
46  
47 Tom Johnson: To put it in perspective, the co-location opportunities are on this tower for other carriers who would  
48 come in the future. The third spot on this tower is still a 45 foot better center than the ATC tower. The likelihood of  
49 people wanting to co-locate on the ATC at that height is low depending on what the coverage objective is. It just  
50 doesn't meet our objectives.

1  
2 Jeff Schmitt: Mr. Harvey, to the best of your knowledge, has there ever been any applications to Durham County to  
3 eliminate the current height restriction on these monopole towers adding 20, 30 or 40 feet to an existing tower?  
4

5 Michael Harvey: Not to my knowledge but I will point out to the board and we have captured this standard in our  
6 Unified Development Ordinance and it is actually in part of the documentation Mr. Johnson submitted to you. State law  
7 allows for increase in tower height where it doesn't constitute a modification meaning you have to go back through a  
8 process to get approval. If this tower was approved today at 125 feet, Mr. Johnson's client could come back to the  
9 county and propose an additional 15 feet of height two years from now and because it is under a certain threshold, it  
10 would not have to go back through this board for review and approval because it represents a minimal increase but I  
11 can't speak to Durham's ordinance.  
12

13 Tom Johnson: What you basically have under state law is a 15% increase in height or antenna if you go up to 20 feet  
14 but I will have Mr. Kerlin address that, which is the most you can do on that America Tower without getting further  
15 approval from Durham County.  
16

17 Lee Kerlin: Generally, that is a practical amount. When a tower is designed, it is not designed to double its height by  
18 attaching another tower on top of it so what would happen if you had a three carrier monopole may request one tier  
19 above but when we are talking about 10 feet that is one thing, 70 feet would be a completely different tower.  
20

21 Larry Wright: We are talking about co-locating on your tower and other towers. You have been in this industry for a  
22 number of years, how does the industry look at a competitor other than T-Mobile coming in and co-locating on your  
23 tower? How open are you to that? Not only you but a Verizon or AT&T?  
24

25 Lee Kerlin: T-Mobile will not be the owner in this situation but we do own our own towers as well as Verizon, AT&T,  
26 other towers. We readily share towers because it is not in our interest to build towers where we do not need to build  
27 towers. We do not want to spend the money next to a Verizon tower if we could simply co-locate on a Verizon tower.  
28 We extend that courtesy to them and they extend it to us. That reduces the number of towers in the community.  
29

30 Tom Johnson: Even though T-Mobile is the initial carrier, the primary applicant is Skyway Towers and they are in the  
31 business of leasing space on the tower so in this instance it is just like having an office building, what you may have  
32 and you want to lease space in it. This tower is open for lease and to lease space to other carriers and that is not a  
33 problem. T-Mobile wants the top spot on this tower. T-Mobile could need another spot at some point because they  
34 need more room for antennas that could happen, but often times, once the tower is built it has more of an opportunity  
35 for locations from other carriers. What Mr. Kerlin is saying is that even if you added the minimal amount you can add  
36 on the tower assuming structurally it will handle it like the tower down Kerley Road, it will still not get high enough  
37 because it is basically in a hole and it won't get high enough to meet the objectives that T-Mobile has for this particular  
38 site.  
39

40 Mark Micol: If you co-locate on the Alltel tower, if you do two co-locations, would that dramatically improve the  
41 coverage?  
42

43 Tom Johnson: Your ordinance asked us to identify towers that are two miles away. That Alltel tower is 1.8 miles away  
44 to the north, almost directly north. That is outside the search ring and under the state statute and even under your own  
45 ordinance, it recognizes the fact that the search ring is of prime importance and under state law, we are not required to  
46 look at anything outside the search ring and that is way outside the search ring.  
47

48 Lee Kerlin: It definitely would not fill the requirement of the search ring.  
49

1 Bob Hornik: I am an attorney with **Brough Law Firm** in Chapel Hill. I represent most of these people sitting out here.  
2 Kind of a grass roots organization that call themselves 'Keep Kerley Country'. I would like to ask Mr. Kerlin a few  
3 questions, cross-examination, regarding his testimony. By the way, I was intimately involved in the Durham case.  
4 There are important differences. Mr. Kerlin, do you work for T-Mobile?

5  
6 Lee Kerlin: I do.

7  
8 Bob Hornik: With respect to the coverage you are trying to provide from this cell site... that is coverage that T-Mobile is  
9 trying to provide, it is not a requirement of any FCC order or anything like that?

10  
11 Lee Kerlin: That is correct.

12  
13 Bob Hornik: It is your choice? Did anyone from Skyway or T-Mobile talk to the owner of 5266 Kerley Road about the  
14 possibility of leasing space on that tower?

15  
16 Lee Kerlin: I'm not aware of that. I'm sure the development person...

17  
18 Bob Hornik: Do you know of anyone who talked to the owner of 5266 Kerley about building a separate tower at that  
19 location?

20  
21 Lee Kerlin: I do not.

22  
23 Bob Hornik: It is possible as demonstrated by .....

24  
25 Mark Micol: The address that you are speaking of, is that the American Tower?

26  
27 Bob Hornik: That is the American Tower site. Mr. Kerlin, this is the co-location of the propagation of co-location known  
28 as Kerley Road site?

29  
30 Lee Kerlin: Yes.

31  
32 Bob Hornik: This is the propagation of the proposed site?

33  
34 Lee Kerlin: Yes.

35  
36 Bob Hornik: Did you consider a combination of a co-location at Kerley Road and co-location at the tower site to the  
37 north?

38  
39 Lee Kerlin: The tower site to the north at that distance would not provide the necessary extra coverage at this location  
40 in the search ring.

41  
42 Bob Hornik: It wouldn't fill the gap between?

43  
44 Lee Kerlin: It would not.

45  
46 Bob Hornik: Did you actually do propagations?

47  
48 Lee Kerlin: I did not.

49  
50 Bob Hornik: So you don't know that for a fact?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50

Tom Johnson: I object to that because the statute and the ordinance... well the statute says within the search ring and I think you are referring to the Alltel tower which is not within the search ring.

Bob Hornik: In any event, it is your business choice, T-Mobile's business choice to opt for a second cell site?

Tom Johnson: I object if it is questioning a business decision.

Larry Wright: Sustained.

Bob Hornik: You haven't accosted out the commercial feasibility of any height or adding new tower at the existing Kerley Road site? Is that correct?

Lee Kerlin: I haven't done any calculations on what it would cost.

Larry Wright: May I ask a question of our attorney? Does this line of questioning.....we really can't rule on this can we? Is it relevant to us... this costing out?

James Bryan: I don't know how far Mr. Hornik wants to go with this but the statute says that the county may not require information or evaluate an applicant's business decision.

Larry Wright: That is where I'm...this was presented to us. Where are you going with this line of questioning?

Bob Hornik: I want to read the same statute that Mr. Johnson was reading to you earlier. Among the things you are allowed to consider, the county, I'm reading from subparagraph, 153A-349.52 subparagraph C, subparagraph 3 of the General Statute. *"A county may require applicants for new wireless facilities to evaluate the reasonable feasibility of co-locating new antennas and equipment on an existing wireless support structure or structures within the applicant's search ring. Co-location on an existing support structure is not reasonably feasible if co-location is technically or commercially impractical or the owner of the existing wireless support structure is unwilling to enter into a contract for such use at fair market value."* We don't know if they haven't costed out, considered the cost of modifying the Kerley Road facility, whether it is technically or commercially impractical for this candidate to consider co-location there.

Jeff Schmitt: If you co-located on the existing tower, one half mile from your proposed site here, the coverage you would get is effectively no different than the before slide you are presenting here, correct, unless the radios are different or the range is different.

Tom Johnson: There would be a hole here in coverage here. There would be coverage north, are you suggesting if....

Jeff Schmitt: If you just put your antennas... co-located them on the existing tower....

Tom Johnson: The ATC Tower?

Jeff Schmitt: Yes. Why would the after and before map, it seems would be the same?

Tom Johnson: No, because of the difference in the height of the antennas. The frequencies we are talking about are in the microwave range of the distance of the antennas above the ground is very important to how far the propagation is so if you are saying the difference in what we are proposing versus the ACT tower, there is a very large difference.

Jeff Schmitt: Yes. You would have to locate further down on the tower than the existing antennas that are there, is that correct?

1  
2 Lee Kerlin: The next position down.  
3

4 Jeff Schmitt: So your doing that would affectively not give you any business leverage over what existing carriers have  
5 with their antenna, is that correct?  
6

7 Lee Kerlin: And let me speak to the technical aspect because you ask a question about, is it technically possibly to  
8 mount the antennas. Well certainly it is technically possible to put antennas on there, radios on this and make a cell  
9 site. Is it technically possible to provide the coverage that we want to provide in this area, the objective of the search  
10 ring, at that, no, I don't believe it is.  
11

12 Larry Wright: Samantha, I would like your feeling.  
13

14 Samantha Cabe: I would be interested in their response only because I read the statute to say that we may require  
15 information necessary to determine whether co-location on an existing wireless support structure is reasonably feasible.  
16 I don't know how you determine some things reasonably feasible unless you are comparing. It wouldn't be feasible if it  
17 costs a whole lot more or if it didn't provide....I think there is lots of factors to what is reasonably feasible and I do agree  
18 that the sentence above that allows him to ask questions and us to consider whether or not the owner of the existing  
19 wireless support is unwilling to enter a contract for use at a fair market value. I would like to hear information on that. I  
20 don't think we should hear information on specific business determinations about what they may but we need to know  
21 whether they considered it or not.  
22

23 Tom Johnson: Mr. Kerlin doesn't do that aspect of it. I do have people here who to do that aspect in terms of  
24 contacting and the commercial... I will admit to you upfront from a commercial monetary point of view and we will  
25 stipulate to this, it would probably be cheaper to locate on the existing tower as opposed to building a new tower. I'll  
26 take that away. That is fine, we will agree to that with no questions asked. The problem is what Mr. Kerlin just said is  
27 the technical impracticability of it because it doesn't make sense to co-locate on an existing tower if you can't get the  
28 signal strength you are trying to achieve with this site and even adding a little bit to this still puts it at a height  
29 disadvantage. That's what we are presenting. We will stipulate whether you talk to him, whether you didn't, it is pretty  
30 obvious that the available height on the American Tower site is lower that where we are looking at locating. Monetarily  
31 it really doesn't matter because monetary is not driving this.  
32

33 Lee Kerlin: I have a director I answer to. We have a search ring that has a proposed objective after the field of the site,  
34 my director wants to see whether was met. I wouldn't go to him with the ATC tower and expect at the end of the day to  
35 have met my objective and to have the approval of my director in the end and that is what I was trying to talk about the  
36 technical aspect. Yes we could co-locate on that, we are not going to achieve the objectives we are trying to achieve.  
37

38 Tom Johnson: If Mr. Hornik doesn't have any further questions of this witness, I can bring my others.  
39

40 Michael Harvey: Mr. Chairman, before we bring another witness, I don't wish my statement to be construed to lending  
41 any credence to Mr. Johnson and Mr. Hornik's arguments but I will remind the board, as we have outlined in our  
42 abstract, page 55, Section 5.10.8(b) 4 subparagraph b, number 4 of the UDO establishes what I believe is a very  
43 reasonable process by which the applicant is required to demonstrate why he or she cannot locate on an existing tower  
44 within a half mile. I believe these requirements are consistent with what the state statute gives us the authority do to. It  
45 is obviously Mr. Johnson's argument is that I can do it for the reasons we have summarized here and obviously it is Mr.  
46 Hornik's contention that is not correct but I want to remind the board that the five standards we currently have and abide  
47 by; appropriate space on the existing telecommunication wireless support structure is not available; applicants made a  
48 good faith effort to negotiate an agreement has been unsuccessful; telecommunication equipment on the existing  
49 wireless support structure is not compatible; adequate coverage by the applicant which goes to Samantha's question at  
50 the beginning of this hearing, adequate coverage by the applicant cannot be met at the location of the existing wireless

1 support structure or the existing wireless telecommunications structure cannot be easily modified. These are all “ors”  
2 so the applicant has to demonstrate we can’t meet one of these standards, it’s not “and”. It’s not all five that have to be  
3 met by our current ordinance. I believe some of the ambiguity some of you have expressed concern about with the  
4 iteration of state statute is covered under our existing code.

5  
6 Tom Johnson: We would agree with Mr. Harvey because that is exactly our point. The part about it not meeting the  
7 objectives and not being technically sufficient at that site to meet the objectives of Mr. Kerlin has testified is our point.  
8 That is one of those “ors” and that is the “or” we are focusing on because that is a key point here.

9  
10 Bob Hornik: The co-location possibility on the existing Kerley Road tower does improve coverage in the area, right?

11  
12 Lee Kerlin: Certainly.

13  
14 Bob Hornik: It just doesn’t meet your standard for what you want to provide.

15  
16 Tom Johnson: Please say what it does for you in terms of connecting with your existing towers.

17  
18 Lee Kerlin: The proposal we have before you provides a lot of coverage out into the county to the northwest. We  
19 expect connectivity to our network to the northeast of Erwin Road. We expect connectivity to the south and we also  
20 provide more coverage into the neighborhoods to the southeast which is part of the objective.

21  
22 Bob Hornik: You are saying the American Tower site would not do that?

23  
24 Lee Kerlin: It does not meet those objectives.

25  
26 Bob Hornik: The potential co-location at the Kerley Road meets all the same objectives but it just doesn’t go quite as  
27 far, right, looking at the propagation map?

28  
29 Lee Kerlin: It doesn’t meet them at the signal strength that we need to provide.

30  
31 Bob Hornik: It covers almost the same area or territory but the dark green coverage is less, right?

32  
33 Lee Kerlin: Yes, the total coverage is smaller.

34  
35 Bob Hornik: Is the minus 90 dbm, do you drop calls at minus 90?

36  
37 Lee Kerlin: It depends. You can’t say that at 90 you drop calls, quality is important as well as signal strength.

38  
39 Bob Hornik: So on your propagation maps, white is no coverage?

40  
41 Lee Kerlin: Yes, that is off network for us when you consider various signal strength. I’m not saying you could never  
42 reach a tower from that and don’t forget this is a two way street, your handset also has to communicate back to the  
43 tower otherwise we would just make an FM broadcast tower and cover everywhere.

44  
45 Bob Hornik: And negative 104 is kind of pale green?

46  
47 Lee Kerlin: Yes.

48  
49 Bob Hornik: And that is coverage, right?

1 Lee Kerlin: That is some outdoor coverage, possibly in car, not very likely to be indoors.  
2  
3 Bob Hornik: It is not your optimal but it better than 0.  
4  
5 Lee Kerlin: It is better than 0.  
6  
7 Bob Hornik: Negative 98 is the next shade of green; you get better coverage than negative 104.  
8  
9 Lee Kerlin: Car... you could still potentially drop in car, possibly some home structures, not likely in metal commercial  
10 buildings and things like that.  
11  
12 Bob Hornik: And negative 90 is the olive color and that is better than negative 98 but not quite as good as 104, right?  
13  
14 Lee Kerlin: Of course.  
15  
16 Bob Hornik: How do you characterize a negative 90.  
17  
18 Lee Kerlin: We could send a good potential for indoor coverage, depending on the construction for residential, possible  
19 commercial, construction again, these things are hard to say. Are you in the basement of your home, in an interior  
20 room, or by a window?  
21  
22 Larry Wright: What is the objective for this line of questioning?  
23  
24 Bob Hornik: The objective is to demonstrate that with 105 at the Kerley Road site, you are getting expanded coverage,  
25 not quite the signal strength he prefers but my argument is that it is not your obligation to try to provide him the signal....  
26  
27 Larry Wright: We have heard him and we have heard what he has to say as far as dropping calls. He has been sworn  
28 in and I think you are wearing down the board.  
29  
30 Bob Hornik: I would be careful about that but I also have to do my job for my clients too.  
31  
32 Larry Wright: I understand that but he is an expert and he has been sworn in.  
33  
34 Tom Johnson: I would like to call Bob Hill, he was sworn and he can speak to the conversations regarding alternative  
35 sites because that is a question the board had and Mr. Hornik had so I will have Mr. Hill speak to that.  
36  
37 Robert (Bob) Hill: I am Robert Hill, Bob, I live at 1300 [REDACTED], SC and I was sworn in.  
38  
39 Tom Johnson: The board asks about whether communications with the American Tower site, looked at as an option  
40 and ...  
41  
42 Robert Hill: American Tower is a nationally known tower company that builds towers and leases spaces to all the  
43 carriers. We have a master lease agreement with them. How we did this bill doing over 200 sites throughout the  
44 Carolinas, we vetted our MLA partnerships, which was Crown American Tower and SBA First. This tower before we  
45 even get at the skyway as vetted. We look at the available [REDACTED] Center, the propagation didn't look good and we ask  
46 them if there was a possibility of extending and we were told they couldn't, we were told no, I don't want to say the  
47 wrong reasons but I believe it was something to do with setbacks and the way it was designed. Does that answer?  
48  
49 Jeff Schmitt: So that means you talked with the people who have the other tower?  
50

1 Robert Hill: Yes. We are co-locating on 37 of their sites now.  
2  
3 Samantha Cabe: Could you state your name again?  
4  
5 Robert Hill: Robert Hill.  
6  
7 Larry Wright: And you are duly sworn?  
8  
9 Robert Hill: T-Mobile and I was duly sworn.  
10  
11 Tom Johnson: The preferences where you have got a contract already is existing, that is vetted first before it is given to  
12 Skyway, who I primarily represent. This came to Skyway because the American Tower site was already vetted and  
13 would not work.  
14  
15 Robert Hill: I am the site Development Manager so I deal with leasing, the tower companies and construction.  
16  
17 Mark Micol: Was finances a part of that decision?  
18  
19 Robert Hill: The reason we vet the co-locations first as far as cost, capital expense, they are the best way for us to go.  
20 They are quicker; we don't have to go through as many regulatory hoops as with a new tower. We try to avoid new  
21 towers as much as possible but when you get into jurisdictions that have limited heights and 105% setback, it gets  
22 difficult to not have to build a few sites.  
23  
24 Bob Hornik: Mr. Hill, you work for T-Mobile?  
25  
26 Robert Hill: Yes sir.  
27  
28 Bob Hornik: Did you personally speak with anybody about the American Tower site at 5266 Kerley Road?  
29  
30 Robert Hill: Yes.  
31  
32 Bob Hornik: Who did you speak with?  
33  
34 Robert Hill: Mark Landers.  
35  
36 Bob Hornik: Who is Mark Landers?  
37  
38 Robert Hill: He is in sales for at least the Carolinas, I'm not sure if he is more. My area is the Carolinas.  
39  
40 Bob Hornik: And he works for American Towers?  
41  
42 Robert Hill: Yes.  
43  
44 Bob Hornik: When did you speak with him?  
45  
46 Robert Hill: Last year, I don't know the exact timeframe, probably October of 2014.  
47  
48 Bob Hornik: Did he refuse you a request to co-locate at 105 feet?  
49  
50 Robert Hill: No sir.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50

Bob Hornik: Did he refuse your request to co-locate at any height?

Robert Hill: No sir.

Bob Hornik: So if he didn't refuse you.....

Tom Johnson: I object to this line of questioning because we stipulated the fact that they wouldn't let us co-locate but the height at which we could get.

Larry Wright: Where are you headed with this line of questioning?

Bob Hornik: What I want to make sure I am clear about is that T-Mobile was not refused or rejected at that site rather T-Mobile rejected that site.

Tom Johnson: I'll stipulate that fact that American Tower would allow T-Mobile on the site at the available height. I will stipulate to that.

Mark Micol: Your request was to add additional height but they said you could not do that because the tower was not sufficient?

Robert Hill: When the 105 didn't work, we asked to extend. I don't have the exact number but we have probably extended about 20 sites, and we have asked for others that were not structurally viable or had setback issues. So yes sir we did ask for that.

Tom Johnson: One of the other standards under your ordinance is impact on property values. We hired yesterday David Smith a local appraiser to take a look at that issue and I would like to have....that analysis is in your packet with pictures. He compared it against another subdivision in Orange County where there is a tower. You can see from those pictures, tab 21, you can see the pictures and what that tower looks like from those locations where you can see the nice part of the subdivision. Mr. Smith analyzed if there were homes in that subdivision that you could not see the tower and there were homes that could see the tower. It is all in the same subdivision and that was the basis of the analysis. I would like him to come speak to his analysis and his conclusion regarding that. The tower report is part of the record but I do want him to address that but obviously he needs to be available for questioning purpose requirements. He has been duly sworn.

David Smith: I live at 3 Morristown Circle in Durham. I have been sworn. I am a state certified general appraiser. I have been appraising primarily in the Durham/Chatham/Orange area for the past 30 years. I also have an MAI designation. That is a professional designation. I relate it to a CPA. You can be an accountant and not be a CPA. You can be an appraiser and not be an MAI. I would like to read, there are two pages, from the report on page 11. The potential adverse effect from any proposed improvement or environmental hazards, noise, odor, lighting, traffic and visual impact. I think other than visual impact there is no evidence of any adverse possible impacts from this. There is a line of trees along the northern, eastern boundaries so it does minimize it there and there will also be a wooden structure around the equipment so that won't look any different than say a residential fence or building. The difference is the tower itself sticking up. To estimate the effect of a cell tower on adjoining or abutting properties, I located a subdivision with a cell tower that was adjacent. The subdivision is part of the Lake Hogan Farms in Northeastern Carrboro and has a total of 82 lots. The cell tower is to the east of the subdivision and the property where the tower is located is adjacent to five of the lots. It is also visible from 27 of the other lots. Using the Triangle MLS I located sales that occurred from March 2001 to July 2014. From those found, I considered only those without basements that were built after 1999. There were a total of 84 sales because some of the properties sold more than once. Of these 46 did not have a view of the tower and the rest did. The tower is very different structure. It was over 200 feet, it is a lattice

1 tower, and I believe it is lit but I am not sure of that. In my report I have charts of the Hogan Farms sales, the copies  
2 are in my report. I adjusted the sales for the primary differences as closing date and garages and age and number of  
3 fire places. I then divided that by the square footage of the building so you have a per square foot of value of the  
4 different houses. Those with the view and those without. When I came down, the average came out to \$152.70 per  
5 square foot for those with a view and \$152.77 without a view and \$151.70 with a view so it was a difference of .65%  
6 which is within the margin of error so based on that I don't feel that a tower like this one which is much worse than the  
7 one here the subject tower would have any adverse impact on property values. I will be glad to answer questions or go  
8 in more detail in houses.

9  
10 Tom Johnson: He did look at the visual impact that was put together from the report and what are the things that were  
11 obvious in terms of looking at that and the results of that.

12  
13 David Smith: It could only been seen from a few places and it was only a little of it and it was not, as you brought up,  
14 when you showed them. It was no more intrusive than the power lines were, except for one picture when it was directly  
15 across from the retirement home where it was more visible. The impact was minor.

16  
17 Tom Johnson: How would you describe the characteristics of the community where the subject tower is being  
18 proposed from your perspective as an appraiser and your experience?

19  
20 David Smith: It is sort of a mixed community. You have a farm, apartments, you have a large school. Then not too far  
21 away in Durham, you have something like a huge subdivision and there is another further north so it is kind of a  
22 transition area.

23  
24 Larry Wright: I don't know if you have had experience with this but have you looked at the difference in stealth towers  
25 as far as communities in appraising property value opposed to monopole as opposed to the type of tower you see in  
26 Hogan Farm. Is there a difference effect on property value from the various types of poles?

27  
28 David Smith: I really wasn't able to get to that level of detail. I looked through all of Orange County and this is the only  
29 tower I found that had enough sales around it to derive some sort of indication. For that I need more data and it is  
30 simply not out there.

31  
32 Tom Johnson: Your analysis is based on a non-stealth tower?

33  
34 David Smith: Yes

35  
36 Tom Johnson: And the lattice tower?

37  
38 David Smith: Yes. When someone buys a house, there are a number of factors they consider. If someone is buying a  
39 house that can see a tower; that is certainly something they will take into consideration. Will that affect them more than  
40 the kitchen or the bathrooms or garage... so it is very difficult to get to a level you are talking about.

41  
42 Bob Hornik: Who hired you to provide your report today?

43  
44 David Smith: The attorney did.

45  
46 Bob Hornik: Mr. Johnson?

47  
48 David Smith: Yes.

49  
50 Bob Hornik: How much were you paid?

1  
2 Tom Johnson: I object to that.  
3  
4 Larry Wright: I think that is sustained.  
5  
6 Tom Johnson: I will admit that I paid him to do the report.  
7  
8 Bob Hornik: How much time did you spend on the report?  
9  
10 David Smith: Roughly a week.  
11  
12 Bob Hornik: 40 hours?  
13  
14 David Smith: Yes.  
15  
16 Bob Hornik: Have you ever prepared a report concerning the impact of a cell tower on property values before?  
17  
18 David Smith: Not for Mr. Johnson, but yes I have in the past.  
19  
20 Bob Hornik: In the past? How many times?  
21  
22 David Smith: Maybe in the past 5 years, maybe 15 times.  
23  
24 Bob Hornik: Have you prepared reports for cell tower owners and operators and carriers each time or have you done  
25 reports for property owners?  
26  
27 David Smith: Never for property owners.  
28  
29 Bob Hornik: So always for the applicant of the cell tower?  
30  
31 David Smith: Correct.  
32  
33 Bob Hornik: Have you ever seen a location of a tower that would impact adjoining property owners?  
34  
35 David Smith: Yes.  
36  
37 Bob Hornik: How familiar are you with the Lake Hogan Farms towers?  
38  
39 David Smith: I drove out to the neighborhood and took pictures of it. There is a site of antenna search that gives you  
40 details about it.  
41  
42 Bob Hornik: What came first, the tower or the houses in that section, do you know?  
43  
44 David Smith: I believe the tower was already there.  
45  
46 Bob Hornik: The tower was built about 1996, does that sound right?  
47  
48 David Smith: That sounds right.  
49  
50 Bob Hornik: Homes started being built there in around 2000 and 2001?

1  
2 David Smith: Some are before that but I don't consider them after 2000.  
3  
4 Bob Hornik: Do you know whether the property owner which... actually adjoins or abuts any of the properties that you  
5 have evaluated in your report?  
6  
7 David Smith: Yes it does.  
8  
9 Bob Hornik: This is a photograph taken from the Orange County GIS site today in fact. Do you recognize the tower?  
10  
11 David Smith: Yes I do.  
12  
13 Bob Hornik: Are the lots facing northwest and west of the tower? Is there a powerline that runs between?  
14  
15 David Smith: There is an easement.  
16  
17 Bob Hornik: How wide is that easement?  
18  
19 David Smith: I don't know.  
20  
21 Bob Hornik: How deep are those        ?  
22  
23 David Smith: I don't know off the top of my head.  
24  
25 Bob Hornik: Is the tower itself in the wooded area?  
26  
27 David Smith: Yes, it is partially wooded.  
28  
29 Bob Hornik: It's not in an open field?  
30  
31 David Smith: No.  
32  
33 Bob Hornik: When you say partially, what do you mean by that?  
34  
35 David Smith: You can see a dry area.  
36  
37 Bob Hornik: The lots on Hogan Farms, they are all wooded in the back?  
38  
39 David Smith: Yes.  
40  
41 Bob Hornik: No one has a view of this tower from an open field, is that correct?  
42  
43 David Smith: Yes.  
44  
45 Bob Hornik: The tower we are talking about tonight would be placed in an open field, correct?  
46  
47 David Smith: Partially. There are trees around part of it.  
48  
49 Bob Hornik: Tell me about woods around it.  
50

1 David Smith: They are not very deep. It is a thin ribbon of trees to the left and then....  
2  
3 Bob Hornik: Do you ever count the trees?  
4  
5 David Smith: No.  
6  
7 Bob Hornik: Is it possible there was a grand total of 12 trees?  
8  
9 Larry Wright: Can we proceed with the questioning please? I know where you are headed, let's go there.  
10  
11 Bob Hornik: You said there were thin trees between the proposed site and the property to the left.  
12  
13 David Smith: They are tall and they screen.  
14  
15 Bob Hornik: How many trees are there along Mt. Sinai Road?  
16  
17 David Smith: I don't believe there are any.  
18  
19 Bob Hornik: How many trees are there up along Kerley Road on the east side?  
20  
21 David Smith: I didn't count those trees.  
22  
23 Bob Hornik: Super wide trees or is it trees like [REDACTED].  
24  
25 Tom Johnson: This is pretty obvious from the pictures I don't know where this helps. I would object to continuing to  
26 count how many trees. That is not the purpose of his expert opinion. It was an analysis of the site as compared to the  
27 site as proposed...  
28  
29 Larry Wright: Let's see where he is going with this if you can kinda get there.  
30  
31 Bob Hornik: I am trying to point out the dissimilarity of this proposed site and what his analysis on these forms and that  
32 is the point I am trying to make. Regarding your information [REDACTED] hazards associated with the proposed, what is the  
33 basis of that information?  
34  
35 David Smith: Information from the cell tower company.  
36  
37 Bob Hornik: What specific information did they give you about that issue? Are there going to be batteries associated  
38 with that site?  
39  
40 David Smith: You will have to ask them those questions.  
41  
42 Bob Hornik: Will there be a generator there?  
43  
44 David Smith: Ask them those questions; they are more of an expert than I am.  
45  
46 Bob Hornik: What the basis of the [REDACTED] there will be no significant noise?  
47  
48 David Smith: Some [REDACTED].  
49  
50 Bob Hornik: [REDACTED] makes little noise.

1  
2 David Smith: None that I have ever seen has made noise.  
3

4 Bob Hornik: Do you know whether the equipment that is kept in the base station has to be cooled or heated?  
5

6 Tom Johnson: I object this is beyond... he has asked questions this expert doesn't know.  
7

8 Larry Wright: Sustained.  
9

10 Bob Hornik: I am exploring with him the basis for his offering that opinion or giving that information that we know is  
11 associated with the site.  
12

13 Tom Johnson: His ultimate opinion is based upon whether or not this proposed tower will adversely affect adjoining  
14 property value by analyzing another existing tower adjoining another subdivision. That is what his opinion is based  
15 upon. There would be just as much noise and other things on that tower as on the opposed site so that will be the  
16 same whichever one you look at.  
17

18 Bob Hornik: That is not necessarily so. You have a full issue of real estate value, a fully treed lot with mature trees  
19 surrounding the cell tower as opposed to an open field with a cell tower. You have different effects. Noise might be  
20 muzzled on one site that is not muzzled from another so its apples and oranges and I think it is important for the board  
21 to consider that when they consider the weight and relevancy of Mr. Smith's opinion comparing the Hogan Farm site  
22 versus the proposed Mt. Sinai and Kerley Road site.  
23

24 Tom Johnson: As for noise, the ordinance very clearly requires we have fencing and landscaping around the bottom of  
25 where the equipment is so therefore, that will be the whether it is the Lake Hogan Farm site or this site. It has to be  
26 covered under your ordinance as well and that has been brought out in previous testimony.  
27

28 Bob Hornik: Nevertheless, if the professional [REDACTED] no significant adverse noise, no environmental hazards which is a  
29 part of the basis of Mr. Smith's opinion, he just told me he doesn't have that information so again, for the board's  
30 consideration regarding noise to Mr. Smith's opinion.  
31

32 Tom Johnson: Again, Mr. Smith said he has been around these sites and did not observe any noise.  
33

34 Johnathan Blitz: My name is Johnathan Blitz from the Durham County Bar and I'm appearing because I live at 5820  
35 Ten Springs Lane and I would just like to point out to the board that competent evidence is what is called for by the  
36 statute and whether or not a witness has been paid tens if not hundreds of thousands of dollars over the years doing  
37 testimony for one side is supremely relevant to his case. I would ask the board to reconsider sustaining the objection to  
38 that testimony as it is crucial to the determining the bias of this witness. The second point I would make is, what we  
39 have is a lot of objections and being supported by testimony by one of the attorneys and I would ask that we formalize  
40 slightly and pay attention to what the witness is actually that he does or does not know because I think it is crucial for  
41 the board only to consider that competent evidence and not learning counsel's introduction of testimony such as what  
42 will be shielding around the bottom of the other tower because I heard just from argument of the testimony.  
43

44 Tom Johnson: I would object to that because the site plan and everything, Mr. Harvey admitted everything in the  
45 application into evidence. The application includes the landscaping and the buffering so that is part of the site plan that  
46 is already in record. I am not testifying to that that has already been admitted into evidence by this board.  
47

48 David Smith: I would like to respond to something he said, I do very few of these. It is a very small part of my practice,  
49 probably less than two percent.  
50

1 Bob Hornik: Mr. Smith, did you investigate whether there had been any recent sales around the American Tower site at  
2 5266 Kerley Road?  
3  
4 David Smith: No.  
5  
6 Bob Hornik: Just one half mile down the road?  
7  
8 David Smith: No.  
9  
10 Bob Hornik: So you are not aware of whether there had been any sites since that tower was built in about 2010? Any  
11 sales of adjacent property?  
12  
13 David Smith: I researched sales around ones in Orange County. Is that in Durham County?  
14  
15 Bob Hornik: That is in Durham County. Was there a reason you limited your search to Orange County?  
16  
17 David Smith: This was in Orange County and it has different requirements.  
18  
19 Bob Hornik: Were you aware that the 5266 Kerley Road site was just one quarter of a mile down the road from this  
20 site?  
21  
22 David Smith: I don't recall.  
23  
24 Bob Hornik: You have been out to this site?  
25  
26 David Smith: Yes.  
27  
28 Bob Hornik: And you didn't see the Kerley Road tower?  
29  
30 David Smith: I was focusing primarily on this property and the ones around it.  
31  
32 Bob Hornik: No further questions.  
33  
34 Samantha Cabe: You said you were focusing primarily on this. Did you see the tower or not?  
35  
36 David Smith: This was a couple of months ago, I was driving around I saw lots of things. I don't know if I saw it.  
37  
38 Samantha Cabe: Ok. You didn't answer the question exactly.  
39  
40 Michael Harvey: I have a question, request for clarification for Mr. Johnson. Tab 21 contains the Impact Analysis  
41 completed by David. The first page of Tab 21 is a statement regarding visual intrusiveness for surrounding properties.  
42 Could you clarify, was the applicant, or you the author of that one page statement and then David Smith's Impact  
43 Analysis?  
44  
45 Tom Johnson: Right. I did that. That is my summary. We have to do a statement of digital intrusiveness for  
46 surrounding properties as part of your ordinance. I will say that is not part of Mr. Smith's report.  
47  
48 David Smith: I get my information from the tower people. I don't know if there is a light on it, I don't know if it is  
49 required. I don't know if it makes noise, I don't know if it smells, they say it doesn't. I do not have expertise to know  
50 whether or not it smells bad.

1  
2 Tom Johnson: Again, I can speak to that. There are photographs as part of your packet, and I will direct your attention  
3 to the back of the appraisal. There are photographs of the property. Mr. Hornik was asking me about the visibility of  
4 the tower to the adjoining properties. These are pictures of the tower on Lake Hogan Farm. And what did you find in  
5 that observation of the tower with respect to the properties that you analyzed.  
6

7 David Smith: That they were highly visible and more visible than the one on Kerley Road.  
8

9 Tom Johnson: There were trees intervening but you could still see it.  
10

11 Female: I'm sorry we can't hear in the back can you use the mic.  
12

13 Tom Johnson: Even though there were trees, you could still see the top of the tower.  
14

15 David Smith: The tower was much more visible than from the Kerley Road site.  
16

17 Tom Johnson: And why did you say it would be much more visible?  
18

19 David Smith: Because they stick up over the trees a lot higher than the tower on Kerley Road and it is also a lattice  
20 structure.  
21

22 Tom Johnson: When you say lattice structure, what do you mean, as opposed to monopole?  
23

24 David Smith: Opposed to a monopole, yes.  
25

26 Tom Johnson: I would like to direct the board's attention to the photographs that are in the back of Mr. Smith's report  
27 and I am glad for Mr. Smith's availability to answer any further questions you may have regarding his report. Because it  
28 seems to be so important according to what Mr. Hornik mentioned, I would like Mr. Hill to come back up. He can speak  
29 to noise and things of that nature because he is the one that is in charge of the site so I would like him to speak to that  
30 and clarify that.  
31

32 Robert Hill: Not including construction, the 30 days during construction, we have a cell tech that drives a truck down  
33 the access road, probably once a month would be the average so, that will be vehicular traffic on the site. As far as  
34 noise, the only thing that makes noise on the site is the HVAC unit. Our equipment does not have that, just a small  
35 handling unit. It is very small what we are putting up for this building but comparing the noise you would hear for future  
36 tenants should say AT&T with a shelter. It sounds like the HVAC unit in your home. It is very comparable to a 12 by 20  
37 shelter. That is the only noise that would be at a site.  
38

39 Larry Wright: Do you have a generator there?  
40

41 Robert Hill: No. Verizon does internal generators so you don't hear them but the other carriers use a baffled generator  
42 so they are not a generator you would hear going down the highway doing power and lights. I can't really give you a  
43 description but they are not as loud as a normal general generator but in this particular case, we don't have generators  
44 so there wouldn't be one.  
45

46 Larry Wright: On what par does it work if there is an overall power outage in the neighborhood?  
47

48 Robert Hill: It doesn't work for long. We lose power... the site doesn't stay on air maybe 30 minutes.  
49

50 Tom Johnson: Maybe on occasion if it is a critical site, you might bring in a generator?

1  
2 Robert Hill: We have portable generators especially for a long coast during hurricane events we bring in a portable  
3 generator to power the sites for evacuation and stuff like that.  
4

5 Tom Johnson: Does that generator not unlike what a household generator might be that people use now days.  
6

7 Robert Hill: Yes. They are about the same size 23W generators.  
8

9 Tom Johnson: I don't have any further questions. If the board does, they are welcome to ask Mr. Hill. Mr. Hornik  
10 probably has some too.  
11

12 Bob Hornik: I can't pass up an opportunity. Mr. Hill, you don't have or won't have any battery backup power at this  
13 site?  
14

15 Robert Hill: All cell sites have battery backup power. On some carriers, they have big batteries inside their shelters.  
16 Ours are very small and our equipment is small.  
17

18 Bob Hornik: Describe for us the batteries you have there and how they are protected.  
19

20 Robert Hill: They are inside a stainless steel enclosure and they are regulated by OSHA and I forget the other code  
21 they have to be regulated by so they are not the type of batteries that could spill over and spill outside the enclosure.  
22 There are four of them and they are about that wide, about a foot tall and 18 inches long and three inches wide.  
23

24 Bob Hornik: Do you know what kind of batteries they are? Are they lead acid batteries?  
25

26 Robert Hill: No. But I can't answer what kind they are.  
27

28 Bob Hornik: Would they be considered to contain hazardous materials?  
29

30 Robert Hill: I don't know. I'm not a battery expert.  
31

32 Bob Hornik: I am trying to determine what kind of materials there will be on the site and what kind of battery or other  
33 backup you have that might generate noise or hazardous materials or things that are relevant for the board's  
34 consideration. There are batteries but you don't know what kind they are?  
35

36 Robert Hill: No. I don't know any details on the batteries. I'm sorry.  
37

38 Tom Johnson: At this point, that is the testimony. I would like to have the opportunity for a summation but I think it  
39 more appropriate that after Mr. Hornik presents his case then I would have an opportunity to rebut and then have a  
40 summation. I am happy to answer questions or tender any of my experts for questions the board may have at this time.  
41

42 Bob Hornik: I do appreciate your time and patience. I have a presentation but I am not quite as high tech as Tom but I  
43 do not have a PowerPoint but I do have elmo slides for us.  
44

45 Larry Wright: Would you like these submitted into evidence?  
46

47 Bob Hornik: Yes, I would like them submitted into evidence.  
48

49 Larry Wright: Ok.  
50

1 **MOTION** made by Jeff Schmitt to enter into evidence. Seconded by David Blankfard.

2 **VOTE:** Unanimous

3

4 Bob Hornik: I am Bob Hornik with the Brough Firm in Chapel Hill.

5

6 Michael Harvey: We are calling this Exhibit 1, is that correct?

7

8 Larry Wright: Is there one available?

9

10 Bob Hornik: I am here on behalf of .... I wouldn't call it the defense but I would call it the opposition. I represent a  
11 coalition of property owners who live in the Mt. Sinai/Kerley Road area who organized and refer to themselves as Keep  
12 Kerley Country. Everyone here is part of our organization raise your hand and let yourselves be known. I want to start  
13 by talking about the application and the ordinance and information that is in the record and the information we submit to  
14 you that is not in the record that perhaps ought to be and then we will conclude my comments by introducing about five  
15 witnesses who will speak on behalf of the coalition, each trying to focus on a particular issue or set of issues and I will  
16 try to keep them focused on their comments and perhaps have a summation at the end. Looking at the packet, first and  
17 up on the board now, this is part of the applicant's proposal and it is the half mile search ring that is submitted in the  
18 application and why I think that is important is two reasons; one to orient us, down here is the Hollow Rock Pools, that  
19 is .....

20

21 Tom Johnson: Point of clarification. This is not the search ring for the tower, this from the balloon test. This is in a half  
22 mile of the tower center and the search ring is different.

23

24 Bob Hornik: Perfect. Better clarification. The reason I wanted to point this out and use this is to illustrate among other  
25 things is that the Kerley Road tower is located at just about at this number 10 on the applicant's exhibit looking within  
26 one quarter mile of the proposed site of the tower on the Bergman property and I think that is important for reasons that  
27 we have already discussed and will discuss a little bit more. My second photograph was taken about a week ago,  
28 maybe two weeks ago and it is a photograph....

29

30 Tom Johnson: I don't object to the photograph. I object to any of the information regarding property sales and the  
31 caption because in these hearings under state law, in order to draw any conclusions from any property values, you  
32 have to have an expert be in real estate or an appraiser. I object to any of that coming in and especially any opinion  
33 regarding reduction of below the appraised value because that is solely the purview of an expert in quasi-judicial  
34 hearings.

35

36 Bob Hornik: I am not offering this photo for the purpose of the caption beneath it. As far as I am concerned we can  
37 disregard that....

38

39 Tom Johnson: I would like to disregard that and have it stricken from the record as that is irrelevant and inconsistent  
40 with the statutes regarding quasi-judicial matter.

41

42 Larry Wright: Can you state why, if you are going to disregard the caption, what is the purpose of this?

43

44 Bob Hornik: The purpose of this is that, see this indicated on the overhead, that is the Kerley Road tower. That is the  
45 stealth monopine set back in the woods behind the house at 5266 Kerley Road and I offer that because as in Durham, it  
46 is a 120 foot monopine tower permitted as a right in that district under the Durham UDO because it is only 120 feet and  
47 it is a monopine. One of the standards in the Durham UDO and I know this because I was involved in the appeal that  
48 Mr. Johnson mentioned earlier, has to do with concealed wireless communication facilities and a concealed wireless  
49 communication facility in Durham, up to 120 foot tall, is permitted as a matter of right and the standard in Durham is that  
50 the tower has to be at least....

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50

Tom Johnson: I object to anything regarding Durham, this is a hearing in Orange County.

Bob Hornik: Give me a minute.

Larry Wright: Let him proceed.

Bob Hornik: The standard in Durham is whether you have the least visually obtrusive facility and the standard here in Orange County, in your own UDO is whether this proposal will be the least visually intrusive and I offer this to show that the contrast was proposed by the applicant here with what was done in Durham at a site less than a quarter of a mile down the road.

Tom Johnson: Again, I object, because the Durham ordinance is not in front of you. The Durham Ordinance is different and I understand the point of that type of tower versus what we proposed but so far as comparing the ordinances, the Durham Ordinance is not before you nor relevant. I will consent that there is a stealth portion of the Orange County Ordinance that would be relevant to our proceedings.

Samantha Cabe: What I got from that is you are presenting this to see visually the difference in what was done here with what is being proposed.

Bob Hornik: Absolutely. Talking about the Durham Ordinance, if my testimony on Durham's Ordinance is not good, then so is their testimony about what is allowed and what is not allowed in Durham.

Tom Johnson: I'll agree to that I was just speaking to a case that had been heard in Durham. I don't consider it.

Bob Hornik: This third photograph is a photograph of the proposed site on the Bergman property taken from the adjoining property, this is the Ann Hall property. Ms. Hall will speak a few words in a moment. These trees along this property line, those are the trees Mr. Smith spoke about a few minutes ago that was more a visual barrier between the Hall property and the proposed tower on the Bergman property. This shed will be moved or removed from the site so the tower can go in approximately that location maybe a little bit further to the east on that site. Essentially this is the view that you have now from the Hall property to the site where the tower will be built on the Bergman property.

Larry Wright: Where was the photographer on this one? What is it on... the witnesses that will be testifying?

Bob Hornik: Ms. Hall, and I think Ms. Wilkins who took the photograph will both be testifying.

Larry Wright: And that....on their property?

Bob Hornik: This aerial photograph was taken from the application package that ties the discussion I was just giving you, this indicating the shed that will be moved or removed from the Bergman property. The photograph was taken from approximately this location on the Hall property. The house is right next door here. This is the open field. Here is the water, strawberry farm, here is the nursing home, Forestview School and this location to orient the board to the site and surrounding area of the site. You will see that the proposed tower location is essentially in an open field, part of a horse farm on the Bergman property. These first photographs were taken from Mr. Smith's report, the one he just testified about. These are photographs of the area of the proposed tower taken from...this is along Mt. Sinai Road, this is the Hall property. This is Mt. Sinai Road looking almost due north at the tower site and shed and these are the tree lines between the Hall property and the tower site.

Larry Wright: Point to those trees again.

1 Bob Hornik: It is not a thick growth of trees but a single line of trees. This is a photograph taken from the application  
2 package and it shows the Lake Hogan Farms Tower. This label confirms tower. Again, I was talking to Mr. Smith about  
3 this just a few minutes ago, Redfoot Run, the access drive into the Lake Hogan Farms Tower. The tower is in fact  
4 surrounded by a growth of trees. Not just a line of trees but a growth of trees. This is the Duke Energy power line that  
5 lies between the tower site and the Lake Hogan Farms properties. You will see that the rear yards of the adjoining... I  
6 say adjoining because they join the power easement not the tower site. The Lake Hogan Farms properties are heavily  
7 wooded in their rear yards. These photographs are taken from Mr. Smith's report. They show the view from 106/107  
8 Lake Hogan Drive towards the tower, the tower in the distance between the trees. Bottom photograph was taken from  
9 103 Randolph Court, Lake Hogan Farms. You can see the tower behind it. Going back to the previous photograph,  
10 here is Randolph Court, there is the tower. This is Hogan Woods Circle and the tower. Here is a photograph of the  
11 Lake Hogan Farm's tower taken from the front of 103 Randolph Court about three weeks ago. I would ask the board to  
12 compare it to the bottom photograph on the previous page. There is a considerable difference in the visual effect of this  
13 tower in May compared to whenever it was that Mr. Smith or whoever took that photograph which was used in Mr.  
14 Smith's report. I was sworn in and I can testify that Lake Hogan Farms really don't know that this tower is there  
15 because it is obscured by trees for nine months of the year. This photograph taken about three weeks ago is  
16 essentially the same photograph as the top photograph from 106 and 107 Hogan's Woods Circle. If you compare the  
17 two, you can see this tree is this tree. Here is the tower in the background. In this photograph, you just never see the  
18 tower. Both of the photographs taken from Mr. Smith's report from 301/306 Hogan Wood's Circle where you see the  
19 tower in the background from 204 Hogan Woods Circle where you see the tower in the background. If you look at this  
20 photograph which was taken three weeks ago, a little closer up than the photo at the top of this page, they have the  
21 same two buildings just a little closer up. There is the tower, the trees in the background. Again, this tower is in the  
22 back yard of all these lots that we are talking about at Lake Hogan Farms so no one walks out their front door and sees  
23 this tower. Here is another photograph of the same tower. You can see the very top of the tower, you can't see any of  
24 the base of the tower. This is from 306 Hogan Woods Circle. Another view of the Lake Hogan Farms tower from 204  
25 Hogan Woods Circle. Again, the tower is primarily... except the top is obscured by trees and growth. Another  
26 photograph taken from Mr. Smith's report showing the Lake Hogan Farms tower from the access drive and from  
27 305/314 Hogan Woods Circle. Here is a photograph of the tower from 305 Hogan Woods Circle. A photo of the tower  
28 in the distance at 314 Hogan Woods Circle. Here is a photograph of the tower as you look from here to up the access  
29 drive to the tower site. You see the base station, you see the tower and you see a pretty significant growth of trees  
30 surrounding the base of the tower. I will remind the board that the Lake Hogan Farms tower was built in 1996 predated  
31 the existence of the homes in the Lake Hogan Farms subdivision so unlike the situation here where you would have the  
32 support of a previous tower, the 129 foot monopole being placed where it doesn't already exist in Lake Hogan Farms  
33 you had a developer building and residents buying in a location where the tower already existed. That is an important  
34 difference. This is an aerial photo we had prepared that shows the search ring....

35  
36 Tom Johnson: Is this part of this packet?

37  
38 Bob Hornik: It is a separate photo that was printed out today.

39  
40 Jeff Schmitt: So the answer is...

41  
42 Bob Hornik: I do not have a copy of that at the moment but I'll submit this for the record. Here we have the Orange  
43 County/Durham County line. The tower proposed in this location and the data indicates that 91 percent of the search  
44 ring is in Durham County and 9 percent of the search ring is in Orange County and we think that is important for the  
45 board's consideration when the board considers whether this tower at this location satisfies the requirements of the  
46 Orange County UDO. I want to talk for a few minutes about some of the requirements of the UDO.

47  
48 Samantha Cabe: What correlation are you attempting to make between the search ring and the propagation because I  
49 think they are two different of things.

1 Bob Hornik: I'm not trying to make any correlation between the propagation and the search ring but I do want to point  
2 out that...the purpose of the search ring theoretically is that citing a tower within the search ring will satisfy or achieve  
3 the applicant's objectives to provide coverage that is still straight by the propagation study. I suppose the point of this  
4 particular photograph and this information is that more than 90 percent of this search ring is located in Durham County;  
5 only 9 percent is in Orange County. A good portion of the area supposedly covered is located in Durham County, some  
6 in Orange County, no question about it. The applicant hasn't demonstrated any investigation of other locations that  
7 may be suitable in Durham County or elsewhere. They really said this was the site and that is about it and I think that is  
8 important for the board's consideration when you look at the criteria when you are supposed to apply to make a  
9 determination on the application.

10  
11 Samantha Cabe: Is there something in the statute or ordinance that allows us to require them to look outside their  
12 search ring.

13  
14 Bob Hornik: I don't think there is anything that neither the statute nor ordinance that requires you...well the ordinance  
15 talks about the two mile radius but I think the statute limits you a little bit with respect to the search rings. I don't  
16 disagree with Tom's saying it is about the impact of the statute on that. This case and this application, I really think,  
17 boils down to two points for the board's consideration. I think it is hard to argue under 5.3.2(A).1 that cell tower and cell  
18 service generally promotes the public health safety and welfare. I'm not going to focus on those two criteria. The two  
19 criteria that I am more concerned about are subparagraphs 2 and 3. Subparagraph 2 deals with the impact and  
20 whether the proposed cell tower will enhance or maintain the value of adjoining property.

21  
22 Tom Johnson: Again, I renew my objection that if he is going to speak to that, that he needs to have an expert, either a  
23 real estate expert or an appraiser to give an opinion to contra the appraiser we put up.

24  
25 Bob Hornik: I'm not going to offer an opinion on that but my point is that I submit to the board that the information  
26 presented to you by the applicant who has the burden of proof that it doesn't satisfy the requirement. It is my confident  
27 and substantial evidence that the proposed facility will maintain or enhance the value of contiguous properties. Mr.  
28 Smith's report didn't even address the impact on any adjoining or contiguous properties.

29  
30 Larry Wright: Based on .....

31  
32 Bob Hornik: Looking at the Lake Hogan Farms tower, that Lake Hogan Farms tower does not abut or adjoin any of the  
33 properties that you could use as comparison for this particular site. I submit, we are talking apples and oranges. The  
34 Lake Hogan Farms properties and that cell tower are completely different in character, different in factual circumstance  
35 than this tower at this location. This tower is a tower in an open field, there is not a stand of trees around it, there is a  
36 line of a few trees at the adjoining property line on Ms. Hall's property. The [redacted] was going to be out in the field directly  
37 across the street from the [redacted], it's not the same application or the same affect.

38  
39 Tom Johnson: Wasn't Mr. Smith trying to make a correlation between those visibility and non-visibility and showing  
40 there was no difference in sales.

41  
42 Bob Hornik: I think that is what he was trying to do but he did not do it adequately and that his report shouldn't be given  
43 the weight he would want it be given. The second point is Section 5.3.2(A)2c.

44  
45 Larry Wright: I would also like to call Mr. Smith because I have another issue. Did you get an assessment to encounter  
46 that?

47  
48 Bob Hornik: We didn't get an assessment to counter that. We don't have to prove that the tower will have a negative  
49 impact on the value of your property. The applicant's burden of proof is to establish that the tower will enhance or  
50 maintain the value of the adjoining property. That is their burden of proof, not our proof. You don't have to prove the

1 negative, they have to prove positive by substantial evidence and I submit to you that they have failed to do so. The  
2 other criteria is whether the location and character will be in use and harmony with the area and I think the witnesses  
3 we will present to you will focus their testimony on whether this particular proposal is harmonious with the character of  
4 the area. I submit to the board when it is all said and done there will be enough evidence in the record for this board to  
5 determine that the proposed cell tower as proposed and whether it is stealthified by making it a modified or by putting  
6 antennas only two feet rather than however many feet out based on the tower. That conclusion that the tower itself is  
7 so visually intrusive that it is inconsistent with the current lay of the land and it is inconsistent with the generally rural,  
8 agricultural of the area. The first witness I would like to call is Ms. Ann Hall.

9  
10 Tom Johnson: There is a lot of things stated there, do I have a chance to ask a couple of questions of Mr. Hornik about  
11 what he presented. At this time, you would admit there is no tower on the Bergman property?

12  
13 Bob Hornik: Correct.

14  
15 Tom Johnson: How would you analyze the impact on the Bergman property if there is no tower to analyze?

16  
17 Bob Hornik: I looked for similar towers in similar locations to try to determine whether the element of this tower at this  
18 location would have an impact on adjoining properties.

19  
20 Tom Johnson: Isn't that what Mr. Smith did?

21  
22 Bob Hornik: That is not what he did.

23  
24 Tom Johnson: Didn't he choose Lake Hogan Farms where there is already a tower that has visibility in some lots and  
25 did not have visibility from others and made an analysis on the impact of property values based on an existing and drew  
26 his conclusions based on that if there were a tower at the Bergman property using another subdivision in Orange  
27 County.

28  
29 Bob Hornik: One of the things he didn't do was consider the fact that the Lake Hogan Farms tower was there before  
30 the homes were there and therefore the impact on property value may have been when the lots were sold back in  
31 1999/2000.

32  
33 Tom Johnson: Mr. Smith lies his property timeframe from 2001 to 2014 where there were actually come turnovers in  
34 house sales. Wouldn't you say if that were closer to the towers and saw it versus if you were not?

35  
36 Bob Hornik: I would say that was more factored in when the homes were built and initially sold.

37  
38 Tom Johnson: But they were sold in that timeframe as well correct. The other things I have to ask is that you live in  
39 Lake Hogan Farms I guess you have been out there. Is that tower lighted?

40  
41 Bob Hornik: I have no idea. I can't see it from where I live.

42  
43 Tom Johnson: It is over 200 feet correct?

44  
45 Bob Hornik: Not according to the report.

46  
47 Tom Johnson: For the Lake Hogan Farms? According to his report, I have right here the tower detail not registered ....

48  
49 Bob Hornik: That is 170 feet.

1 Tom Johnson: It says height obstructer 213.9 feet.  
2  
3 Bob Hornik: Somewhere in your report it said 170 feet.  
4  
5 Tom Johnson: I'm reading the report you presented to the board which was in Mr. Smith's report. It says structure  
6 characteristics ground elevation 548.3 feet height obstructer 213.9 feet overall height 762.2 feet.  
7  
8 Bob Hornik: I saw it somewhere.  
9  
10 Larry Wright: Ready to call your witness.  
11  
12 Bob Hornik: Ann Hall please.  
13  
14 Ann Hall: My name is Ann Hall, I live 5916 Mr. Sinai Road, Durham, NC 27705.  
15  
16 Larry Wright: Have you been duly sworn?  
17  
18 Ann Hall: Yes I have. I'm Rebecca Ann Hall speaking as an adjacent property at 5916 Mr. Sinai Road. My husband  
19 and I live next door to the Bergman property where T-Mobile proposes to build a 125 foot cell tower. One of our  
20 daughter's lives next door at 5912 Mt. Sinai Road and the adjoining property beside 5906 Mt. Sinai also belongs to us.  
21 All three of these properties and an additional tract at 5900 all adjoin the Bergman property on the back of the tracts of  
22 land. I have lived here since 1957. All homes were built on the tracts of land in the 1930s on land purchased from the  
23 Crabtree Farm which the Bergman property is part of his farm. Over the course of the past 58 years having been  
24 raised on a large farm myself on the Orange County/Alamance County line in my younger years, I have seen and  
25 enjoyed the farm, the horses and the rural agriculture setting here at where I now reside. I can walk out my door in the  
26 morning and listen to all and watch the horses and enjoy the perfect quiet character of the community. The cell tower  
27 will intrude on the enjoyment of my property and surrounding property in our neighborhood. The plan for the tower I  
28 have seen places it in the middle of an open field next door to our house. It will loom overhead just 137 feet from our  
29 property line and maybe 150 feet from our house. There is no question that the cell tower will change the character for  
30 this area and not in a positive way. People who visit their loved ones in the nursing home and those for an afternoon in  
31 the area will be looking at an ugly metal tower, out of place instead of the beautiful countryside setting. The pictures  
32 have been taken and are available to be seen. Since there is a tower behind the nursing home and have them told it is  
33 not high enough to do the job. Why build a tower on the front side of the nursing home where the property elevation is  
34 not any higher. Grove Road at the top of the hill has a much higher elevation, which seems to me they would be  
35 looking for a tract of land of this nature. At the top of the hill, on Kerley Road, you can see buildings at Duke University,  
36 South Square Mall and buildings around the hospital in Chapel Hill from that point on the road. I feel there are other  
37 locations that could be used that are more suitable with higher elevation. If the tower needs to be in this area for  
38 whatever reasons, there are other locations where the tower can be built which would have less impact on us and the  
39 community. There is a big open field behind our house as stated earlier. There is a copy of the Orange County GIS  
40 aerial photograph which shows it. Our house is outlined in red. The open field is just above our property in the photo.  
41 It is surrounded by trees that could be used as a buffer and has higher elevation located on the Bergman property. This  
42 seems a better location, less of an eyesore and much less of an impact on our property as well as not affecting a  
43 neighborhood along a main road. We and others in surrounding areas even though it still joins our property if the tower  
44 was there instead of in the field to the side of the house. We feel that being in a different location will not affect the  
45 property value of our property if the tower is not built on Mt. Sinai Road. My husband and I will be the ones most  
46 directly affected by the cell tower. We have worked very hard through the years for something of this nature to cause  
47 our property to be of less value and we are opposed to the tower being built at this location on Mr. Sinai Road. It would  
48 not be compatible and harmonious with the rural residential and agricultural character around us which we feel is very  
49 important in our lives. We appreciate your consideration in this matter and thank you.  
50

1 Tom Johnson: I would object to any opinion of value because she is not an expert.  
2  
3 Samantha Cabe: Did anyone ask you whether or not they could place the tower on your property?  
4  
5 Ann Hall: No. I didn't know about the tower until the first balloon test came up. I didn't know anything about it.  
6  
7 Samantha Cabe: Do you know if her property is within the search ring Mr. Johnson?  
8  
9 Tom Johnson: Ms. Hall's property is within the search ring.  
10  
11 Ann Hall: Is the other property that I was speaking of that is behind my property across the back of the property line.  
12  
13 Samantha Cabe: I thought you were saying that was your property.  
14  
15 Jeff Schmitt: The open field she spoke about. Is that your property?  
16  
17 Ann Hall: No. It is part of the Bergman property.  
18  
19 Samantha Cabe: The same owners who own this property?  
20  
21 Ann Hall: Right it is. And there is a road that goes in at the upper part of that Bergman property up Kerley Road. It is  
22 called Bergman Lane. There are houses up there but they are on the outside of the field area where there is lots of  
23 trees and things in between them but the part I am speaking about is where the tower could be closer to my property  
24 which would not affect those that are in the field that are up higher and I don't have a problem with that. It is where it is  
25 secluded and wouldn't be seen. People would never know it was up there and it is a much higher elevated area.  
26  
27 Mark Micol: Was that brought up at the town hall meeting? Did you bring that up at the town hall meeting? Were you  
28 present?  
29  
30 Ann Hall: I have been at some of the meetings and I have mentioned this but not brought out that we discussed it or  
31 anything. The field on how it adjoins... and some that adjoins my other piece of property; we mow that and keep it  
32 mowed all the time. The incline starts along that way in that field. It goes up a lot more even than beside my house  
33 where the field is where the tower is to be. As you go up there and cross the line, it goes on to the Bergman property  
34 there. It keeps going up even higher. It's not level and then goes up all the way. It's further on that end and it's higher  
35 on that corner. There are lots of pine trees and other trees that are completely around this hill and I can't tell you how  
36 many acres are there but it's a large field. Much larger than where they want to put this.  
37  
38 Tom Johnson: The alternate location you admitted is closer to some other homes, closer than the proposed lots.  
39  
40 Ann Hall: No.  
41  
42 Tom Johnson: The tower wouldn't be closer to other homes?  
43  
44 Ann Hall: No. None, whatsoever.  
45  
46 Tom Johnson: There are no homes up there?  
47  
48 Ann Hall: There are some homes where you come in on Bergman Lane which is further up at the hill almost near  
49 Kerley Road. The height that I was talking about where you can see where it cuts into the woods there. No there are  
50 no houses within that field or in those trees.

1  
2 Tom Johnson: I am talking it would be closer to some of those subdivisions that are down that end of Kerley Road?  
3  
4 Ann Hall: I don't think so.  
5  
6 Tom Johnson: Have you run a balloon test or pictures or anything to show.....  
7  
8 Ann Hall: Have I run a balloon test? No. I wouldn't know how to even start.  
9  
10 Tom Johnson: I understand.  
11  
12 David Blankfard: If you look at number 21, there is a topo map that shows the piece of property that you are speaking  
13 of has higher elevation.  
14  
15 Tom Johnson: Yes. Just getting in to higher elevation. I was just getting at the proximity because there are other  
16 homes up there; there is another subdivision up that way.  
17  
18 Samantha Cabe: Have you seen Attachment 1 in the packet provided to us by staff that was submitted by Michael  
19 Harvey into evidence?  
20  
21 Tom Johnson: We are getting down a road we can't get under. We have to pick a spot where we negotiate with an  
22 owner to put a tower. The tower site we choose has to be evaluated based on the factors in the ordinance. It is very  
23 clear from case law and other law that the purpose of this board isn't to go decide if I come up with a McDonald's  
24 location at the corner coming into Hillsborough, you don't try to decide, why don't you go talk to that property owner and  
25 buy the property from them. We are looking at this site, and whether this site complies, so this is the site we have been  
26 able to negotiate and present to the board not relocating the tower somewhere else.  
27  
28 Samantha Cabe: So I guess my question is that it appears that it is the same property owner, it's the same tract of  
29 property so my question for you is did you attempt to negotiate a different location with the same property owner.  
30  
31 Tom Johnson: We negotiated with the property owner for the location that the property was willing to put the tower and  
32 that is the location that was identified and I can have Mr. Nekosha who actually did the negotiation testify to that fact.  
33 We talked to Ms. Bergman. We have to deal with willing property owners, willing buyer, willing seller. In this case,  
34 talking to Mr. Bergman, that was her preference because if you move it otherwise, you've got another home up there on  
35 the Northern end that is not Ms. Bergman's home either if you tried to move it. There could be a variety of factors, I am  
36 just pointing out that could be one factor of many but the thing is Ms. Bergman determined in negotiations with her is  
37 where she preferred along with the tower company.  
38  
39 Larry Wright: I think we are getting into closing arguments, Mr. Smith has reminded me of this twice and I think we are  
40 still listening to witnesses. Is that okay?  
41  
42 Tom Johnson: I guess my point is getting down the road of trying to choose where the site goes is not as much as  
43 choosing whether this site for a variety of reasons meets [REDACTED].  
44  
45 Larry Wright: I think we have heard this witness and we are ready to move on.  
46  
47 Ann Hall: That is fine.  
48  
49 Eve Olive: I have been a resident of 5815 Mt. Sinai Road since 1971. I was born in Tennessee and grew up in South  
50 Africa. I am an architect by training with a degree from the University of Motile, South Africa. I practiced architecture in

1 South Africa, Switzerland, England and the United States. Locally, I worked for the architectural firm of Archie Royal  
2 Davis, AIA in Durham and for the firm of [REDACTED], AIA in Chapel Hill. Projects I worked on included the Durham County  
3 office and Crabtree Valley Mall in Raleigh. I was engaged in these and many other architectural projects for a period of  
4 five years. Then I focused on educational work, helping to found the Emerson Waldorf School in Chapel Hill and  
5 designing its first buildings. Presently I consult on campus development. I believe that my training in architecture and  
6 city planning as well as the international travel I have done to famous sites qualifies to me to offer a professional  
7 opinion on whether something is harmonious, visually appropriate or well planned. I lived in [REDACTED] a quarter from the  
8 proposed site of the cell tower and pass it daily. Careful zoning to date has preserved the rural character of this area.  
9 All who drive through this rural beautiful area have appreciated the horse farm on the corner of Mt. Sinai and Kerley  
10 Roads. It has added to the unique rural, agricultural character of this farm of the rural buffer. Leaving it unchanged  
11 would add to the richness of the rural experience not only for the residences but for all who pass this way in search of  
12 nature and solitude. After all, the idea of the rural buffer zone was designed to protect residences and visitors alike  
13 from such visual intrusions as cell towers. From an aesthetic point of view, this cell tower would be total out of keeping  
14 with the rural character of the area. There are almost no trees on the Mt. Sinai Road property and the tower would be  
15 completely visible from the road and would degrade the view at the cross roads. Since we are on the border of Duke  
16 Forest, thousands of people from Durham and elsewhere come to this area for a rural experience. They come to ride  
17 horses, to pick strawberries, or just stroll through the forest. The proposed placement of a 129 foot cell tower would  
18 profoundly degrade this experience. 129 foot tower is as high as a 12 story building. Apparently it is to be surrounded  
19 by a 60 foot by 60 foot solid wood fence, eight feet high with 3 strands of barbed wire on top. This construction is most  
20 likely to remind one of a prison compound. The tower would be totally visible from Mt. Sinai and from the corner where  
21 Mt. Sinai meets Kerley and where there are absolutely no trees. I think of five towers within a five mile radius of this  
22 proposed tower and each one is tucked away and discreetly hidden in well established wooded areas off of minor  
23 roads. This proposal is totally exposed with no possibility whatsoever of hiding the tower or the 3600 square foot base.  
24 There is also a very loud humming noise which would integrate form the equipment coming from the base of the tower.

25  
26 Tom Johnson: I object to that unless there is a basis for that.

27  
28 Eve Olive: A lot of towers do hum but maybe your tower would not hum which would be an improvement. The  
29 application states that the proposed cell tower is in an open field. The application then goes on to state that the existing  
30 trees and terrain do an excellent job of hiding the proposed tower. This statement is wildly inaccurate. There are only  
31 five trees along this southern boundary or approximately 450 feet. This means that the nursing home residents across  
32 the road currently have a charming view of the horses in the pasture. It is greatly valued view. Those patients who are  
33 able to roll themselves upfront in their wheel chairs and visitors wheel them to see the horses in the pasture across the  
34 road. We would like to think they would never have to look at a cell tower instead or at something that resembles as  
35 prison enclosure. Recently a drunk driver careened right through the horse pasture fence and into the field where it is  
36 proposed to locate the tower. If the car had struck the wooden fence and burst into flames, he could have had a very  
37 dangerous situation on our hands. This is another reason for locating the tower in a less exposed location and away  
38 from a heavily traveled road. I have reviewed the application and see that the vast majority of this search ring lies  
39 within Durham County. It seems reasonable that Durham County bear the burden of siting this tower since that is  
40 where the vast majority of the search ring lies. Furthermore, I did not notice any discussion in the application of an  
41 alternative location on the American Tower site at 5266 Kerley Road. Related to the American Tower site, I did not see  
42 any reference in the application to raising the height of the existing tower at Kerley Road if indeed the tower height is  
43 affected that remains co-location. The Orange County Unified Development Ordinance requires that applicant  
44 demonstrate the proposed tower is the least visually intrusive alternative. I would hazard to guess that rather being the  
45 least visually intrusive alternative that it is the most visually intrusive proposal that this planning board has ever been  
46 asked to consider. It feels as those this area is under an arsenal to be turned into a utility cluster with a visually  
47 intrusive siting of the proposed cell tower in addition to the existing cell tower at 5266 Kerley just \_\_\_ there is no doubt  
48 that the citing of this cell tower will have an adverse effect on property values in the area as well. I am speaking as an  
49 architecture and a property owner. This area is legally designated as a rural buffer. We ask the planning board to  
50 recognize the visually intrusive nature of this proposal. We ask the planning board to recognize the resulting

1 degradation of the rural quality of the rural part of this buffer and we ask the planning board to fulfill their obligation to  
2 protect the legally established rural buffer from this intrusive unaesthetic high tech assault on the rural quality of the  
3 buffer. We have appropriate ordinances in place, could we please respect and use these ordinances.  
4

5 Mark Waller: My name is Mark Waller. I live at 5005 Kerley Road in Durham and I have been sworn in. I am also the  
6 owner and operator of Waller Family Farm which is located directly across the street from the proposed cell tower site.  
7 My family has been farming this farm since the 1940s. My father, who turns 90 this Saturday still lives in the home  
8 located at the corner of Mt. Sinai and Kerley Road. The view from his recliner as he sits in his den and looks out his  
9 window is directly into the pasture where the tower is proposed. We are a diversified farm, we still have cows, chickens  
10 and vegetables. We also conduct educational farm tours in the fall that teach kids where their food comes from.  
11 However, we are best known for our strawberry you pick operation. We are about to finish our eleventh season of  
12 strawberries and hope to have many more years to come. Each spring we have a few thousand people come out to  
13 enjoy some family time and pick some strawberries. You don't have enough time to tell you all the wonderful,  
14 heartwarming comments told to us each year at the farm but here are a few examples from this year. Thank you so  
15 much for the wonderful opportunity to relive my childhood. Now I can come pick strawberries with my mother or my  
16 grandmother and make new family memories. A little lady told me that after a hard day at work she looks forward to  
17 coming and relaxing to the sounds of cows blowing, roosters and yes our rooster crows all day. Another lady thanked  
18 us for not selling out. Thank you very much for not selling out to development and keeping this magical place going. A  
19 cell tower located directly across the street from the strawberry field from where these people will be picking will have  
20 an impact on them. You probably saw the pictures where the tower is going. Those green lines run across into the  
21 field, that is the strawberry field so they will be looking from that to the tower. When I told them of the possible cell  
22 tower moving into the field across the street. Not a single one said that is what we need is more towers with cell  
23 providers. Everyone started with "here", you have to be kidding. I am trying to convey to the board the uniqueness of  
24 this area. We are not a search ring, we are a community. My wife and I continue farming this land as long as the good  
25 Lord sees fit. I feel very strongly about preserving the rural character and Durham County in general. I currently serve  
26 on the Durham County Farmland Protection Board. We meet monthly and try to find ways to preserve rural character in  
27 Durham by putting land into conservation easement, development farmer markets to help farmers stay in business, to  
28 work with local high schools to promote FFA which is Future Farmers of America. Also served on the Durham County  
29 Farm Bureau Board where we do most of the same things including offering agricultural scholarships and funding of  
30 FFAs. I worked with Frank Duke who was, at the time, the Durham City/County Planning Director on redoing our area  
31 from R20 which is one house per 20,000 square feet to one house per two acres there and preserving more open and  
32 rural character. It is obvious that this type of structure is also not consistent with the Orange County Buffer Zone. I  
33 think it is obvious that a 129 foot tower with a four and one half foot base sitting in the middle of an open pasture is not  
34 consistent with the rural character or harmony of this area. To say this 129 foot monstrosity with a 14 foot  
35 circumference around the base is anywhere close to a 40 foot wooden telephone pole with a 30 inch circumference... I  
36 think it shows how the tower people are grasping at straws to try to convince you that this thing actually fit in the area.  
37 Besides, telephone poles are 1930s technology that hopefully will be replaced. Nobody likes to look at them either.  
38 This is why utilities are buried in subdivisions and not on poles. No one goes on vacation to look at ugly cell towers and  
39 power poles. We go to lakes and parks and beaches to enjoy the natural beauty and get away from such intrusions.  
40 Also to say that a 40 foot pine tree on the right of way is going to obscure the view of this 130 foot tower is the same as  
41 saying that shrubbery in my yard will obscure the view of my house. I can also assure you that the cell tower will not  
42 enhance the value of this area. I would even say that my dad's home and our farm will be reduced in price.  
43

44 Tom Johnson: I object.  
45

46 Mark Waller: What is value anyway? Unfortunately the world has attached a financial price to anything we hold in  
47 value. I say that is not necessarily true. What is a good day of health worth to you? What is a relaxing afternoon in the  
48 country or being able to look across my fields, my barns, my ponds, my cows and not having the top half of this huge  
49 metallic structure staring back at me. What is that worth because on the day they did the balloon test, I went home to  
50 sit on my porch and I could see the top half of that tower. You know how tall the power poles are, the power companies

1 chop trees off so they won't get to the power line which in the winter I am glad they do but just because you have pine  
2 trees there, they are not very tall and we can see the top half of those easily. There are only two parties with a financial  
3 value in this; T-Mobile cares nothing about me, my family, my way of life or my community or they care about is the  
4 money. Getting their piece of the cell tower pie. I have great cell service. We had a speech today about providing cell  
5 service. Everybody out here has great cell service, internet access, great television. This is not Missouri where we are  
6 trying to get people internet access or something they don't have. We got it. All this is T-Mobile wanting their piece of  
7 the cell tower industry. And the other person is the family that is allowing this to take place who has actually chosen  
8 money over community. Therefore I strongly urge the board to deny the application for this special use permit and not  
9 allow this tower to upset our community. I thank the board for its time.

10  
11 Samantha Cabe: Would you say that people go to your farm to enjoy the surroundings and the natural atmosphere that  
12 is on your property?

13  
14 Mark Waller: Yes ma'am.

15  
16 Samantha Cabe: In your opinion, do you think that's why people would go to your farm?

17  
18 Mark Waller: Without question.

19  
20 Samantha Cabe: This is not directed to your strawberries but do you earn money from other operations from your farm  
21 besides the strawberries?

22  
23 Mark Waller: We are diversified. We have cows, we sell hay, we bush hog.

24  
25 Samantha Cabe: Do you earn money from people coming to your farm for reasons other than strawberries?

26  
27 Mark Waller: The education farm tour involved, we have families, we have local schools, local church that come and  
28 bring their kids. We start with animals and where their food comes from.

29  
30 Jeff Schmitt: Is it an economic venture. Do you charge them?

31  
32 Larry Wright: Mr. Waller, were you duly sworn?

33  
34 Mark Waller: Yes sir.

35  
36 Johnathan Blitz: My name is Johnathan Blitz, my address is 5820 Ten Springs Lane which is about a quarter mile from  
37 the proposed site and I have been duly sworn. And I am from Missouri. I can also to the use we make of Mr. Waller's  
38 farm although I would be able to see the proposed tower if it is allowed to be built from my property. I can tell you we  
39 take many visitors to our home to Mr. Waller's farm during strawberry season to pick there and our experience would be  
40 severely impacted by it a looming metal monstrosity that is supposed to be built here. I want to point out a couple of  
41 things to the board and I'm going to follow learned counsel and mix a little facts and law to cut through some of this and  
42 simplify the board's decision tonight. First, there has not been one witness on the applicant's side who is an Orange  
43 County resident or lives anywhere near that tower site. Even the applicant herself, Leah Bergman is not here but I can  
44 testify as to her feelings about this and I believe her state of mind is relevant to this board.

45  
46 Tom Johnson: I object.

47  
48 Johnathan Blitz: There is an exception to the hearsay rule for admissions.

49  
50 Larry Wright: We have already heard from another member that is hearsay, can you please move on.

1  
2 Johnathan Blitz: For the record, I would like to make a record of that, there is a hearsay exception. I read North  
3 Carolina Rules of Evidence which would apply in this case and that hearsay exception provides that when a party  
4 opponent makes a statement that statement can be entered into evidence in opposition to that party's position in a  
5 proceeding.  
6

7 Tom Johnson: I know you are saying party opponent, she is not an applicant.  
8

9 Johnathan Blitz: I'll move on although she is listed as an applicant in the application package.  
10

11 Tom Johnson: She is listed as the property owner and the property owner has to sign the application consenting to us  
12 pursuing as applicant but she is not the applicant.  
13

14 Johnathan Blitz: So you don't have a single Orange County resident in support of this proposed activity and in fact,  
15 there has been an attempt to change up the application during the course of this hearing which I would also object to.  
16 That change up is changing the application itself by changing the visual appearance of the tower. That is not allowed  
17 and it shouldn't be allowed. You shouldn't make exceptions on the day of the hearing to allow them to introduce a  
18 different proposal and I heard the charge by the member, David Blankfard, I am going to blow down your charge to a  
19 couple simple words. You are the consenius of this community. It is your job to consider other factors that just the  
20 pure economics of this. Other factors that just the pure business decision that everyone in this room is concerned with  
21 because they get to build this and walk away. The expert gets to charge his fee and probably already been paid. And  
22 he gets to walk....  
23

24 Tom Johnson: Objection. That was addressed earlier.  
25

26 Johnathan Blitz: You have the grounds under the UDO to deny this application. You are under no mandate to approve  
27 it just because they come and propose it just because they come and propose it and say well, we can get a slightly  
28 better signal from a much earlier uglier location. You don't have to do that. You have a statutory to deny this and you  
29 have the ordinance behind you to deny this and you also have two really critical pieces of evidence. Plus we have  
30 heard Mr. Smith that adjoining property owners in the Lake Hogan subdivision actually had a more than one percent  
31 lower property value. He tried to dismiss this by saying it is within a margin of error but the fact is that you can look at  
32 the base facts and look at the property sales and form your own conclusions and take into account his bias. Ms. Olive  
33 just testified to the degradation of property and there was no objection.  
34

35 Tom Johnson: I did object to it and continue objecting to that, she is not an expert and I object to any further argument  
36 on that without expert testimony.  
37

38 Johnathan Blitz: What this all shows, as somebody who has been around the courthouse for a while, is contempt. And  
39 I don't mean contempt in a way, let's clap them in iron, we are going to come in here with some experts and we are  
40 going to come in here with some outsiders and not have a single person who says I want better cell service. They don't  
41 even have that. They don't have a single Orange County resident to support this.  
42

43 Tom Johnson: I object to that because it violates the statute regarding questioning the business decisions.  
44

45 Larry Wright: Sustained.  
46

47 Johnathan Blitz: You don't have to approve every monstrosity. What you have to do is apply the ordinance and you  
48 have consider the opinions of the people who are going to live with this every day because they are the real experts on  
49 an important factor in the ordinance and that is visual impact. The people who know what this area looks like. The  
50 people who drive through it every day who live there who come and wheel nursing residents out of the home so they

1 can see it. We all know and we know this is going to have an unacceptable adverse on our community and we are  
2 asking you to deny it. Thank you.  
3

4 Jeff Fisher: My name is Jeff Fisher. I am an Orange County resident and I have been sworn. Over the course of  
5 hearing all the testimony, I'm tired and it is late. You have heard both sides very well. I am an attorney for the [REDACTED]  
6 firm and also work, I have a company called Union Places and we specialize in conservation real estate. We also  
7 create maps to show how unique a place and the reason I was asked to speak was because I am an Orange County  
8 resident and we made this map that illustrates the distance between the two power lines, the incredible Waller Farm,  
9 the fact that this is close to Duke Forest. I ask you to think about this as you make this decision....  
10

11 Tom Johnson: I object to that being an inaccurate representation of the tower on that to that degree. The  
12 representation that we prepared we are based upon computer generated representation but the representation of the  
13 tower is not accurate nor has it been certified.  
14

15 Samantha Cabe: Maybe we should ask him how he prepared it.  
16

17 Jeff Fisher: It was from the GIS and information shared with us so we just put in information we got....  
18

19 Larry Wright: Why don't we take a look at it to see what he has to say?  
20

21 Jeff Fisher: The other reason I am here to speak is because I specialize, I am a real estate professional, an attorney  
22 who handles conservation easement transactions. I help landowners through the process but actually going after the  
23 funds that Mr. Waller would go after if he did want to get funds from the Federal Government or State Government to  
24 protect his working farm.  
25

26 Tom Johnson: I object this to relevance.  
27

28 Jeff Fisher: The reason that is relevant is that if Mr. Waller went to apply for his funds like most Orange County  
29 residents could if they have a working farm in the rural buffer and there is a cell tower next to it, the likelihood of him  
30 being funded goes down. That is one element. You ask about whether or not revenue going to go down because  
31 people want a rural experience. He spoke to that and I can speak to that one element of whether or not he could  
32 secure those funds for protecting farms. I think, I said I would be brief, so I will close with these comments. This  
33 community was the same community to [REDACTED] on the [REDACTED] when they came forward and that is now the new New Hope  
34 Creek Preserve. The point I want to drive home is that we are not a group of NIMBY (Not In My Back Yard). I haven't  
35 heard any of my neighbors say we absolutely don't need cell phones. Everybody is using cell phones, we understand  
36 we need towers, it is the location. I hope you hear that and before you make a decision you go out to the Waller and  
37 walk in his shoes. It is a very important decision. I am disappointed in the company that has presented this because  
38 they can other due diligence then all these people would not have had to come out here and stay out here until 10 or 11  
39 o'clock at night because they had presented a proposal that looked like the tower we don't see that is within 1,170 of  
40 this property I don't think you would have gotten this response. I think this would have gone through. I don't have  
41 anything against them building their tower in general but the location is wrong. Please do not approve it. Thank you.  
42

43 Larry Wright: Mr. Fisher, you said you have an enterprise or company that you work for an organization and you said  
44 that Mr. Waller want grants that he would have less chance of achieving funding.  
45

46 Jeff Fisher: I used to run a [REDACTED] service work with nature conservancy. That was my former career, my profit and we  
47 would work with landowners for them to apply for funding for working farms to permanently protect farmers so my firm is  
48 probably one of the few firms in the whole United States that does this. We work with landowners, we have done it  
49 across North Carolina. We just did it on the Gates Farm in Mebane. We helped them to secure funding on behalf of

1 the City of Mebane to protect that working farm. We deliver market based solution for land conservation. We don't say  
2 don't build but here is how you can achieve funding for conservation.  
3

4 Larry Wright: You said you would have less chance of getting funding because of the cell tower, what is the connection  
5 there?  
6

7 Jeff Fisher: They have a criteria, the Federal Farm and Ranch protection program and also the State Agricultural Trust  
8 Fund and they go through a list of criteria and try to determine, is this farm in an area that is indeed in a rural and one of  
9 the criteria is there commercial development around the farm. Cell tower is commercial development.  
10

11 Larry Wright: That would have to be listed on that grant proposal?  
12

13 Jeff Fisher: Mr. Waller is on the board that reviews those applications and I have not doubt and I wanted Mr. Waller to  
14 help me do this at some point. I will tell him you chance would go do when the character and quality of the adjacent  
15 land around you becomes less rural and that is what we are discussing here especially within the [REDACTED]. One other part  
16 I'll add is the federal government provides tax deductions for protecting conservation easements. So if you put a  
17 conservation easement on your property you protect a [REDACTED] the federal government gives you tax benefits for that. It is  
18 the same concept.  
19

20 Mark Micol: Would a subdivision have the same impact?  
21

22 Jeff Fisher: A subdivision would show that the property is under the threat of development which would increase the  
23 funding opportunities but the fact that it is increasingly commercial and not agricultural would also have a double  
24 negative if you had a cell tower and a residential development.  
25

26 Jeff Schmitt: So the cell tower would actually be the break point because there is two commercial facilities on the  
27 corner now anyway, the nursing home and the apartment complex. But funding could be available accept when we put  
28 this tower there it would not be?  
29

30 Jeff Fisher: My point is if you have one farm that has a cell tower next to it and you have another piece of property,  
31 then Mr. Waller's property would lose in that competition.  
32

33 Larry Wright: I think the point the community is trying to tell you is that if you go out Erwin Road, you understand as you  
34 go north of Erwin, you go into that unique rural buffer. It is a different landscape than when you go south.  
35

36 Larry Wright: What is the name of your company?  
37

38 Jeff Fisher: Unique Places, LLC.  
39

40 Tom Johnson: I think that completes our formal presentation. That is the Keep Kerley Country presentation.  
41

42 Michael Harvey: It is 11:00 at night. There are 52 other individuals that have signed up to speak.  
43

44 Larry Wright: Does anyone else have anything to present to the board that is novel. Anything that is not hearsay and  
45 present evidence that would be paramount to this.  
46

47 Beth Bega: My name is Beth Bega, I am with Pruitt Health representing nursing home across the street and I have  
48 been duly sworn. Pruitt Healthcare is a licensed certified skill nursing facility not a retirement home at 5935 Mt. Sinai  
49 Road in Durham. We have 140 licensed beds. We house residents for both short term residential, rehabilitation to a  
50 transition home and we also have long term skilled nursing care for the infirmed and elderly and we have talked to

1 some of the clients today. They will tell you the reason they chose Carolina Point is they were more comfortable in the  
2 rural setting. They like it peaceful, they like sitting on the front porch looking at the horses, the pasture across the road,  
3 the farm, the strawberries and employees with tell you that agitated residents are calmed down when they are taken  
4 outside to the front porch to watch the horses. Carolina Point has an unobstructed view of the proposed cell tower  
5 location. We are number 11 in your packet of the balloon test and this is the picture from that packet actually on our  
6 private property looking down our driveway though what is pointed out as the lights are the actually lights on the  
7 building so it's not giving perspective. One of the three qualifications in Section 5.3.2 of the Unified Development  
8 Ordinance says the location and character of the use if developed according to the plans submitted will be in harmony  
9 with the areas in which is located. The use is in compliance with the physical development of the county plan as  
10 embodied. There is a standard for aesthetically pleasing and for the 140 residents, their families are 180 plus employees,  
11 the place being proposed is definitely out of character for this rural....

12  
13 Tom Johnson: I object to anything with respect to hearsay or what someone else may say.

14  
15 Beth Bega: It is not hearsay.

16  
17 Tom Johnson: It is hearsay speaking for someone else that is not here to testify.

18  
19 Larry Wright: I have to agree with him, I'm sorry.

20  
21 Beth Bega: I sat on the front porch and I believe it is an eyesore, not aesthetically pleasing with the harmony with the  
22 character of the rural area and the pleasant situation where it is now. Thank you.

23  
24 Michael Harvey: Before summations, I would like the board to recognize Jackie Hicks, a telecommunications consultant  
25 so the board can ask questions, the applicant can ask questions and those in opposition can ask questions as well.

26  
27 Jackie Hicks: I do want to thank Tom for offering to camouflage this facility because I do have some real concerns  
28 because we don't know what kind of camouflage he means. We haven't seen information, it wasn't provided prior to  
29 the hearing and it was discussed. Even though he did offer up a monopine, even in his statement or his page he wrote  
30 under Tab 21, paragraph 3, he even wrote using a monopine at this location does not make sense because the tower  
31 itself is in an open field. I think he is stating that even a monopine is not adequate for this location so I do have  
32 concerns about the visual intrusiveness and that is my major thing. I would also like to ask since there is only one other  
33 tower in Orange County that T-Mobile is co-located on, does T-Mobile, if this tower is approved, do they have plans to  
34 build out service in the county?

35  
36 Tom Johnson: I object this goes into business decision.

37  
38 Jeff Schmitt: Your capacity with the county is?

39  
40 Jackie Hicks: I am their telecommunications consultant.

41  
42 Tom Johnson: I object to anything regarding business development because the state statute clearly says that is  
43 irrelevant.

44  
45 Male: You said you consult with the county, what does that entail?

46  
47 Jackie Hicks: Reviewing application basically, all the aspects. The ordinance, everything from co-locations, new  
48 towers, modifications, everything. I work hand in hand with Michael.

49  
50 Larry Wright: Finish what you were going to say.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50

Jackie Hicks: I am concerned about the visual intrusiveness.

Larry Wright: As a consultant, you said you were familiar with the UDO so how does this visual intrusiveness, where does it relate to various sections of the UDO.

Jackie Hicks: Under Section 5.10.8 (a) and (b), the placement and height and quality of wireless telecommunications tower and equipment in such a matter including but not limited to the use of stealth technology or camouflage technique to minimize adverse aesthetic and visual impacts on the land, property, buildings and other facilities adjacent to surrounding in generally the same area as the requested location of such wireless telecommunication support structure which shall mean using the least visible intrusive facility that is not technically or commercially impractical under the facts and circumstances.

Larry Wright: How do you think this would impact this area, this neighborhood as far as harmony, etc.

Tom Johnson: I would object to that because I don't think that is relevant to what she just spoke to stealth.

Larry Wright: Interpreting the UDO, we have to do this here, sitting here. Interpreting as a consultant for the county, you are the aware of the UDO and with the statement you've made, you just....

Tom Johnson: I would object just from the sense that I have not heard anything than she is a consultant for the county and she has read the UDO but I have heard nothing regarding her qualifications so there is no basis for her to give any...just because she is a consultant.

Larry Wright: Is my question out of order?

James Bryan: I'm quite sure what your question is.

Larry Wright: I just want to know that we are sitting here and have heard testimony on all sides, you have no interest on one side or the other, you are here from the county, everybody is a good guy to us. We have to make a decision so I am asking you a question. You read the UDO I want to know, do you the county and so on, are there adverse effects here?

Tom Johnson: I object she has not been tendered an expert nor has she given any basis upon which she has the ability.

Beth Bega: I think visual intrusiveness is huge to the county. I think it is huge ...

Tom Johnson: I object to that because....

Samantha Cabe: What are your qualifications and what do you advise the county on.

Beth Bega: I have been a telecommunications consultant since 2004.

Samantha Cabe: What do you consult on?

Beth Bega: I consult on all matters that have to do with UDO, any telecommunications issues.

Samantha Cabe: Such as?

1 Larry Wright: The AT&T towers that came across the board?  
2  
3 Beth Bega: Yes sir. I review everything from modifications to co-locations to the towers.  
4  
5 Samantha Cabe: What do you review it for?  
6  
7 Beth Bega: I review it to make sure it is in compliance with the ordinance and make sure they keep up with the state  
8 and federal laws.  
9  
10 Mark Micol: Would you be qualified to look at alternative locations? Like what Ms. Hall suggested, the field behind her  
11 house on the same property?  
12  
13 Beth Bega: I don't think by law you can do that. I think Tom addressed that as far as the location because it really is up  
14 for the property owner because when they say they will lease this property to a tower company, they do have the right  
15 to say where it is going to go. The neighbors can persuade her.  
16  
17 Mark Micol: That would be the idea. They would work with the community to find an alternative location that is suitable  
18 for their business needs.  
19  
20 Beth Bega: A lot of times what will happen and it didn't happen in this case. One of the first steps for a new tower  
21 application is a site visit and a lot of applicants will have that site visit with the planner or planning director or whomever  
22 represents the community and they will go look at sites but Orange County has sites already designated so there are all  
23 kinds of ways to deal with this and to make sure it is more pleasing for the community.  
24  
25 Samantha Cabe: We all realize you are not the ultimate decision maker whether their application is in compliance but I  
26 am asking you ask a consultant for the county who reviews all telecommunications applications that are submitted, is it  
27 your opinion that this application meets the criteria for being in harmony with the area in which it will be located if you  
28 can give an opinion on that.  
29  
30 Beth Bega: Tom going to object. No, I don't think it is in harmony.  
31  
32 Jeff Schmitt: Did you express an opinion to Mr. Harvey prior to Mr. Harvey providing us with the package of your  
33 consideration of all the elements regarding this application?  
34  
35 Beth Bega: Yes.  
36  
37 Jeff Schmitt: That statement is where?  
38  
39 Michael Harvey: It was provided to you as the [redacted] letter.  
40  
41 Tom Johnson: My point is the letter does not state what she just stated.  
42  
43 Beth Bega: It states in here, in my opinion, it complies with the following portions of the County's Unified Development  
44 Ordinance has not been demonstrated by clear and [redacted] evidence showing that building any other less visually intrusive  
45 type of facility other than a tower would serve to prohibit the provision of service.  
46  
47 Tom Johnson: I would object to that standard because that is not the standard in the state statute.  
48  
49 Beth Bega: That is my opinion, it doesn't have to. I'm not stating a law.  
50

1 Tom Johnson: But you are saying that prohibition...saying that is the standard but it's not.  
2  
3 Beth Bega: This is my opinion. I am not trying to fight a federal or state law here in a recommendation report. This is  
4 my recommendation to the county and to Michael Harvey. I am not trying to play attorney.  
5  
6 Tom Johnson: When did I get this report?  
7  
8 Beth Bega: Friday.  
9  
10 Tom Johnson: During the day today when I got your report.  
11  
12 Larry Wright: Final arguments.  
13  
14 Tom Johnson: I'm going to summarize where we started. We started with going over the fact that this is a quasi-  
15 judicial committee. That is important because you have to distinguish what is happening here with the special use  
16 permit versus a zoning matter. This Board of Adjustment is constituted in a different way than a planning board and I  
17 heard the name planning board mentioned by some of the opponents. This is a quasi-judicial proceeding where we  
18 have to present evidence. That is why we have our experts because we have to present that evidence, we have to  
19 bring that board to meet the requirements of the board. In the same fashion, this board has to look at the law and the  
20 fact making their determinations and not lay opinions on matters that are not presented by evidence. That is the key  
21 difference. As we mentioned earlier there are some key points to be made from the ordinance itself. First, let's look at  
22 the general conditions. For the use will maintain or promote the public health, safety and general welfare. Again, it is  
23 accepted in the land use goals that this county has already adopted plus the intent statement that I read in the  
24 beginning of the ordinance that this type of service is important to the public health, safety and general welfare of the  
25 community. Providing these adequate services. Efficient, effective public safety which includes telecommunications.  
26 Expansion of affordable high speed internet access providing reliable notification of oversight or emergency access.  
27 That is all in the staff report, I didn't do this. Your staff prepared this and reminded us that those are some land use  
28 goals within the ordinance itself. The use will maintain or enhance the value of contagious property. Again, the only  
29 testimony from an expert was from our expert about the impact on property values and you cannot do it on the site itself  
30 but you can go to another site. There you have got a lattice tower that even by the admission of the opponents own  
31 attorney with the [redacted] if visible from some of those locations and the comparison was between those lots where it was  
32 visible and those where it was not and the expert came to the conclusion there was not difference in those values. That  
33 the values would be maintained and not be harmed. Spent a lot of time here about harmony. I do want to speak about  
34 what state law says about harmony and the staff in its report alludes to this as well on page 58. There are concerns  
35 expressed in the telecommunication towers are not appropriate for development in the rural buffer zoning district. The  
36 thing is under your ordinance towers are a permitted use subject to the special use permit in the rural buffer district.  
37 That is what North Carolina law says. It is presumed to be harmony if the jurisdiction allows it as a use in the district.  
38 This is allowed as a use in the district therefore, by definition it is in harmony and all you are hearing is that it is in a  
39 rural buffer but the commissioners by opting the UDO said in a rural buffer, it is appropriate but carry it a step further,  
40 look at the character of this area and you look at the fact there is a \_\_\_ facility across the street, there is a school  
41 across the street, there is a large one story apartment building across the street. There are major subdivisions that are  
42 in very close proximity us like a lot of areas you see around the area and other parts of the country. The growth is  
43 coming, it is urban growth, this is an urban area that is growing into the rural area. That is just the way it is. It's not the  
44 tower that is doing that. It is the subdivisions that have come, it's the subdivision, the school, the nursing center that  
45 has come to this area. You know what is more important to me. You have a very experienced staff that has been very  
46 involved in this whole process. We have gone back and forth with correspondence to get to the point getting the  
47 answers so far as us showing how it meets the ordinance. We have been back and forth with Mr. Harvey on numerous  
48 occasions. The key point to me is on page 124 and he has got years of experience but on page 124 this is what is said  
49 in his report. Staff has reviewed the application, the site plan and all supporting documentation and has found that the  
50 applicant complies with the specific standards with the required regulations as outlined in the UDO. I didn't not see that

1 CTS report until today. This has been going on for months. It makes it hard for me to adjust that is why I adjusted at  
2 hearing tonight to say if I didn't get the report until today it is hard for me to address the stealthing issue as proactively if  
3 that is the consultant's concern. That is why I came in tonight with respect to stealthing. One is to do the close mount  
4 antennas on a single pole or do a monopine. That is stealthing that is recognized with your ordinance and certainly with  
5 Durham County's cause they require that so we are will to accept that. What are those to stealthing but again, I didn't  
6 know about that concern from CTS until today. There was a lot of mention about the top half of the tower and again, all  
7 that was viewable from the Lake Hogan Farm's property. Same comments and it was not the adverse impact. The  
8 bottom line is we agree with what your staff said. We agree that the statute says that you have look at the search ring  
9 and what is available in the search ring. I am not open to questions about the business of the applicant. We have  
10 presented ample evidence as to why the existing tower within the search ring will not work it is just too short and too low  
11 in elevations. Higher the elevation is the tower that would work better and meet the objectives not work better but meet  
12 the objectives that T-Mobile has located otherwise it won't meet their objectives and it doesn't help and that is certainly  
13 in keeping with the ordinance and that is where the facts lie and that is what the experienced staff says and I act that  
14 you rule based on the fact not the emotion but you have to look at the facts and the law that is before you and if you  
15 really look at that in terms of the expert testimony, you have no choice but to approve the application as presented.  
16 Thank you.

17  
18 Beth Bega: Can I say something?

19  
20 Tom Johnson: I thought we were through...

21  
22 Beth Bega: It is just a statement that you made. You knew that ...He didn't just find this out.

23  
24 Bob Hornik: I am aware of the time. A few points. First, the board can ask Mr. Harvey exactly what he said and what  
25 he meant by [REDACTED] which Mr. Johnson just talked about. About three points I want to make. First, I am looking at  
26 Section 5.10.8(b)3.0 of the Ordinance and it says that all applications shall contain a demonstration that the wireless  
27 support structure [REDACTED] as to have the least visually intrusive effect reasonably possible and thereby have the least  
28 adverse visual affect on the environment and its character, on existing vegetation and on the residences and the area  
29 of the telecommunications tower. May I submit to the board that on that criteria alone, this board can and should deny  
30 the application. The application had not been submitted complies with that ordinance. It is a requirement of the  
31 ordinance. You don't have to already waive it. They have to make that demonstration and they did not. I have my  
32 proposed finding I will hand them out to the board.

33  
34 Michael Harvey: For the record, this will be Exhibit 2.

35  
36 Bob Hornik: These are my proposed findings based on the evidence in the record and what has been demonstrated to  
37 the board tonight. I agree to a certain extent with Mr. Johnson that says when there is case law out there that says  
38 when a use is allowed in a district for a conditional permit or special use permit that is considered to be harmonious with  
39 the district but what the case law goes on to say is that [REDACTED] provided that the application otherwise complies with all  
40 the other requirements and that is where this application falls apart. It falls apart on the issue of complying otherwise  
41 with the requirements of the ordinance. I can go through a laundry list of provisions in the ordinance that I submit have  
42 not been satisfied by the application, the applicant and the presentation tonight. I won't for the sake of time go through  
43 and reach each of the sections of the ordinances but summarized in my proposed findings. I would ask the board to  
44 consider that. I would ask the board to consider Section 5.10.8 (B) 1 (a) and (b) of the UDO which are the overall policy  
45 and desired goals when you listen or review the evidence that has presented and [REDACTED] the arguments that were  
46 presented you have to consider them in context when you do the prism of [REDACTED] policies so paragraph B says the  
47 placement height and quantity of wireless communication towers and equipment all applicants are required to adhere to  
48 the following overall policies and goals. The overall policies aren't goals for SUP for wireless communication support  
49 structures shall be promoted, encouraging wherever possible the following: the placement height and quantity of  
50 wireless communication towers such a manner but not limited to the use of stealth technology or camouflage

1 technology techniques to minimize adverse aesthetics and visual land, property, buildings and other facilities adjacent  
2 to, surrounding and generally the same area as the requested location in such wireless telecommunication support  
3 structure. I ask this board to please exercise and apply some common sense in this application. This is not a  
4 complicated application when you look at the facts and look at where it stands in the ordinance. This applicant has not  
5 satisfied the requirements of the ordinance with respect to at least the issue of being the least visually intrusive location  
6 of the tower. You are not obligated to allow T-Mobile to build its optimal site so they can argue about that if they want.  
7 You are not required to let them build the optimal; you are required to apply standards in your ordinance. They have  
8 not satisfied the ordinance. This last one has to do with the property value question.

9  
10 Michael Harvey: I'll put it in Exhibit 3.

11  
12 Bob Hornik: The case is American Towers versus the Town of Morrisville in 2012 North Carolina Court of Appeals. I  
13 would direct the board's attention to look at the facts of the case but when we get to the last two pages which deal with  
14 the impact on property value issue. The analysis of this court and the facts that are presented to the court as the facts  
15 that are presented to you. The applicant in that case, the petitioner, presented expert testimony. The opposition did  
16 not, the court looked at that and said that they responded that the petitioner responded found that the petitioner's [REDACTED]  
17 on the issue of the proposed telecommunication was substantially [REDACTED] value of adjoin property to be deficient in four  
18 areas. One, report that [REDACTED]. Two, the subdivision, the cell tower was in place before the neighboring homes were  
19 built as opposed to the case in here. Three, the report denied [REDACTED] the effect of possible evaluation of property and four,  
20 the report did not take into account any potential loss of value due to the loss of [REDACTED] the tower rising above the  
21 adjoining residential neighborhood. In the end, the Court of Appeals affirmed the Superior Court's decision which  
22 affirmed the denial of a special use permit for a cell tower as in the case of American Towers versus Morrisville. And  
23 they decided to uphold the Court of Appeals opinion. The same proposition. So you don't to accept their expert  
24 testimony as [REDACTED] if you don't want to. I would suggest to the board that you shouldn't accept that testimony. In  
25 addition to all the various specific provisions of the UDO that I submit the applicant did not satisfy, the applicant did not  
26 [REDACTED] on evidence to satisfy the second and third prongs on the general findings that you have to make to [REDACTED]. They did  
27 not prove to you that this proposal would maintain or enhance the value of adjoining property and they did not prove to  
28 you that this proposal if built as proposed would be compatible and harmonious with the uses in the area and on those  
29 two grounds I would ask this board to deny the application. Thank you.

30  
31 Larry Wright: I would like to thank both counsels and are there any questions that the board has?

32  
33 Jeff Schmitt: Do you wish to proceed until we have deliberation and finding tonight or are we going to adjourn.

34  
35 Larry Wright: We are not going to adjourn. We are going to go through this.

36  
37 Karen Barrows: Michael, on page 141, there is a note from the health department, has this request been met?

38  
39 Michael Harvey: They are proposing a subdivision and that note is to remind time and ultimately you all of the  
40 testimony that if there is a subdivision of property we will have to evaluate the no expected impact statement.

41  
42 Karen Barrows: This is not considered subdividing the property?

43  
44 Michael Harvey: No. This is not going to be a subdivision.

45  
46 Jeff Schmitt: Can I ask the applicant/petitioner of consideration for other sites within the two mile circle. Is that an  
47 appropriate thing or a business question?

48  
49 James Bryan: There are some factors that are going to be business decisions and some that or not. You can't ask  
50 them about their plans for expanded service but there is a submittal requirement in our UDO that says hey you have to

1 show us all the towers in two miles. Then they have to evaluate within their search ring so you can ask them about  
2 that?  
3

4 Tom Johnson: I would object in so far that we would be reopening the record after the summation of the parties.  
5

6 Jeff Schmitt: Within the search ring, how many other sites did you consider?  
7

8 Tom Johnson: Within the search ring, the search ring is a half mile radius. Typically, I think there are three location  
9 presented for consideration and they looked at all factors in terms of the locations and heights. For instance, the  
10 American tower sites, we did search ring so they looked at that and examined that with the respect but it not work with  
11 the height and the location issue because it was so low so multiple sites were looked but the thing that generates all  
12 this, you look with their search ring and determine their sites and you talk to property owners like when you are trying to  
13 negotiate a contract to purchase a real estate so you have to determine; number one you have to find a willing person  
14 to do it then number 2, you have to have that person reach an agreement with that person where it would be located on  
15 their property and there are financial considerations too. You go through a process to do that. It was determined based  
16 upon all these factors that this was the best site to present so that is really where we are.  
17

18 Male: None of this is in the record before as generated even in the application or hearing tonight and I move to strike.  
19

20 Tom Johnson: I was just responding to the question.  
21

22 Larry Wright: This is the time when the board can ask questions and we do.  
23

24 Male: If you can reopen or new testimony.  
25

26 Larry Wright: I have not closed the public hearing.  
27

28 Jeff Schmitt: Did you make an offer to locate the tower on another piece of property within the ½ mile.  
29

30 Tom Johnson: I can't address that specifically... there are four others considered.  
31

32 Jeff Schmitt: The first lady, Mrs. Hall, pointed us to this large piece of property who own this site located if its approved  
33 in the back. It is further away and surrounded by trees. Yes there are other houses. Did you request of her to  
34 potentially locate this tower back there?  
35

36 Tom Johnson: All I can say is that we have an agreement with Mrs. Bergman and this is where the future site.  
37

38 Larry Wright: I have a question about the buffer. I see long leaf pines, is there an intent to put a buffer around this  
39 thing? It's a 20 ft. buffer but where is it?  
40

41 Tom Johnson: It is around the outside of the fence as required by the ordinance.  
42

43 Larry Wright: But the fence adjoins someone else's property.  
44

45 Tom Johnson: No the fence around the compound of the structure doesn't go that far.  
46

47 Michael Harvey: Reviewed Findings.  
48

49 Samantha Cabe: The standard, the search ring utilized in finding the proposed site, what you are looking at there is  
50 only that they submitted the search ring?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

Michael Harvey: They did present the search ring. Tom and I have a difference of opinion. I would say he did submit it and he did submit a response to my original concern.

Samantha Cabe: Can you tell me where your original packet was documented in our packet.

Michael Harvey: It was in the original letter we wrote on March 30, the questions we asked were basically were basically was he identifying every tower within the identifiable search ring where the distance properly referenced, were the radio points actually being provided as required and did the search ring really yield the viable number of properties that ought to be considered. Our ultimate questions that Tom and I had discussions offline where can you truly discount the Kerley Road existing site and obviously the testimony here this evening as we state in the abstract itself the argument provided by the RF engineer is the tower was too low and that was the whole testimony. On page 137, the May 15 letter, we had suggested that they provide addition assessment on the narrative on the Kerley Road site. Tom's response was that they had chosen to add additional documentation in their Tab 26 and they would handle additional testimony here this evening to address my concern about search ring issues. And then obviously he quotes from the general statute as well. Part of the concern is that I am dredging on a business development component of this and he believes I am exceeding my authority. Continued reviewing Findings.

Tom Johnson: I accept the conditions so I don't have any objections to the conditions that have been listed. We are find using the same design of the tower down the road if we using the monopine.

Larry Wright: Hearing none. I will close the public hearing. Are there any comments the board want to say?

Karen Barrows: I wanted to say that submitting what is required for the SUP in general was quite helpful so thank you Michael.

1  
2  
3 **FINDINGS OF THE ORANGE COUNTY BOARD OF ADJUSTMENT**  
4 **PERTAINING TO A REQUEST SUBMITTED BY**  
5 **SKYWAY TOWERS LLC / T-MOBILE**  
6 **REQUESTING A CLASS B SPECIAL USE PERMIT APPROVAL**  
7 **FOR A TELECOMMUNICATION TOWER AT**  
8 **5022 Kerley Road (PIN 0801-15-4533)**  
9

10 As required under Section 5.2 *Table of Permitted Uses* of the Orange County Unified Development  
11 Ordinance (UDO), a Class B Special Use Permit is required for the erection of a telecommunication  
12 tower, over 75 feet but under 200 feet in height, reviewed and acted upon in accordance with the  
13 provisions of Section 2.7 of the UDO. Such permits shall comply with general and specific standards as  
14 set forth in Section(s) 5.3.2 and 5.10.8 of the UDO.  
15

16 Section 5.3.2 (A) (2) of the UDO requires written findings certifying compliance with the following:  
17

- 18 (1) The use will maintain or promote the public health, safety and general welfare, if located  
19 where proposed and developed and operated according to the plan as submitted;  
20  
21 (2) The use will maintain or enhance the value of contiguous property (unless the use is a  
22 public necessity, in which case the use need not maintain or enhance the value of  
23 contiguous property); and  
24  
25 (3) The location and character of the use, if developed according to the plan submitted, will  
26 be in harmony with the area in which it is to be located and the use is in compliance with  
27 the plan for the physical development of the County as embodied in these regulations or  
28 in the Comprehensive Plan, or portion thereof, adopted by the Board of County  
29 Commissioners;  
30

31 In addition, the Board shall make findings certifying that the application is compliant with the following  
32 specific standards:  
33

- 34 (1) Specific standards for the submission of Special Use Permit applications as outlined  
35 within Section(s) 2.2 and 2.7 of the UDO,  
36  
37 (2) Specific regulations governing the development of telecommunication tower as set forth in  
38 Section 5.10.8 (A) through (B) of the UDO,  
39  
40 (3) Section 5.3.2 (B) relating to the method and adequacy of the provision of:  
41 a. Sewage disposal facilities,  
42 b. The adequacy of police, fire, and rescue squad protection, and  
43 c. The adequacy of vehicular access to the site and traffic conditions around the site  
44  
45 (4) The general findings outlined within Section 5.3.2 (A) (2).  
46

47 Listed below are the findings of the Orange Planning staff regarding the application in question. The  
48 findings have been presented by Article and requirement to assist the Board of Adjustment in its  
49 deliberations.

REQUIREMENT	UDO	SUPPORTING EVIDENCE	Staff	BOA
<b>APPLICATION COMPONENTS</b>				
Proper forms	2.2	Application (TAB 1 of binder)	Yes	
Fees paid	2.2.4(D)	Staff Testimony/Application (TAB 2 of binder)	Yes	
Full description of use <ul style="list-style-type: none"> <li>• Location</li> <li>• Appearance</li> <li>• Operational characteristics</li> </ul>	2.7.3(B)(1)	Application (Application Binder and Site plan)	Yes	
Owner Information	2.7.3(B)(2)	Application (TAB 3 of binder and Site plan)	Yes	
Information needed for Use Standards	2.7.3(B)(3)	Application (TAB(s) 3, 4,5 of binder and Site Plan)	Yes	
Site Plans (10 copies for Class B; 26 for Class A)	2.7.3(B)(4)	Application/Staff Testimony (Site plan)	Yes	
Preliminary Subdivision Plat (if necessary)	2.7.3(B)(5)	[No subdivision proposed.]	N/A	
List of parcels within 1,000 feet	2.7.3(B)(6)	Application (TAB 5 of binder)	Yes	
Elevations of all structures	2.7.3(B)(7)	Application (Site plan)	Yes	
Environmental Assessment (or EIS) <ul style="list-style-type: none"> <li>• Topography</li> <li>• Drainage issues</li> <li>• Natural or Cultural resources</li> <li>• Mining</li> <li>• Hazardous Wastes</li> <li>• Wastewater treatment</li> <li>• Water usage</li> </ul>	2.7.3(B)(8)	Project exempt per Section(s) 6.16.2 and 6.16.3 of UDO  Proposed level of land disturbance for project does not meet established thresholds for an environmental assessment to be completed.	N/A	
Method of Debris Disposal	2.7.3(B)(9)	Application (Site plan)	Yes	
Development Schedule	2.7.3(B)(10)	Application (Site plan)	Yes	
Extended Vesting Request	2.7.3(B)(11)	Not requested	N/A	

REQUIREMENT	UDO	SUPPORTING EVIDENCE	Staff	BOA
<b>NOTIFICATION REQUIREMENTS</b>				
Public Notice <ul style="list-style-type: none"> <li>• Date</li> <li>• Time</li> <li>• Place</li> </ul>	2.7.5(a)	Abstract (Attachment 2)	Yes	
Published in Newspaper <ul style="list-style-type: none"> <li>• Two successive weeks</li> <li>• First notice at least ten days prior but no more than twenty-five days prior</li> </ul>	2.7.5(b)	Abstract (Attachment 2) and Staff Testimony	Yes	
Sign Posting on Property (at least 10 days prior)	2.7.5(c)	Staff Testimony posted sign on <i>May 28, 2015</i>	Yes	
Mailed Notice <ul style="list-style-type: none"> <li>• Certified mail</li> <li>• All adjacent property owners (within 1000 ft.)</li> <li>• Not less than fifteen days prior</li> </ul>	2.7.5(d)	Abstract (Attachment 2)	Yes	

REQUIREMENT	UDO	SUPPORTING EVIDENCE	Staff	BOA
<b>SPECIFIC STANDARDS</b>				
<b>Waste Disposal</b> Method and adequacy of provision for sewage disposal facilities, solid waste and water service.	5.3.2(B)(1)	Abstract (Attachment 4)  Both Environmental Health and Solid Waste have indicated they have no concerns.  Conditions are recommended to require Solid Waste Permit as part of development process.	Yes	
<b>Safety</b> Method and adequacy of police, fire and rescue squad protection.	5.3.2(B)(2)	Abstract and Staff Testimony  Orange County Emergency Service staff and the Sheriff's office have indicated the project can be served.	Yes	
<b>Vehicle Access</b> Method and adequacy of vehicle access to the site and traffic conditions around the site.	5.3.2(B)(3)	Application and Site plan  There will not be an appreciable traffic increase in the area associated with the development of the telecommunication facility.	Yes	

REQUIREMENT	UDO	SUPPORTING EVIDENCE	Staff	BOA
<b>STANDARDS for Telecommunication Facilities</b>				
<b>Site Plan</b> A site plan prepared in accordance with Section 2.5 of UDO	5.10.8 (A) (1) (a)	Application, Applicant Testimony, Staff Testimony, and Site plan	Yes	
A detailed description of the proposed telecommunication support structure (i.e. monopole, self-supporting lattice, etc.) including a detailed narrative description and explanation of the specific objective(s) for the new facility including a description as to the coverage and/or capacity, technical requirements, and the identified boundaries of the specific geographic area of intended coverage for the proposed telecommunication support structure.	5.10.8 (A) (1) (b)	Application (TAB(s) 3, 5, 6, 7, 10 through 20), Site plan, and Applicant Testimony	Yes	
Elevation drawings and color renderings of the proposed tower.	5.10.8 (A) (1) (c)	Application (TAB(s) 9 and 12), Applicant Testimony, and Site plan	Yes	
A signed statement from the applicant certifying that the proposed telecommunication support structure:  (i) Shall be maintained in a safe manner, (ii) Is in compliance with all conditions of all applicable permits and authorizations without exception, and (iii) Is in compliance with all applicable and permissible local, State, and Federal rules and regulations.	5.10.8 (A) (1) (d)	Application (TAB 6), Applicant Testimony, and Site plan		

REQUIREMENT	UDO	SUPPORTING EVIDENCE	Staff	BOA
<b>STANDARDS for Telecommunication Facilities (continued)</b>				
A statement, prepared by a professional engineer certifying the tower's compliance with applicable standards as set forth in the State of North Carolina Building Code, any associated regulations; and describing the tower's capacity.	5.10.8 (A) (1) (e)	Application (TAB(s) 7 and 9), Applicant Testimony, and Site plan	Yes	
A statement indicating how the proposed tower will minimize visual intrusiveness to surrounding properties in the area.	5.10.8 (A) (1) (f)	Application (TAB(s) 21 and 22), Applicant Testimony		Yes
A copy of the installed foundation design including a geotechnical sub-surface soils investigation, evaluation report, and foundation recommendation for the proposed wireless support structure.	5.10.8 (A) (1) (g)	Application (TAB(s) 8 and 9), Applicant Testimony, and Site plan	Yes	
The existing cell sites (latitude, longitude, power levels) to which this proposed site will be a handoff candidate.	5.10.8 (A) (1) (h)		Yes	
Propagation studies of the proposed site and showing all adjoining planned, proposed, in-service or existing sites.	5.10.8 (A) (1) (i)	Application (TAB(s) 10 and 26), Applicant Testimony, and Site plan	Yes	
The search ring utilized in finding the proposed site.	5.10.8 (A) (1) (j)	Application (TAB(s) 10 and 26), Applicant Testimony	Yes	Yes
The number, type, height, and model of the proposed antennas along with a copy of the applicable specification sheet(s).	5.10.8 (A) (1) (k)	Application (TAB 11), Applicant Testimony	Yes	

REQUIREMENT	UDO	SUPPORTING EVIDENCE	Staff	BOA
<b>STANDARDS for Telecommunication Facilities (continued)</b>				
The make, model and manufacturer of the tower and antenna(s), antenna heights and power levels of proposed site.	5.10.8 (A) (1) (l)	Application (TAB 12), Applicant Testimony	Yes	
The frequency, modulation and class of service of radio or other transmitting equipment.	5.10.8 (A) (1) (m)	Application (TAB 13), Applicant Testimony	Yes	
The maximum transmission power capability of all radios, as designed, if the applicant is a cellular facility.	5.10.8 (A) (1) (n)	Application (TAB 14), Applicant Testimony	Yes	
The actual intended transmission and the maximum effective radiated power of the antenna(s).	5.10.8 (A) (1) (o)	Application (TAB 15), Applicant Testimony	Yes	
The direction(s) of maximum lobes and associated radiation of the antenna(s).	5.10.8 (A) (1) (p)	Application (TAB 16), Applicant Testimony	Yes	
Certification that the NIER levels at the proposed site are within the threshold levels adopted by the FCC.	5.10.8 (A) (1) (q)	Application (TAB 17), Applicant Testimony	Yes	
Certification that the proposed antenna(s) will not cause interference with other telecommunications devices.	5.10.8 (A) (1) (r)	Application (TAB 18), Applicant Testimony	Yes	
A written affidavit stating why "the proposed site is necessary for their communications service".	5.10.8 (A) (1) (s)	Application (TAB(s) 19 and 26), Applicant Testimony	Yes	
A copy of the FCC license applicable for the intended use of the facility as well as a copy of the 5 and 10 year building out plan required by the FCC.	5.10.8 (A) (1) (t)	Application (TAB 20), Applicant Testimony	Yes	

REQUIREMENT	UDO	SUPPORTING EVIDENCE	Staff	BOA
<b>STANDARDS for Telecommunication Facilities (continued)</b>				
Applications for the co-location of antennas	5.8.10 (A) (2)	The proposal is for a new tower, not for the co-location of equipment.  The application is not proposing any co-locations at this time.	N/A	
Overall Policy and Desired Goals  Alternatives to constructing new wireless support structures, placement to minimize adverse aesthetic impacts, etc.	5.8.10 (B) (1) (a) and (b)	Application (TAB(s) 21 and 22), Applicant Testimony	Yes	Yes
Balloon Test	5.8.10 (B) (2)	Application (TAB(s) 21 and 22), Applicant Testimony, Abstract (Attachment 4), Staff testimony.	Yes	
Submittal of site plan	5.8.10 (B) (3) (a)	Application, Site plan, Applicant Testimony, Staff testimony	Yes	
Plans and elevations for all proposed structures and descriptions of the color and nature of all exterior material, along with the make, model, and manufacturer of the proposed structure, maximum antenna heights, and power levels.	5.8.10 (B) (3) (b)	Application (TAB(s) 11, 12, 15 ), Applicant Testimony, Site plan.	Yes	
A Landscape and Tree Preservation Plan	5.8.10 (B) (3) (c)	Application, Site plan, Applicant Testimony	Yes	
Evidence that the applicant has investigated the possibilities of placing the proposed equipment on an existing wireless support structure.	5.8.10 (B) (3) (d)	Application (TAB(s) 3, 10, 26), Applicant Testimony	Yes	
Documentation from applicable state or federal agencies indicating requirements, which affect the appearance of the proposed wireless support structure, such as lighting and coloring.	5.8.10 (B) (3) (e)	Application (TAB 27), Applicant Testimony	Yes	

REQUIREMENT	UDO	SUPPORTING EVIDENCE	Staff	BOA
<b>STANDARDS for Telecommunication Facilities (continued)</b>				
Draft bond guaranteeing removal of the wireless support structure in the event that it is abandoned or unused for a period of 12 months.	5.8.10 (B) (3) (f)	Application (TAB 28), Applicant Testimony.	Yes	
A listing of, and current tax map identifying, all property owners within 1,000 feet of the parcel	5.8.10 (B) (3) (g)	Application (TAB 5)	Yes	
A report containing any comments received by the applicant in response to the balloon test along with color photographs from various locations around the balloon.	5.8.10 (B) (3) (h)	Application (TAB(s) 22 and 29), Applicant Testimony, Abstract.	Yes	
Evidence that the balloon test requirement has been met.	5.8.10 (B) (3) (i)	Application (TAB 22), Abstract (Attachment 2)	Yes	
A notarized statement that the sign posting requirement has been met.	5.8.10 (B) (3) (j)	Staff testimony	Yes	
Photographs of a clearly visible balloon floated at the proposed tower location as well as photographs with the proposed tower and associated antennas superimposed upon them showing what the proposed tower will look like.	5.8.10 (B) (3) (k)	Application (TAB 22)	Yes	
The Special Use Permit application shall include a statement that the facility and its equipment will comply with all federal, state and local emission requirements.	5.8.10 (B) (3) (l)	Application (TAB 6) and Applicant Testimony	Yes	
Environmental Assessment Analysis and a Visual addendum.	5.8.10 (B) (3) (m)	Environmental Assessment is not required.  Application (TAB 22).	N/A	

REQUIREMENT	UDO	SUPPORTING EVIDENCE	Staff	BOA
<b>STANDARDS for Telecommunication Facilities (continued)</b>				
Visual Impact Assessment requirements	5.8.10 (B) (3) (n)	Application (TAB 22), Applicant Testimony.		Yes
Demonstration that the wireless support structure is sited so as to have the least visually intrusive effect reasonably possible and have the least adverse visual effect on the environment and its character, on existing vegetation, and on the residences in the area of the telecommunications tower.	5.8.10 (B) (3) (o)	Application (TAB(s) 19, 21, and 22), Applicant testimony		Yes
A statement, prepared by a professional engineer licensed in the State of North Carolina certifying the tower's compliance with applicable standards as set forth in the State of North Carolina Building Code, and any associated regulations.	5.8.10 (B) (3) (p)	Application (TAB 7), Applicant Testimony	Yes	
Proposed telecommunications equipment planned cannot be accommodated on an existing wireless support structures	5.10.8 (B) (4) (a)	Application (TAB 7), Applicant Testimony	Yes	
Location of Wireless Support Structures	5.10.8 (B) (4) (b)	Application inclusive with a specific statement contained in TAB(s) 25 and 33, Applicant Testimony, Abstract.  The applicant is not by-passing a 'higher priority' site with the proposal to erect a tower on this property. There are no higher priority sites in the area where a tower can be located.	Yes	
Fall zone setbacks of 110% of tower height (not including lighting rod)	5.10.8 (B) (4) (c)	Site plan	Yes	
Access	5.10.8 (B) (4) (d)	Site plan. Access shall be off of Mt. Sinai Road.	Yes	

REQUIREMENT	UDO	SUPPORTING EVIDENCE	Staff	BOA
<b>STANDARDS for Telecommunication Facilities (continued)</b>				
Landscape and Buffers – Type C land use buffer	5.10.8 (B) (4) (e)	Application, Site plan, Applicant Testimony.	Yes	
Visibility of balloon shall not constitute sole justification of denial but shall serve as an indication of what location on the site may be less visually intrusive.	5.10.8 (B) (4) (f)	Applicant testimony (acknowledgement of condition)  Application (TAB 22)	Yes	
The applicant shall demonstrate and provide a description in writing and by drawing how it shall effectively screen from view the base and all related equipment and structures of the proposed facility.	5.10.8 (B) (4) (g)	Site plan, Applicant Testimony	Yes	
The site plan shall indicate a location for at least two equipment buildings in addition to that proposed for use by the applicant.	5.10.8 (B) (4) (h)	Site plan	Yes	
All utilities at a facility site shall be installed underground and in compliance with all Laws, ordinances, rules and regulations of the County.	5.10.8 (B) (4) (i)	Site plan, Applicant Testimony	Yes	
All wireless support structures shall satisfy all applicable public safety, land use, or zoning issues required in this Ordinance.	5.10.8 (B) (4) (j)	Application inclusive, Site plan	Yes	
Fences and Walls	5.10.8 (B) (4) (k)	Site plan.	Yes	
Tower is structurally designed to support additional users.	5.10.8 (B) (4) (l)	Application inclusive	Yes	
To minimize the number of antenna arrays the County may require the use of dual mode antennas.	5.10.8 (B) (4) (m)	Not applicable for this project	N/A	

REQUIREMENT	UDO	SUPPORTING EVIDENCE	Staff	BOA
<b>STANDARDS for Telecommunication Facilities (continued)</b>				
Structures shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings.	5.10.8 (B) (4) (n)	Site plan, Application inclusive	Yes	
Both the wireless telecommunications support structure and any and all accessory or associated telecommunication equipment and related facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings, this shall include the utilization of stealth technology as may be required by the County.	5.10.8 (B) (4) (o)	Applicant testimony (acknowledgement of condition)  Language within application indicates proposed monopole will be constructed of galvanized steel, grey in color.		Yes
Antennas shall be flush mounted	5.10.8 (B) (4) (p)	Site plan, Applicant Testimony	Yes	
Lighting	5.10.8 (B) (4) (q)	Not applicable. Tower is not required to be illuminated.	N/A	
The tower and antenna will not result in a significant adverse impact on the view of or from any historic site, scenic road, or major view corridor.	5.10.8 (B) (4) (r)	Not applicable. Area does not contain historic sites (i.e. officially designated), designated scenic roads (NC DOT), and is not located in a major view corridor	N/A	
Facilities, including antennas, towers and other supporting structures, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with	5.10.8 (B) (4) (s)	Applicant acknowledges condition via testimony	Yes	
Abandoned structures shall be removed with 12 months.	5.10.8 (B) (4) (t)	Applicant acknowledges condition via testimony	Yes	

REQUIREMENT	UDO	SUPPORTING EVIDENCE	Staff	BOA
<b>STANDARDS for Telecommunication Facilities (continued)</b>				
A determination shall be made that the facility and its equipment will comply with all federal, state and local emission requirements, and the Special Use Permit shall include a statement that the facility and its equipment will comply with all federal, state and local emission requirements.	5.10.8 (B) (4) (u)	Condition of approval	Yes	
The Special Use Permit shall include a condition that the electromagnetic radiation levels maintain compliance with requirements of the FCC, regarding emission of electromagnetic radiation.	5.10.8 (B) (4) (v)	Applicant acknowledges condition via testimony and information in TAB 41.  Condition of approval	Yes	
Warning signage on compound fence	5.10.8 (B) (4) (w)	Site plan, Applicant Testimony	Yes	
Bond Security. Applicant/owner shall file a bond with the County to assure faithful performance of terms and conditions of Special Use Permit.	5.10.8 (B) (5)	Condition of approval	Yes	
Liability Insurance	5.10.8 (B) (6)	Application (TAB 43)	N/A	

1

REQUIREMENT	UDO	SUPPORTING EVIDENCE	Staff	BOA
<b>SPECIFIC STANDARDS</b>				
In accordance with Section 5.3.2 (A) (2), the Board of Adjustment shall also consider the following general conditions before the application for a Special Use can be approved.				
<b>NOTE:</b> Planning Staff does not provide a recommendation on these items as the Board is expected to act based on the sworn testimony provided at the hearing. Staff is providing a brief synopsis of the information contained within the submittal the applicant argues demonstrates compliance for reference purposes only.				
The use <b>(will / will not)</b> maintain or promote the public health, safety and general welfare, if located where proposed and developed and operated according to the plan as submitted.	Section 5.3.2 (A) (2) (a)	Application package inclusive <ul style="list-style-type: none"> <li>• Narrative (TAB 3)</li> <li>• Impact Analysis (TAB 21)</li> <li>• Balloon Test (TAB 22)</li> <li>• Site Plan</li> </ul>	N/A	
The use <b>(will / will not)</b> maintain or enhance the value of contiguous property (unless the use is a public necessity, in which case the use need not maintain or enhance the value of contiguous property).	Section 5.3.2 (A) (2) (b)	Application package inclusive <ul style="list-style-type: none"> <li>• Impact Analysis (TAB 21)</li> <li>• Site Plan</li> </ul>	Yes	
The location and character of the use, if developed according to the plan submitted, <b>(will / will not)</b> be in harmony with the area in which it is to be located and the use is in compliance with the plan for the physical development of the County as embodied in these regulations or in the Comprehensive Plan, or portion thereof, adopted by the Board of County Commissioners.	Section 5.3.2 (A) (2) (c)	Application package inclusive <ul style="list-style-type: none"> <li>• Narrative (TAB 3)</li> <li>• Impact Analysis (TAB 21)</li> <li>• Balloon Test (TAB 22)</li> <li>• Site Plan</li> </ul>	Yes	

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

Larry Wright: On page 111, there is the application of components with its supporting evidence and we can comfortably go off this for page 111 and 112.

**MOTION** made by Samantha Cabe that for the recommendations we just reviewed with Mr. Harvey up to page 123 that we adopt the 3 staff recommendations that were made and only address the ones that were left open for our decision. Seconded by David Blankfard.

**VOTE:** Unanimous

Jeff Schmitt: The character of the property is changing it is not all rural anymore. There is a commercial venture, a commercial complex, a commercial venture as a nursing home. It is changing; does that affect the visual intrusiveness? I don't know.

Larry Wright: Every place is changing. But is this change, does it follow the intent of what the UDO is really trying to protect citizens in Orange County or to protect the county grow in development.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49

Samantha Cabe: Question to the attorney. Do we have to fill in these findings or only the ultimate requirements and make findings that support the ultimate findings or do we have to go through all these things that staff has recommended.

James Bryan: You have to make findings and conclusions for all of these but what the board has done in the past have lumped all the submittal ones together with one comprehensive finding that was in the application packet that was testified by the applicant staff testified to it. That is where all the submittal ones together. You have got either the three general standards, harmony, appraisal and ....

Samantha Cabe: With these submittal standards, all we are looking for is did they address this either in their application or testimony. We are not evaluating at this point whether they did minimize the visual intrusiveness. We are just saying they addressed it in their application and testimony?

Jeff Schmitt: It is their opinion.

Samantha Cabe: I just don't want us to weigh something we don't have to weigh.

James Bryan: I would actually interpret submittal to be submittal.

Larry Wright: Correct.

**MOTION** made by Samantha Cabe to adopt the staff findings and add findings of yes to all the unanswered questions by staff. Karen Barrows seconded.

**VOTE** Unanimous

Larry Wright: On page 123, Section 5.3.2 (A) (2) (a).

**MOTION** made by David Blankfard that the use will maintain or promote the public health, safety and general welfare if located where proposed and developed and operated according to the plan as submitted and the impact analysis and site plan. Seconded by Jeff Schmitt.

**VOTE:** 3-2 (Larry Wright and Samantha Cabe opposed)

Larry Wright: On page 123, Section 5.3.2 (A) (2) (b).

**MOTION** made by Samantha Cabe to find the applicant failed to meet its burden with regard to proving that the use will maintain or enhance the value of contagious property and I based that motion on the fact that the impact analysis was submitted and evaluated only residential properties in a very regulated subdivision in Orange County and did not consider any impact on a farming operation. It did not address any impact on a nursing home or another commercial facility that might be in the area and also none of the comparables submitted in the Impact Analysis to locate the tower in the front yard or in the direct view of any of the comparable properties. Seconded by Jeff Schmitt.

**VOTE:** 4-1 (David Blankfard opposed)

Larry Wright: On page 123, Section 5.3.2 (A) (2) (c).

**MOTION** made by Karen Barrows that the location and character of the use will not be in harmony with the area in which it is to be located.

Friendly amendment made by David Blankfard stated based on the photos provided during the balloon test and the applicant has showed the tower in its location.

*DRAFT*

1 Friendly amendment made by Jeff Schmitt stated the proximity that the tower will be in the neighboring property  
2 owned by Ms. Hall. Motion seconded by David Blankfard.

3 **VOTE:** Unanimous  
4

5 **RECOMMENDATION:**  
6

7 While staff has received numerous comments from local residents and property owners indicating  
8 they do not believe the proposed facility complies with the provisions of Section 5.3.2 (A) (2)  
9 inclusive, no specific evidence has been submitted for review establishing the grounds for making a  
10 negative finding on the general standards as detailed herein. These standards include maintaining or  
11 promoting the public health, safety, and general welfare, maintaining or enhancing the value of  
12 contiguous property, the use is in harmony with the area in which it is to be located, and the use being  
13 in compliance with the general plan for the physical development of the County.  
14

15 Staff has reviewed the application, the site plan, and all supporting documentation and has  
16 found that the applicant **complies** with the specific standards and required regulations as outlined  
17 within the UDO  
18

19 Provided the Board of Adjustment finds in the affirmative on the specific and general standards as  
20 detailed herein, and no evidence is entered into the record demonstrating the applicant has either:

21 a. Failed to meet their burden of proof that the project complies with the specific development  
22 standards for a telecommunication facility, or

23 b. Fails to comply with the general standards detailed within Section

24 5.3.2 (A) (2) of the UDO, the Board could make an affirmative finding on  
25 this application.

26 In the event that the Board makes an affirmative finding, and issues the permit, staff recommends the  
27 attachment of the following conditions:  
28

29 **1.** The height of the tower shall not exceed a height of 129 feet above pre-  
30 construction grade (125 ft. tall tower with a 4 ft. lighting pole at the top for a  
31 combined total height of 129 ft.) as detailed within the approved application  
32 package as reviewed and acted upon by the Board of Adjustment at their June 8,  
33 2015 meeting.

34 **2.** Existing vegetation, as detailed on the approved site plan reviewed and acted  
35 upon by the Board of Adjustment at their June 8, 2015 meeting, shall be  
36 maintained as indicated in perpetuity.

37 **3.** The facility and its equipment shall comply with all federal, state and local  
38 emission requirements.

39 **4.** The electro-magnetic radiation levels shall be maintained compliance with all  
40 federal, state and local requirements, including the requirements of the Federal  
41 Communications Commission regarding emission of electromagnetic radiation.  
42 Within 30 days of installation of equipment on the tower, and within 30 days  
43 of the installation of any additional equipment in the future, the tower owner shall  
44 provide documentation of emission levels in relation to FCC standards to the  
45 County for review. In addition, the tower owner must provide documentation of  
46 emission levels within five working days if so requested by Orange County. Orange  
47 County may make such requests at any time, not to exceed 2 times per year.

*DRAFT*

- 1 **5.** Two ten pound 2-A:20-B:C dry chemical portable fire extinguishers shall be  
2 installed at the site at a conspicuous location for use during an emergency event.
- 3
- 4 **6.** As required within Section 5.10.8 (A) (1) (g) of the UDO, the applicant shall be required  
5 to provide a final copy of the installed foundation design including a geotechnical  
6 sub- surface soils investigation, evaluation report, and foundation recommendation  
7 for the proposed wireless support structure prior to the commencement of land  
8 disturbing activities associated with the construction of the telecommunication facilities.
- 9 **7.** The applicant shall obtain a driveway permit from the NC Department of  
10 Transportation approving the driveway access for the project off of Mt. Sinai Road.
- 11 **8.** Final assignment of a street address shall be completed by Orange County Land  
12 Records prior to the issuance of any permit authorizing land disturbing activity on  
13 the property.
- 14 **9.** The applicant shall obtain all necessary development permits from the County prior  
15 to the initiation of and land disturbing activity associated with the construction of the  
16 telecommunication facilities including, but not limited to:
  - 17 a. Building Permit,
  - 18 b. Erosion Control/Stormwater Management Permit,
  - 19 c. Solid Waste Management Permit, and
  - 20 d. Zoning Compliance Permit.
- 21 As part of the review of proposed construction drawings, the Orange County  
22 Services Department shall review and comment upon final submitted construction  
23 drawings to determine compliance with State Fire Code regulations.
- 24 **10.** Any proposed co-location of antenna on this tower shall be reviewed, acted upon,  
25 and installed in accordance with the provisions of the UDO.
- 26 **11.** A co-location site shall be offered to the County for the placement of antenna in  
27 support of local emergency communication needs.
- 28 **12.** The applicant shall submit all necessary bonding/financial security documents to  
29 the County Attorney's office for review and approval guaranteeing the removal of the  
30 tower in the event it is abandoned or unused for a period of 12 months. A cost  
31 estimate shall be provided by a qualified contractor. The amount of the security shall  
32 be 110 percent of the estimate. This must be completed before building permits are  
33 issued.
- 34 **13.** Telecommunication tower owners shall submit a report to the County Inspections  
35 Division certifying structural and electrical integrity upon completion of the initial  
36 construction and at intervals as specified within the UDO.
- 37 **14.** Inspection records shall be kept by the tower owner and made available upon request  
38 to the County Inspections Division during regular business hours. Inspections shall  
39 be performed as specified within the UDO.
- 40 **15.** In those cases where an inspection is required, which is not performed by  
41 Orange County Inspections, the applicant is required to notify the Planning Department  
42 and any applicable County telecommunication consultant of the inspection and its  
43 results.

1 **16.** Nothing associated with the approval, development or use of the property in support  
2 of the proposed telecommunication facilities shall be construed as impacting the use of  
3 the property for single-family residential or horse/farm activities with the exception of  
4 preserving existing foliage as detailed within Condition 2.

5 Expansion of same shall not constitute a modification of the special use permit as  
6 detailed within the UDO requiring a re-review of the project by the Board of Adjustment.

7 **17.** The County's telecommunications consultant shall issue a final Certificate of  
8 Completion upon the completion of a final inspection of the constructed  
9 telecommunication facilities. Commercial service cannot be provided/initiated until this  
10 final Certificate is completed and issued.

11 **18.** The Special Use Permit will automatically expire within 12 months from the date  
12 of approval if the use has not commenced or construction has not commenced or  
13 proceeded unless a timely application for extension of this time limit is approved by  
14 the Board of Adjustment.

15 **19.** If any condition of this Special Use Permit shall be held invalid or void, then this  
16 Special Use Permit shall be void in its entirety and of no effect.

17  
18  
19 **MOTION** made by Samantha Cabe to deny this special use permit submitted by Skyway Towers LLC because they  
20 failed to prove by clear convincing evidence the specific standards required for approval per the Orange County  
21 UDO.

22  
23 James Bryan: There was substantial evidence contrary to it or for the value that they fail to provide the substantial  
24 evidence. You may say they provided substantial evidence       

25  
26 **MOTION** made by Samantha Cabe to deny the application by Skyway Towers LLC on the basis that they did not  
27 meet their burden to provide substantial evidence that would support approval under the Orange County Unified  
28 Development Ordinance. Seconded by David Blankfard.

29 **VOTE:** Unanimous

30  
31  
32 **AGENDA ITEM 6:           ADJOURNMENT**

33  
34 Meeting was adjourned at approximately 12:10am.