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Town of Stedman
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Town of Hope Mills
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COUNTY of CUMBERLAND

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Cumberland County

Benny Pearce,
Town of Eastover

Donovan McLaurin
Wade, Falcon, & Godwin

DATE: JANUARY 14, 2010
MEMO TO: CUMBERLAND COUNTY BOARD OF ADJUSTMENT
FROM: CUMBERLAND COUNTY PLANNING & INSPECTIONS DEPARTMENT
SUBJECT: TENTATIVE AGENDA

A meeting of the Cumberland County Board of Adjustment will be Thursday, January 21, 2010 at 7:00 p.m. in Hearing Room #3 of the Historic Courthouse at 130 Gillespie Street. The Tentative Agenda is as follows:

1. ROLL CALL
2. ADJUSTMENTS TO THE AGENDA
3. APPROVAL OF THE NOVEMBER 19, 2009 MINUTES
4. ABSTENTIONS BY BOARD MEMBERS
5. PUBLIC HEARING DEFERRALS
6. BOARD MEMBER DISCLOSURES
7. POLICY STATEMENT REGARDING APPEAL PROCESS
8. PUBLIC HEARING(S): **STAFF INITIATED WITHDRAWAL**
 - **P09-09-C:** CONSIDERATION OF A REQUEST FOR A VARIANCE FROM THE COUNTY ZONING ORDINANCE, SECTION 927, SUB-SECTION C.1, TO ALLOW YARD SETBACKS OF UP TO 33 FEET WHERE 220 FEET IS REQUIRED FOR A 220 FOOT TOWER, AND A SPECIAL USE PERMIT FOR A TOWER IN A RR RURAL RESIDENTIAL DISTRICT ON A .36+/- ACRE PORTION OF A 97.77+/- ACRE TRACT; LOCATED AT 1511 LAKE UPCHURCH DRIVE; SUBMITTED BY THOMAS H. JOHNSON, JR., NEXSEN PRUET, PLLC ON BEHALF OF AMERICAN TOWERS, INC.; OWNED BY H.D. BOWEN, JR.
9. PUBLIC HEARING(S):
 - A. **P10-01-C:** CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A CONVENIENCE CONTAINER AND RECYCLING FACILITY IN AN A1 AGRICULTURAL DISTRICT ON 1.39+/- ACRES, LOCATED AT 2331 POLLY ISLAND ROAD, SUBMITTED BY DONALD P. TEW ON BEHALF OF CUMBERLAND COUNTY AND MICHAEL TATE, PLS.; OWNED BY CUMBERLAND COUNTY.
 - B. **P10-02-C:** CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW AN OUTDOOR RECREATION/ AMUSEMENT, CONDUCTED OUTSIDE A BUILDING FOR PROFIT IN A PND PLANNED NEIGHBORHOOD DISTRICT ON 56.32+/- ACRES, LOCATED AT 533 CARVERS FALL ROAD, SUBMITTED BY NORWOOD EASON BRYAN, III AND GARRIS N. YARBOROUGH, ATTORNEY; OWNED BY CARVER'S FALLS, LLC.

- C. **P10-03-C:** CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A 235 FOOT TOWER IN A RR RURAL RESIDENTIAL DISTRICT ON 23.77+/- ACRES, LOCATED EAST OF BLACK BRIDGE ROAD (SR 1115) NORTHEAST OF LAKE UPCHURCH DRIVE (SR 1116); SUBMITTED BY HENRY C. PARKER JR. AND JOHN F. MAZUR, JR., LAND COM, LLC ON BEHALF OF SEQUOIA WIRELESS; OWNED BY HENRY C. PARKER JR.
- D. **P10-04-C:** CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A 220 FOOT TOWER IN A RR RURAL RESIDENTIAL DISTRICT ON A 3.52+/- ACRE PORTION OF A 97.77+/- ACRE TRACT; LOCATED AT 1511 LAKE UPCHURCH DRIVE; SUBMITTED BY H.D. BOWEN, JR. AND THOMAS H. JOHNSON, JR., NEXSEN PRUET, PLLC ON BEHALF OF AMERICAN TOWERS, INC.; OWNED BY H.D. BOWEN, JR.

10. DISCUSSION

11. UPDATE(S)

- A. Board member books to be updated.
- B. Watershed violations closed out:
 - 1. WS00-02 and WS02-02, Inverness Subdivision
 - 2. WS08-05, Progress Energy – Cape Fear Operations Center

12. ADJOURNMENT

Members:
George Quigley, Chair
John R. Swanson, Vice-Chair
Oscar L. Davis, III
Melree Hubbard Tart
Joseph M. Dykes



Alternates:
Martin J. Locklear
Horace Humphrey
Carrie Tyson-Autry
William L. Tally
Randy Newsome

CUMBERLAND COUNTY BOARD OF ADJUSTMENT

130 Gillespie Street
Fayetteville, NC 28301
(910) 678-7602

MINUTES
NOVEMBER 19, 2009
7:00 P.M.

Members Present

George Quigley, Chair
John R. Swanson, Vice Chair
Oscar L. Davis, III
Melree Hubbard Tart
Joseph M. Dykes
Carrie Tyson-Autry

Absent Members

Staff/Others Present

Harvey Raynor, (Butch)
County Attorney
Patricia Speicher
Jeff Barnhill
Pier Varner
Angela Davis
Marili Melchionne

Chair Quigley called the meeting to order at 7:00 p.m. in Public Hearing Room # 3 of the Historic Courthouse.

1. ROLL CALL

Mrs. Varner called the roll and stated a quorum was present.

2. ADJUSTMENTS TO THE AGENDA

There were no adjustments to the agenda.

3. APPROVAL OF THE OCTOBER 15, 2009 MINUTES

A motion was made by Mr. Dykes and seconded by Mr. Swanson approving the minutes as written. The motion passed unanimously.

4. APPROVAL OF THE 2010 DEADLINE/MEETING SCHEDULE

A motion was made by Ms. Tart and seconded by Mr. Swanson approving the 2010 deadline/meeting schedule. The motion passed unanimously.

5. ABSTENTIONS BY BOARD MEMBERS

There were no abstentions by Board Members.

6. PUBLIC HEARING DEFERRALS

There were no deferrals.

7. BOARD MEMBER DISCLOSURE

There were no Board Member disclosures.

8. POLICY STATEMENTS REGARDING APPEAL PROCESS READ

Mrs. Varner read the Board's policy regarding the appeal process to the audience.

9. PUBLIC HEARING

Opened Public Hearing

- **P09-09-C:** CONSIDERATION OF A REQUEST FOR A VARIANCE FROM THE COUNTY ZONING ORDINANCE, SECTION 927, SUB-SECTION C.1, TO ALLOW YARD SETBACKS OF UP TO 33 FEET WHERE 220 FEET IS REQUIRED FOR A 220 FOOT TOWER, AND A SPECIAL USE PERMIT FOR A TOWER IN A RR RURAL RESIDENTIAL DISTRICT ON A .36+/- ACRE PORTION OF A 97.77+/- ACRE TRACT; LOCATED AT 1511 LAKE UPCHURCH DRIVE; SUBMITTED BY THOMAS H. JOHNSON, JR., NEXSEN PRUET, PLLC ON BEHALF OF AMERICAN TOWERS, INC.; OWNED BY H.D. BOWEN, JR.

MRS. VARNER: Mrs. Varner presented the zoning, land use, and photos of the tower site to the Board. She also presented a map showing the corridor for the Fayetteville Outer Loop crossing the parent tract.

CHAIR QUIGLEY: Asked the board members if they had any questions for staff.

MRS. VARNER: Mrs. Varner indicated she had additional information. The frontage and location for the parent tract is 880', but for the tower site is 125'. The current use on the tower site is vacant land. Water and sewer availability are well and septic for the parent tract. There are some conditions that should be paid particular attention which are numbers 1 and 2.

Information for the Highway Plan, Fayetteville Outer Loop is identified in the Highway Plan as a major thoroughfare. This proposal calls for a multi-lane facility U-2519 with a right-of-way of 250'. Road improvements are included in the 2009-2015 MTIP. This property will be directly impacted by the Fayetteville Outer Loop located inside the 1000' corridor.

The applicant is requesting a variance from the Cumberland County Zoning Ordinance, Section 927 for the tower, sub-section C, setbacks. In residential and agricultural zones a tower less than 300' in height must be set back from all adjacent property lines and/or lease lines a distance not less than the height of the tower. Tower provisions adopted January 23, 1996. Any questions are welcome.

CHAIR QUIGLEY: Asked the board members if they had any questions for staff.

VICE-CHAIR SWANSON: Asked Mrs. Varner to please pull up the slide of the site plan, before the first photograph of the notification sign that had blue letters.

CHAIR QUIGLEY: The green line is the corridor for the right-of-way.

MR. DAVIS: Why would they not get the variance from DOT first?

MRS. VARNER: He would have to go through the variance first in order to get the permit for the location of the tower. The variance with the DOT is something that he will have to deal with afterwards. He is planning to put the tower site in the jurisdiction of Cumberland County, so it doesn't make sense to go first with the DOT variance if they won't get the variance approved by Cumberland County.

MR. DAVIS: It works the other way too.

MS. SPEICHER: If I could explain. That came up kind of late in the game about the actual corridor. We were going along with the applicant with the state right-of-way. It was quite late in the process when the need for a DOT variance was discovered and notice had already been given for this case, so we continued on with it. We did make the applicant aware.

VICE-CHAIR SWANSON: Can you go back? In this drawing it looks like the proposed right-of-way for the outer loop is to the west. If this schematic was properly oriented to the north, it looks like the Outer Loop would be to the west. Can you go one – I'm sorry, go back to the first one with the blue letters.

Here it is to the east. Is there something wrong with the site plan as it is drawn? Because it seems to be – if we look at that one, that green line where the mouse is, it is on the east side, now go back one. Even though we have turned the schematic, now that right-of-way is on the west side. Can you go back one more? Go back two more.

MS. SPEICHER: We have it on the west or the north west side.

VICE-CHAIR SWANSON: Maybe I'm looking at the wrong one, or am I the only one? That one that is on the west side, go back one more. That is the only one that shows it on the east, I think.

MS. SPEICHER: You are looking at the corridor line as opposed to the right-of-way line. The site plans are showing the actual right-of-way line.

VICE-CHAIR SWANSON: I got you, go back to the one with the blue letters, I understand.

MS. SPEICHER: They both have that notch in them, if the notch is what is causing confusion.

VICE-CHAIR SWANSON: Let's go back one more, I understand.

CHAIR QUIGLEY: Any other questions for staff? We do have some persons who are signed up to speak in favor of the request for variance, and everyone will be heard. Do we have Mr. Graham Herring? Mr. Herring, will you come forward to the podium?

MR. JOHNSON: If I may, Mr. Chairman, I am Tom Johnson, I am signed up there too. He is one of the witnesses that is working with me in terms of an expert. I am actually the one who turned in the application so it may be better if we take it in the order that I make the presentation, then I will call Mr. Herring up to explain.

CHAIR QUIGLEY: What is your name, sir?

MR. JOHNSON: Tom Johnson.

CHAIR QUIGLEY: Okay Mr. Johnson – Mr. Herring, we will defer to you. Mr. Johnson, would you raise your right hand and place your left hand on the bible, please? (Mr. Johnson was sworn in.)

CHAIR QUIGLEY: Please state your name and address for the record.

MR. JOHNSON: Thank you, sir. My name is Thomas H. Johnson, Jr., I am an attorney with the firm of Nexsen/Pruet, PLLC. My address is 201 Shannon Oaks Circle, Suite 100, Cary, North Carolina, 27511.

CHAIR QUIGLEY: Thank you very much. Would you go ahead and make your statement, and it is subject to questions from the Board.

MR. JOHNSON: Absolutely, and I will be glad to answer any questions at any time. I appreciate the opportunity, Mr. Chairman, to be here. I will also clarify some of the questions the Board had prior to me getting up here. I do have a power point presentation if we can put it into the computer so that I can be able to show you some other pictures. You are welcome to have the copy of it.

CHAIR QUIGLEY: Yes, we would have to have a copy of it.

MR. JOHNSON: Absolutely, and that is no problem whatsoever. One thing I do want to address up front, I do have a copy and I also have a signed copy, but I only have one. This is the variance from DOT I have already applied for, and DOT in Raleigh has given me, and here is the copy – has granted the variance. (See Exhibit 1)

CHAIR QUIGLEY: Circulate that as an exhibit.

MR. JOHNSON: If I could have that in the record. I also would like to, before I forget to move into evidence, all of our application and all the associated materials that we submitted in connection with the application, I would like that admitted into evidence in support of our application.

VICE-CHAIR SWANSON: Just for my own clarification, the pin number that is identified in the letter from the North Carolina Department of Transportation, is that for the parent parcel or is that for the site of the tower itself?

MR. JOHNSON: It is the site of the tower itself. I had to supply the site plan to DOT along with my application that I submitted in writing. The issue was it is in the corridor but it is not in the right-of-way. The difference is the corridor is set aside in case the road may need to change, the right-of-way may need to be moved.

In this case the right-of-way has been set, so in that case DOT was not concerned about where we were locating the tower because it is between those two lines and it is not in the actual right-of-way that will be used. I can show you the right-of-way lines. Mrs. Varner put up one map that she had, and you had our site plan. I can show you how it goes so you can orient yourself.

MS. SPEICHER: Mr. Chair, could we make a clarification, the parcel number is for the subject property as well as the parent tract, and I would just like to read it to verify that we have the same number. He has 0403-02-9183.

VICE-CHAIR SWANSON: I am reading Pin number as 0403-12-0077.

MS. SPEICHER: I cannot explain the discrepancy.

MR. JOHNSON: I gave the parcel number for – all I have is a parent parcel, I did not have one – there had not been one set aside for the tower site, so that is all we can use is the parent parcel tax ID number. I do not know why DOT used that, but I gave them the site plan and submitted the site plan because they had to have that in order to rule on the variance.

VICE-CHAIR SWANSON: So that letter has nothing to do with this site?

MR. JOHNSON: No, it actually does, it is based on the site plan for this specific site.

MS. SPEICHER: If I could, Chair, the parcel number on the application is 0403-02-9183.

VICE-CHAIR SWANSON: Two different pin numbers.

CHAIR QUIGLEY: Two different pin numbers.

MR. JOHNSON: That must be an error by DOT, and I apologize for that, but they had the specific site plan before them. The site plan is what they ruled on, the site plan that I provided to you.

VICE-CHAIR SWANSON: If I could ask the staff to pull up the plat of the zoning map. Where the red arrow is, just for my clarification, the pin number where the red arrow is, is 0403-02-9183?

MRS. VARNER: That is correct.

MS. SPEICHER: I think Pier just uncovered what the discrepancy may be. Mr. Johnson, in the letter – or gave DOT, apparently the old parcel number which is 0403-12-0077. I believe they changed in 1998 or 1999 time frame.

MR. JOHNSON: But that is still showing on the website. If you pull up the Tax Assessor's office, they still have that reference.

VICE-CHAIR SWANSON: I am familiar with what she is talking about.

MR. JOHNSON: I apologize for the discrepancy on that, but they did review the site plan, they would not have granted the variance without specifically reviewing the site plan, and I provided it to them.

CHAIR QUIGLEY: Okay, you can continue your presentation.

MR. JOHNSON: Like I said, DOT was fine with it because of the fact that they set the right-of-way, and that is the right-of-way as is shown by the dotted line. If you can see where you've got the subject property shown in blue to the – just above that square, there is a line that goes across almost horizontal, but not quite. That line right there, that is part of the right-of-way line where there will be an intersection with Lake Upchurch Drive, so that is why it takes that movement instead of going straight at that location. Then it comes back to the south, and if you will follow that line to the south, that is the right-of-way. That is that corner that if you will pull up the other map, I can show you where – see, that is that jog right here in this map, that is where that is.

I know it is confusing because we are turning the site a little bit, but you can see it easier from Lake Upchurch Drive if you turn it a little bit. I just wanted to explain that. As far as the variance from DOT, that is the variance we need. If the board has concerns or needs further clarification for any reason, I am glad to get that from DOT, but DOT very clearly has no problem with this site.

The second thing I want to address is the setback, I do this a lot, and have done this for many years as far as setting tower sites. Ordinances are worded almost exactly like yours, some are a little different. I was not made aware this week that the way this board maybe, or the county and staff has interpreted the ordinance is that the fall zone does not go to the property lines of the parent parcel, but it goes to the property lines of the leased parcel.

I guess by virtue of this – and I did not realize it until I got the agenda this week that that was the interpretation, because you do mention in your ordinance the parent parcel, and it says and/or. My interpretation, as it is done in other jurisdictions that have similar language, is that it means or, and as long as we are setback from the parent parcel, the adjacent property lines that distance, we are okay; it does not have to be from the lease line.

In that regard, Mr. Bowen is here with me who is the owner of the property. I have spoken with him, and he is perfectly willing to grant an associated easement for the fall zone on his property if we need to have that as a condition of whatever action you may take here tonight. Because it was never our intention to create a variance situation on any side other than the side like toward Lake Upchurch Drive which we acknowledge that. If you will look at our application, that is what we speak to.

We try to minimize as is in the variance requirements to minimize any variance request, and that is perfectly well our intention. Our intention would be to consider the variance and the setback variance as being on the Lake Upchurch Drive side of the project. I did want to clarify that up front. Again, I can have Mr. Bowen come up here.

The reason it is irrelevant in this case, just so you are aware, and you may already be aware and probably are. In your telecommunications ordinance it says that if we use a monopole tower that structures can be located within the setback. So to Mr. Bowen it is not a situation where it is of concern to him for that reason, because he can build structures within that setback zone; he can still use his property within that setback zone. Different than if you had a lattice tower or a guy-wire tower; your ordinance treats those differently. That is my point in that regard to clarify that portion.

Now I would like to proceed as well to go forward on the variance. I will handle – there is some overlap in the variance and the special use permit. I want to deal with the variance first because that is the most important part to deciding what we do if the board is in agreement with that, before deciding what we do on the special use permit.

Ms. Varner, if you could pull up my presentation. (See Exhibit 2 - DVD) You may ask why we are here, I wanted to give a little background in terms of – and I know you have heard other tower applications, but just to give you some figures that are as most up-to-date that I have. The public is depending upon wireless and mobile devices more and more for emergency use. Having the comfort to be able to pick up their mobile phone and call 9-1-1. There are 300,000 calls a day to 9-1-1 using mobile phones; that is across the country.

Fifty to seventy percent (50-70%) of those calls are from mobile phones, and 25% of those are in doors on mobile phones; big difference. Because when you are indoors, those walls block signal, so you need towers closer to the home in order to have stronger signals so your phone works when you use it.

Eighty-seven percent (87%) of Americans have a mobile phone they take with them, they have it with them all the time. More than 20% of the homes are wireless only; that is they don't have a land-line phone any more to pick up, so they have got to be sure that their phone is going to get to 9-1-1 or whoever they may need to contact in the event of an emergency.

One-third rely on mobile phones even if they have a land-line. So you may have 20% that are wireless only, but another one third will rely on those mobile phones even if they have a land-line. In addition, wireless devices are depended upon by emergency service providers. You may have EMS or fire, and I do not know if they are here, but they may have laptops, they may have their own cell phones, they may have their own wireless devices. More and more they are using those to communicate in the event of an emergency.

I know that in Hurricane Floyd when I was involved in that in eastern North Carolina that we were trying to keep the wireless lines up because the land lines were out. That was the main land-line emergency service. Just giving you an idea of the importance and why we are here to fill in for the tower.

This is the current situation regarding towers in the area. For existing towers, the one in the middle that is in white and outlined, the 141-184, that is the current tower that we are talking about here tonight in that location.

This is the proposed coverage of this site. So if you can see a little bit of how it matches up with the other towers, and I am going to step you through this because I am going to show you some other pictures that clarify it even more.

This is without the site, so you see the white, the white is gaps in coverage. The orange is more a stronger coverage, the yellow is a little less strong, green is a little less than that, then you have the blue that gets weaker and weaker. But here you see a lot of white space, that is what we are trying to resolve; in this area.

This is how it matches up, and you can see how well it matches up with the adjacent sites, it is like taking a piece of a puzzle and putting it in the middle of the hole; that is the hole we are trying to fill right here. It becomes even more important, you know we talk about I-295, the outer loop, it becomes even more important in that instance as well because you have in the future traveling public who are going to use that important artery in this area, and this tower will be available for the traveling public to use and have access to.

Why are we having to do this now, you know wireless has been around a long time, people have more phones, and as people have more sophisticated devices, then you have to have more towers because there is a limited bandwidth or tunnel that those devices can use, and it gets full, so you have to have another tower to take up for that full space that is being taken up.

Here is the site plan, this is actually our survey, our site plan that we provided with our application. As you can see, we meet the 220 feet on the parent parcel from every location but across the road. The reason is specifically because of the right-of-way of I-295 and the way this property is configured in this triangle. We could not move the tower further back or we would get into the right-of-way. Now what we have done is we have 101 feet to actually the right-of-way of Lake Upchurch Drive on the one side toward those homes.

None of those homes are in the 225 foot setback, but as your ordinance recognizes they could be within that setback and it would not matter with a monopole.

Even if you take it a step further and you have a 60 foot right-of-way for Lake Upchurch Drive, if we took that on, we are at 161 feet, so we are still pretty close to the 220 notwithstanding that their homes are across the way there. But we are 220 feet from those homes, regardless. That is the radius, we were very careful about that, and we were trying to minimize that impact.

On top of that, and I wanted to pass this out to the board, and I submitted this with the application, but if the board can take a look at – Mr. Raynor, I have many copies. We had an engineering firm take a look at the plans and give an opinion. If you want me to wait a minute until you get that, I will. (See Exhibit 3) If you are ready for me to go ahead, I'll proceed.

MS. SPEICHER: For the record, could we ask specifically what the document is?

MR. JOHNSON: I'll be glad to describe it. This is an opinion letter – do you want me to describe it, or do you Mr. Chairman?

CHAIR QUIGLEY: Does anybody need to have this document described to them specifically?

MR. JOHNSON: I think Ms. Speicher wants it for the record, and I will be glad to –

CHAIR QUIGLEY: Yes, okay, do that, please.

MR. JOHNSON: It is a statement from DaVinci Engineering which is an engineering firm who reviewed the plans and this document is sealed by a License North Carolina engineer. Basically giving the opinion that this tower, it is 220 feet, if it were to fail, the most radius that it would impact would be 78 feet from the base of the tower. Because these towers are designed not only with winds in mind, because we can have hurricanes, tropical storms, that come up this far, we all know that. So they are designed with that in mind, but they are also designed for winds and ice. Because we can have ice storms here with a lot of wind, and that creates more burden on the tower.

These standards have gone up in recent years because of how much the public depends on these towers for emergency services, so we have to build them to very stringent standards. But this is a monopole tower sunk in the ground, and again, your ordinance again recognizes the difference. If the winds are bad enough, and if it were to fail and the weakness is – where the weak point is, it is just going to bend over. It is probably not even going to bend all the way over. It is not going to shear at the bottom and fall flat, because there is so much concrete in the ground to hold that tower in, there are bolts at the base, it is not going to take up and fly away or anything like that. It is just going to bend just like anything else would in the wind, and you have seen that in many things, trees, telephone poles, whatever, they tend to bend over rather than just fall flat. This is the engineering letter that shows that.

So in any event where this is located, this is not going to affect any property outside of Mr. Bowen's property, it is going to be in fact within the tower site itself.

I wanted to show some other examples too, if you could carry on, I have some other pictures just to – again, this is just another view of the site plan similar to what you have seen before. This is a more up-close view with a 70 x 70 foot compound and the 125 foot by 125 foot lease area for the site.

This is an elevation of the tower, 220 feet with room for extra users in the future so you will not have to have duplicate towers.

Talking about how close it is to the right-of-way, and DOT is not worried about it. DOT is not likely real worried about it because on interstate interchanges you have these monopole lights – many of them. Here is an example of one, this is in the Raleigh-Durham near the airport. You have got this monopole light station it is smaller in terms of – less substantial than what we are putting in the ground, but it is there right adjacent to the interstate.

Again, this is another one, this is even closer to the airport. This is actually on the airport property. This shows – this is at the airport, go to the left, you are at the Raleigh-Durham airport, and you can see numerous of these light towers at this interchange. We are at an interchange here on the interstate, but you just see them there; these are monopole towers. Ours will be a little bit taller than these, but not substantially so. Just giving you an idea of how close these set next to well traveled arteries. Here is another view, again showing those same towers at that interchange.

But it is not just light towers. This is in Wilmington, I had it from another hearing that I did, but these are high voltage electrical transmission lines. The base of that tower sits in somebody's yard. This has high voltage lines on the top of it, this is not antennas like we are talking about. Again, this is a very tall pole, very substantial pole, not as substantial as what we are going to put in the ground, but it goes right through a residential area.

This was just something I threw in here, I just thought you might be interested in it because some questions had come up before about exposure on towers and things like that; I thought it would be of interest. If you can see, police and mobile radio on the left, that is the level of radio exposure, FM radio transmitter, less than half of that. A cordless phone like in your house at a 15 level. A baby monitor, wireless baby monitor for monitoring whether the baby is crying in the nursery is one. A WIFI router that many of you have to have wireless computer service in your home is at .13, a cell site is at a .1, very, very, very low.

As part of the application process we submitted the documentation, and we will get to that on the Special Use Permit. But I did want to show you this because I thought it was a very good diagram that showed the differences in what we are talking about here.

I do want to kind of summarize on the variance, if I may. I know you have a list of conclusions you have to come up with on a variance request, and I want to go through those step-by-step.

The first thing you have to do under your ordinance is: “There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district.” This site is different because of size and shape, because, as you can see, of the right-of-way of I-295 and Lake Upchurch Drive; because of those two roads and how they intersect, it has created a property of a distinct and unique size and shape that is not like any of the others in the district. The second is that granting the variance –

VICE-CHAIR SWANSON: Can I ask a question?

MR. JOHNSON: Sure.

VICE-CHAIR SWANSON: But this is a proposed site, isn't it?

MR. JOHNSON: It is a proposed site, absolutely.

VICE-CHAIR SWANSON: Would it not be a reasonable interpretation that part of the hardship that you are seeking to alleviate is caused by the site selection?

MR. JOHNSON: You may say that, but the particular piece of property, in order to be able to have it useable for something which is property owner – have some property, he wants to be able to use it. Because of its size and shape, it gives an opportunity that – to use it for this with this size and shape for this use. It is only, as I said, because of the health and safety issues, it's not really going to have any impact on anybody else. But because of the size and shape, yes, I know it is proposed, absolutely; I cannot disagree with you on that. But we have minimized it and we have set it back enough and we have the evidence to support the fact that it will not impact anybody on that side of the road. Your ordinance itself recognizes that with a monopole you can put structures within that setback.

VICE-CHAIR SWANSON: One of the things we have to consider is as I am listening to you, is if there is extraordinary and exceptional conditions because of its size, shape topography that sounds applicable to other lands. I frankly have kind of a hard time reconciling a proposed site because it is not built, it is not a separate pin number. So in trying to come to grips with duties and responsibilities of a board member, how is that reconciled if you or your client pick the exact location?

MR. JOHNSON: Well, I understand.

VICE-CHAIR SWANSON: Part of what you are explaining away is well only 79 feet are going to break off, it is not going to hit the house across the street, it is not going to hit the 3,000 cars going up and down the road in the daily traffic count, I understand your points.

MR. JOHNSON: I will explain that, we did not self-create the site. The site was created when DOT decided we are going to put I-295 in this location; we did not create that. What we are dealing with a site, and as you saw earlier, for us to plug that hole, this is optimum; it plugs that hole in many ways. It plugs it for those 3,000 cars a day that may use I-295. It plugs the hole for these residents that are in this area. If they want to pick up their phone and they want to get 9-1-1. We did not create the shape of the site. The shape of the site was created when DOT said we are going to put the outer here at Lake Upchurch Drive. That is not the thing we created. Yes we are putting the tower there, but we are also setting it back enough so that we can meet on all sides but one, and we are very close to meeting it on that one side.

MS. TART: Is that the original tract?

MR. JOHNSON: Yes, ma'am.

MS. TART: Not the proposed tract – the original acreage?

MR. JOHNSON: Yes, ma'am.

MS. TART: Why was this particular spot chosen out of that acreage?

MR. JOHNSON: It was chosen in order to meet the requirements in terms of optimally meet how that hole would be plugged. Because when we go and look, we look at that, and we adjusted a little bit – just keeping in mind that you have a site here that is useable for very few things. A tower is one thing that can go there and help the neighborhood, and at the same time, as I said, plug the hole that we have. DOT has no problem with it being there. In terms of the parcel number, that will be changed once I guess we get through subdivision review, or whatever, but we would get it assigned a parcel number, we just cannot at this time, unless we have a Special Use Permit, we cannot get a separate parcel number. Are there any questions?

I was just going to proceed through the conditions. Granting the variance will not confer upon the applicant any special privileges that are denied to other residents in the district where the property is located. Again, this is a unique shape of property so there are not others that have a property at the intersection of Lake Upchurch Drive and I-295. The literal – application would deprive the applicant of rights commonly enjoyed by other residents of the district in which it is located. Again, because of the shape of this site it would deny us an opportunity to put a tower or deny the property owner the right to put a tower on this site.

The requested variance will be in harmony with the purpose and the intent of this Ordinance, and will not be injurious to the neighborhood or to the general welfare. My points from that are:

1. Your ordinance recognizes harmony by allowing towers in the RR district by Special Use Permit.

2. It is in harmony by virtue of your ordinance recognizing that the monopole towers you can build structures within the setback. That is obviously what you considered when you had your ordinance – that it was appropriate to be able to build structures within that setback.
3. The third thing in terms of not injurious to the neighborhood or the general welfare, I would go back to the engineering letter that said that this will fall – if it were, it would bend at 78 feet and stay within the tower site. Special circumstances are not the result of the actions of the applicant.

As I said earlier, we did not make the shape of this parcel, it was made because of the DOT's decision to put in I-295; that was not our doing. The variance is a minimum that will make possible the legal use of the land, building or structure. It is; it is just on the one side, and we shifted it back as far as we could so that we only had it on that one side, and again, we are offering up the easement by Mr. Bowen that will take care of any concerns about that not being included as part of the lease area.

In the existence of a nonconforming use of neighboring land, buildings or structures in the same district or of permitted or nonconforming uses in other districts does not constitute a reason for approval of the requested variance. We are not dealing with nonconforming uses here at all. In granting a variance, the Board may attach any conditions that you want to, which again, if you wanted to attach as a condition that we get that easement from Mr. Bowen, that is fine, we have no objection to that.

Then you also state any other exceptional difficulty or hardship, and I would ask because of the configuration of this property as a result of I-295 that you find that as a hardship that has been created, not by Mr. Bowen, not by American Tower, but by DOT's actions in locating I-295.

VICE-CHAIR SWANSON: Isn't it true that even if there was no right-of-way you would still need a variance?

MR. JOHNSON: With the right-of-way where you could adjust that backwards. If you will see, the site is limited when you get to the right-of-way, we don't have very much room. We could go back into the right-of-way right there and still be on Mr. Bowen's property, see how it slants?

VICE-CHAIR SWANSON: Let's take 295, the outer corridor out of the equation.

MR. JOHNSON: Okay.

VICE-CHAIR SWANSON: If there is not a corridor, you would still need a variance.

MR. JOHNSON: No, because we could go back where the right-of-way is. If there was no right-of-way, we could move back on Mr. Bowen's property further back.

VICE-CHAIR SWANSON: Can't you also move to the south?

MR. JOHNSON: Well, I really cannot if you move to the south – I guess – north is actually – you will see true north on the left hand side there, if we moved to the south we are getting into the right-of-way of I-295.

VICE-CHAIR SWANSON: The schematic that you are looking at, true north is pointed towards the bottom right hand corner of the schematic.

MR. JOHNSON: Right.

VICE-CHAIR SWANSON: So if the site plan, if that moved parallel to the left along Lake Upchurch Drive, then it would –

MR. JOHNSON: I thought you were talking – you said south, and if you move south you are moving into the right-of-way.

VICE-CHAIR SWANSON: Well – okay, or west southwest – southeast. My question is, is that an option, moving it to the southeast?

MR. JOHNSON: I do not know, other than the right-of-way, which we have to really be careful of, let me speak to Mr. Bowen if I may. It would help us somewhat on this, and I have a question of staff, and maybe Mr. Raynor can help clarify this as well. When you can put structures within that setback, which your ordinance allows, can you put lot lines within that associated with those structures?

MS. SPEICHER: This staff cannot approve a subdivision of that tower site without a variance.

MR. JOHNSON: That is some of what we run into because of – you can build in it, which the ordinance allows us to build in that setback, but if you move it then we're having some problems in terms of being able to put lot lines with it. That is the hardship that is created, not by us but by the interpretation of the ordinance. It puts us in a real tough position, and Mr. Bowen in a tough position.

I do not know if you can grant a variance for lot lines, that is fine as well, we might – that is another variance as opposed to the variance we are doing here. I do not know that you could do it for lot lines, quite honestly, because that is a subdivision ordinance issue. I have not read the subdivision ordinance to see what it says about – in that setback, I did not see it in the tower ordinance. Ms. Speicher is there a separate provision in the subdivision ordinance that says you can't subdivide within the setback if you can build in it?

MS. SPEICHER: The reference to building within the setback is taken into consideration building on your own site. So if you do a subdivision it would have to meet and be able to provide the setbacks from whatever structure was located on the site that you were subdividing. The lot would have to be big enough to support the setbacks.

MR. JOHNSON: I read that ordinance, you can read Section D, it does not say whether it is the property owner or somebody else, it just says you can put structures within the setback. That is what the ordinance says, I understand staff's interpretation, I understand and appreciate that; I am not disputing that at all, I am just saying that I did not read that in the ordinance. If you want to look at 927 D, it just says structures located near towers shall not encroach upon the setbacks unless such towers are of monopole design and construction, in which case buildings and structures may be located within the setback distances.

That is not unusual, I know that I am speaking not of this ordinance but of other ordinances. But other ordinances allow residential structures to be pretty close to these monopoles and will allow you to subdivide it. The theory being, once a tower is up, you know it is there, and if you choose to buy a lot within that tower setback, you know that tower is there, and any third party buyer knows it is there and sees what they are buying and understands all of that. That is the whole purpose of – and that is kind of related to allowing these structures.

VICE-CHAIR SWANSON: Do you have any information from NCDOT as to when this portion of the Outer Loop would begin? In other words, when the MTIPs would begin and it appears that there are several residential homes that will be –

MR. JOHNSON: That will have to be done. I do not know when the right-of-way acquisition is. I know that when I looked at the MTIP it was way out in terms of when this will be built. I think it is pretty far out, I do not know if staff knows from FAMPO where it is on the MTIP.

VICE-CHAIR SWANSON: Is it a matter of years, two years, three years?

MR. JOHNSON: I think it is ten plus years, it is a long time. That is why those homes and all are still there, the right-of-way acquisition has not even started, and it will be a process. Because of the quick take provisions that DOT has, they can go in and take that property fairly quickly, so they are not going to spend the money right now until it gets closer to when it is going to be built.

MRS. VARNER: Mr. Swanson, excuse me, according to FAMPO the road improvements are included in the 2009-2015 MTIP, between those years.

MR. JOHNSON: Is that for right-of-way acquisition, or construction? I cannot imagine that it is for construction.

MRS. VARNER: It says road improvements, those were the comments that we received from FAMPO.

VICE-CHAIR SWANSON: Based on your tower coverage, would it be a reasonable interpretation of the graphics of that, that right now the principal means of emergency communication is by radio or law enforcement first responders in that area?

MR. JOHNSON: Typically what you find for first responders, and I have talked with folks even in this area because we have another tower we are doing in Fayetteville, and I was just talking with them, they would use radio. The police and fire use radio, but they also use associated devices that are wireless. I know from personal experience in Dare County for instance, and I have helped build that system out, Dare County law enforcement uses cell phones, and they start complaining to the carriers, oh we do not have service, and we have had to improve service for them in Dare County.

If you will see the officers they will have their radio, but they will have their cell phone on their hip too, and that is – then I also have – I do not know if EMS is using it, but the wireless computers that you can use and use the same radio waves to do that. That is not part of the radio system, and they do that sometimes just to get better service so they can have computer service, because that mobile radio does not allow for computer service, it is just radio.

VICE-CHAIR SWANSON: One of the benefits, if I am hearing you right, would be that, I will state it in the negative, without the tower, that first responders must rely in this particular area, based on the lack of tower coverage that you have portrayed, on FM radio communication. Based on the numbers that you showed, the usage, most of the people here in this residence, businesses in the area, emergency services would have to rely on wired phones.

MR. JOHNSON: If they had a wired phone.

VICE-CHAIR SWANSON: If they had a wired phone.

MR. JOHNSON: They may, I will not say that people within that white space may never get a signal. I know in my building I do not have a signal sometimes, but sometimes I do, in my office building. It is one of those things, we are trying to provide reliable service. Reliable so that when you pick up that phone, when that person in that home picks up that phone, they know that they have 9-1-1 on the other end.

How about – you go through the list, Columbine, and everybody in school and the kids got their phones and they are calling, any of those number of situations people are calling on mobile phones, things have changed.

The other thing, Mr. Yates, I was going to mention that and you reminded me, we are actually proposing for two carriers on here too, so it is not just AT&T, it is AT&T and T-Mobile on this one tower. So that if somebody has T-Mobile service, they have it, they have AT&T. AT&T is also, and you may have seen it in the press or whatever, rolling out the 3G service which allows more effective use of your I-Phones and the Smart Phones, that service is already available in Fayetteville, this is part of upgrading that service as well.

CHAIR QUIGLEY: Does anyone else have any other questions for Mr. Johnson? Did you have anything else to speak – you can come back at another –

MR. JOHNSON: I will come back in rebuttal if I need to, but that is really the primary presentation I have right now.

CHAIR QUIGLEY: Thank you very much, I remind you that you do remain under oath.

MR. JOHNSON: Thank you very much.

CHAIR QUIGLEY: We are now calling Mr. Herring. Mr. Herring was sworn in and asked to state his name and address for the record.

MR. HERRING: I would be glad to Mr. Chairman, members of the Board. My name is Graham Herring, 8052 Grey Oak Drive, Raleigh, NC 27615. If I may, I would like to hand up this documentation. (See Exhibit 4)

CHAIR QUIGLEY: Thank you.

MR. HERRING: I appeared before you gentlemen and ladies just a few months ago. I was employed to go out and evaluate this site in relationship to its proximity to the surrounding improved properties and unimproved properties, for that matter, with the intent in mind to see if there is any potential emanation of value, adverse impact on current development that exists in the area, any potential future development based on the long-term plan for Cumberland County and the anticipated growth within this area.

Without getting too involved and elaborating on the documentation that you have there, the bottom line is that it is my interpretation, based on my experience in talking with area developers, appraisers, and this type tower in thousands of other locations within North Carolina and the Eastern Seaboard that I have evaluated is well placed and would create no adverse impact or emanation of value on the surrounding properties.

MR. JOHNSON: I do want Mr. Herring to clarify one thing when he talks about setbacks, if there is a variance granted, will it change your opinion?

MR. HERRING: None whatsoever. In particular, because of the proximity to the natural barriers that exist on the road, Lake Upchurch Drive itself, the planned improvements of the highway and the fact that the fail point and the engineering of the signal tower, even though I'm not a structural engineer, are designed so that it would not have a catastrophic failure within the bounds of the compound itself in this area.

Developers in Cumberland County specifically also, but throughout the state, and other states are in residential developments or recreational golf course type developments have planned for towers to service or exist.

We have tracked sales and resale of properties, both residential, commercial, and industrial before and after the building towers and in developed areas that actually develop around existing towers; vertical structures, not only cell towers, but vertical structures, radio, television, water towers here in Cumberland County, things of that nature. There are just no adverse impact typically associated with it. Thank you.

CHAIR QUIGLEY: Does anyone have any questions for Mr. Herring?

VICE-CHAIR SWANSON: Have any of your studies indicated that towers of this type change the demographics of the neighborhood as they existed before the tower was erected; to the best of your knowledge? In other words, would the area, if it was predominantly owner occupied, would it suddenly very rapidly change to rental income?

MR. HERRING: Absolutely not, there is just natural progression of development in that regard. We have experienced enhancement with economic development people requesting that a specific industrial or commercial area be provided this service as far as a penetration or capacity, and have requested to be able to supply communications.

VICE-CHAIR SWANSON: To the best of your knowledge, do these towers – is there any sort of economic growth associated with their emplacement?

MR. HERRING: That is, in a round-about way, what I was speaking to that we have seen specific industries that relied on communications, service industries, things of that nature that requested before, actually by, let's say an industrial tract and developing it in the case of Fayetteville, in Cumberland County out by the tire plant and things of that nature needing communications as an enhancement. Thank you very much.

CHAIR QUIGLEY: Thank you. Mr. Jason Grossclose?

CHAIR QUIGLEY: Mr. Johnson, you are –

MR. JOHNSON: Jason is not going to speak but one of our folks who came in late –I would like to have Dave Lacava speak, and he was supposed to have already signed up, and I apologize for that. He is the one who – he is with AT&T who helped develop the plots that I showed you, and I would like him to just be able to clarify that since he is an engineer.

CHAIR QUIGLEY: Mr. Lacava was sworn in and asked to state his name and address for the record.

MR. LACAVA: My name is David Lacava, my address is 1130 Situs Court, Suite 100, Raleigh, North Carolina, 27606.

CHAIR QUIGLEY: Thank you very much, and what is your statement?

MR. LACAVA: I would just like to support what Mr. Johnson has already presented to the Board. I am the RF engineer who approved the location of this site and also took part in the technical design and features that the facility offers. I just want to make a short statement that supports what Mr. Johnson said, that the current location that we've proposed maximizes the effectiveness of the facility. It also maximizes the effectiveness of this site in relation to the other six sites that surround this proposed facility; so that the proposed site will work in a proper manner with the other sites that are surrounding the facility that we're proposing. This site is also optimal for our competitor, T-Mobile as well, and that's basically my statement.

CHAIR QUIGLEY: Does any member of the Board have any questions for Mr. Lacava? Everybody understands what he was saying?

VICE-CHAIR SWANSON: Absolutely, I can hear him now.

CHAIR QUIGLEY: Okay, Mr. Lacava, thank you very much.

MR. LACAVA: Thank you.

CHAIR QUIGLEY: We do have Mr. Jason Grossclose, does he have any information that would differ from anything that we have already heard?

MR. JOHNSON: No, he does not.

CHAIR QUIGLEY: Does he wish to present anyway?

MR. JOHNSON: No, he does not.

CHAIR QUIGLEY: We do have some people who are signed to speak in opposition to this, and I just wanted to say that there will be ample time provided for anyone who wants to speak in rebuttal to anything that is presented. First name I have is Mr. Mazor, would you please come to the podium? Mr. Mazor was sworn in and asked to state his name and address for the record.

MR. MAZOR: Yes, sir, my name is John Mazor, my address is 2957 Farms Drive, Charleston, South Carolina, 29492. We are here in opposition of you all granting a variance. In a few weeks we will be submitting for a site down the road off of Black Ridge Road on a 25 acre parcel. Our proposed tower will be sitting about 600 feet off the road. We will not be asking for a variance, there are not any houses – we meet all the criteria of the county.

My biggest question is why American Towers is taking their tower and cramming it up against the road right across the street from all those houses when it is obvious that Mr. Bowen has 100 plus acres. These sites are not site-specific.

That site will work on any parcel, it would work in this parcel. It would work in this corner as you suggested, if it was down south, it would work back here, it would work on this parcel, that parcel, that parcel, that parcel. A variance – a typical variance is for hardship, I do not see where their hardship is. We were able to secure a site. We meet all the criteria, we are not asking for a variance and we just formally ask that the Board to deny them – obviously there is not a hardship, there is plenty of rural land out there for them to meet all their setbacks.

CHAIR QUIGLEY: Where exactly is the property that you are developing out there? Is it visible on this particular sketch?

MR. MAZOR: This is Clifford Parker, he is the owner of the property. This property right in the corner is back off the road like you said.

CHAIR QUIGLEY: Thank you.

MR. MAZOR: Does anybody else have any other questions?

CHAIR QUIGLEY: Do you have any questions for Mr. Mazor?

VICE-CHAIR SWANSON: I do, just for clarification, has the tower been built, is that what you are saying?

MR. MAZOR: No, sir. We are fixing to submit for application within the next two weeks. The Planning Commission has asked us to delay a little bit just to wait to see the outcome of this tower. But I wanted to let you know there is another opportunity and that we don't need a variance for our setbacks.

MR. DAVIS: Is that why you are already building?

MR. MAZOR: Excuse me, sir?

MR. DAVIS: Have you already started building?

MR. MAZOR: No, sir, we are in the beginning stage, we are waiting to hear the outcome of this. If this goes unfavorably or favorably toward us, then we are going to proceed and submit for our application within the next week or two.

MR. DAVIS: Who is us, who is we?

MR. MAZOR: I am sorry, it is Sequoia Wireless. We are a little smaller than American Tower.

VICE-CHAIR SWANSON: The height of the tower that you propose?

MR. MAZOR: We are proposing 160 feet, it would basically be almost 40 feet less than the height of their tower.

CHAIR QUIGLEY: Mr. Raynor, did you have any comment?

MR. RAYNOR: I just wonder what type of tower it would be.

MR. MAZOR: It would be monopole, it would be very similar to what they are building.

CHAIR QUIGLEY: Any other questions from any other Board Member? Okay, Mr. Mazor, thank you very much. I remind you that should you wish to come back, you remain under oath.

MR. MAZOR: Yes, sir.

CHAIR QUIGLEY: Mr. Parker, did you want to introduce any information? (Mr. Parker was sworn in and asked to state his name and address for the record.)

MR. PARKER: My name is Clifford Parker, 4841 Blacks Bridge Road, Parkton, North Carolina; I am in Cumberland County, and I do live right there in that area. T-Mobile approached me last year about this time for the tower. The tower was delayed because they had personnel conflict at T-Mobile. I waited for about six weeks for T-Mobile to approach me, and they didn't. Mr. Mazor from Sequoia had me sign the contract and since then have been working on trying to get his tower in, and the people from American Tower approached me back in July or August, and they said mine was the primary site for the tower that they wished to put in, but they could not get around this contract with Sequoia. Those are my comments.

CHAIR QUIGLEY: Does anyone have any questions for Mr. Parker?

VICE-CHAIR SWANSON: Like the applicant, in other words, the only thing that you would require would be a special use permit?

MR. PARKER: That is all.

CHAIR QUIGLEY: Any questions? All right, thank you very much Mr. Parker, I remind you that you remain under oath. Mr. Johnson?

MR. JOHNSON: I would like to address – first of all, I do question their standing to say anything because they are not adjacent property owners, and that is typically, if you will look at the rule of law, it is somebody who has standing that would be affected by the tower. Second time I have had this happen where somebody who says we have another site for you down the road and we would rather have the money than Mr. Bowen have the money. I had this happen to me in New Hanover County last week. That is not a justifiable reason to turn this site down.

Now, on this site – and the other thing is neither one of these gentlemen mentioned they were RF engineers. I had Mr. Lacava here, who is an engineer, he is a certified engineer who looked at this site and decided that it was the best site as well as T-Mobile.

Here you have two carriers who have been able to join-up and match optimally at this site at 220 feet, that is very, very unusual. In all my time, I have usually dealt with one carrier, this is where two have come together – where they are matching their systems which are different. They may be on different towers, they may be in different locations, they are matching up and this is optimal for them, and this is the site that works for them as Mr. Lacava said and testified.

The search ring for this site, and I can get Mr. Lacava up to verify this, is three tenths of a mile for AT&T. You are going to get outside that if you are going to where this other gentlemen's property is, that is the area where they wanted that tower. I also did not hear Mr. Mazor or the other gentleman mention that they had anyone who was a tenant on that tower, and they do not have their permits or anything in place, so certainly that – they are not ready to build that site, have not submitted an application. I would know of no reason why they could not have gone and submitted an application if they had wanted to; we certainly did not say they could not do that. But in our situation we have two tenants both of which says it optimally fits their needs, they are ready to go. We have an RF Engineer, not lay people, somebody who is an actual engineer saying this site is optimal, this is where we need to be in order to provide the best service for the residents of this area matching up six towers.

If you think about that, you have six towers that AT&T is matching up, however many more, probably six more that T-Mobile has, that is a pretty big jigsaw puzzle to fit together. It is not like you have two towers and you are moving one way or the other to fit between two, you are talking six. You are trying to fit that gap that exists.

In terms of the variance, if I point out again, it is not our fault that we are coming in here – or Mr. Bowen's fault that we are having to come in here for the variance. There are two very important things that he has nothing to do with that are outside his control. Number 1 is DOT and where they decided to put I-295. Now he could go testify at the Public Hearing, but they decided they were going to put it there; that is out of his control and that drastically impacts this property.

The second thing is he cannot subdivide it. According to what staff said we cannot have lot lines in there even though you can build structures, again, that is not of his doing, that is something beyond his control. So it really limits his ability to do anything with this parcel and to be able to move it back. It is very uniquely shaped, outside his responsibility, nothing that he did. Again, it is optimal for these others to provide for the emergency services and welfare for the individuals in this area.

I would ask you to consider that, or ask you to please grant the variance, there is not a health and safety issue, we have the engineering to show it, that the tower is going to remain on site. We are very close to meeting the setbacks on every side. If you include the road right-of-way, it is 160 feet even on the site we are requesting a variance on. Much – very, very close within 60 feet of that, there are no structures currently existing within that, but you allow structures in the setbacks, so that really takes that away.

I would just ask you to consider granting the variance for the welfare of the people in this area. After working through it and Mr. Bowen hearing what is going on here tonight. Thinking through the process with Mr. Grossclose, he's with American Tower, we will move it so that – Mr. Bowen has agreed to move it back enough, kind of southwest or whatever it may be to get back far enough so that we are outside the right-of-way of I-295; we already have the variance. I would probably have to modify that variance letter, but I had no trouble getting DOT to agree to the variance, and I will agree to modify that, if we move the site, we will probably need to do that. But we are staying outside the right-of-way anyway, that is set; and move it back enough – I am not a surveyor or an engineer, but we can move it back far enough so that at least –

Now I do have a question of staff. The adjacent property line that you would consider, is it the road right-of-way on Mr. Bowen's side, or is it the road right-of-way on the opposite side?

MS. SPEICHER: Any change in the site plan that is submitted would have to be re-staffed.

CHAIR QUIGLEY: Understand.

MR. JOHNSON: We understand that, but I am just asking for our setback purposes, can we go to the opposite side of the 60 foot right-of-way on Lake Upchurch Drive, or do we have to stay on the – Mr. Bowen's side of the right-of-way of Lake Upchurch Drive measuring the 220 feet?

CHAIR QUIGLEY: I am asking that question to staff, thank you, do you have an answer?

MS. SPEICHER: The way we measure the setbacks are property lines or lease lines, so whichever it is going to be, then I suspect we will be back here in a month or two months. Without the full staff looking at it, one staff member cannot give an opinion.

CHAIR QUIGLEY: I understand. Staff cannot respond specifically to your question at this time, but what they are asking is that you would re-submit so that the full planning staff can consider your request.

MR. JOHNSON: Can I ask this, and if I may, Mr. Raynor, maybe you can weigh in on this; is it possible for us to just to continue it and make that change? It is really not a large modification. We will get it in as soon as we can so that we can at least get back on your December agenda, and we will re-advertise it with the right description and everything.

VICE-CHAIR SWANSON: Mr. Chairman, can I ask a question?

MS. SPEICHER: Excuse me, there is no possible way. We are currently working on January 2010 cases, and if the site is moved, we do have to re-advertise it, and we do not have time to do that.

CHAIR QUIGLEY: It would appear that that is not feasible to do that in December, it would have to be re-advertised in sufficient time to satisfy requirements.

MR. JOHNSON: Could we just continue –

MR. RAYNOR: It could be continued.

MR. JOHNSON: We could just continue it and modify it.

MS. SPEICHER: It could be continued – but the legal description that was advertised is the .36 acre tract.

MR. JOHNSON: We will fix that.

MR. RAYNOR: It would have to be re-advertised, but we could continue.

MS. SPEICHER: It would also take an additional fee, and a new application.

MR. JOHNSON: The advertising, what is it, ten day advertising; ten days prior?

MS. SPEICHER: Ten to 25 days.

MR. JOHNSON: Minimum of ten but –

CHAIR QUIGLEY: Mr. Swanson does have one question, let's let him ask that question.

VICE-CHAIR SWANSON: Is the purpose of the continuance and the movement of this to kind of mitigate the need for the variance?

MR. JOHNSON: That is it.

CHAIR QUIGLEY: So you would not have a request for a variance?

MR. JOHNSON: We would not really have a request for a variance, it would be the special use permit only.

VICE-CHAIR SWANSON: Then can I ask a question of Mr. Raynor? If that was the case, the applicant was waiving his – if the application for a variance is being waived based on a proposed site plan, that still requires advertisement?

MR. DAVIS: We would have to have the new site plan.

MR. RAYNOR: We would have to know what we are working with.

MS. SPEICHER: It would also have to show –

MR. DAVIS: We do not know where that site plan is and neither does the public.

MS. SPEICHER: In our mailed notices and everything under Cumberland County Commissioners' policy where we do the radius, it all shifts, so it could be –

MR. DAVIS: So what do we have now, do we have a withdrawal of the variance and a continuation of the special use permit; is that what we have?

MR. JOHNSON: Right.

MS. SPEICHER: We certainly –

MR. JOHNSON: That is where we are, and we would like to continue it. We can get the property description to you as quickly as possible, and it really should not impact anything. Just to verify that we've gone back far enough, we will change the description, we will include the setback area because I understand that was a staff concern; we will include that in the description.

MS. SPEICHER: I would really like to ask the Board to consider because of holidays, staff's pre-scheduled vacation times, and just a very short time period, and especially knowing that staff is working on January 2010 cases right now already, and have been since November 6th.

MR. JOHNSON: I am not trying to put staff at a disadvantage, I am not, honestly I am not, I understand that. Our pressure is to work with you, which we are doing by taking out the variance, and to get this done for our benefit as quickly as we can – as reasonably can be possible, not – I do not want to again hurt staff's ability to review it, that is not our intention.

VICE-CHAIR SWANSON: If I could ask a question of the staff, would it be – and possibly Mr. Raynor, would it be improper to conditionally grant a special use permit subject to the revised site plan, not requiring a variance?

MS. SPEICHER: You certainly could, you would have that option. With the staff approval of the site plan meeting the setbacks, yes, sir.

MR. JOHNSON: If you could do that, that would be great and we will go ahead with the hearing tonight.

MS. SPEICHER: Well –

MR. JOHNSON: We will agree to that, and if you want to put a date on it –

MS. SPEICHER: I am sorry, we cannot do that because we cannot move the tower without re-notifying. We cannot move the subject property without re-notifying.

MR. DAVIS: It is got to be advertised.

MS. SPEICHER: Right.

MR. DAVIS: Because the public has to know what the change was.

MS. SPEICHER: Right.

MR. JOHNSON: But it is in the same tax parcel, would that make a difference? We are not moving tax parcels.

MS. SPEICHER: Only the .36 acres was submitted for the special use, that is what was advertised, that is what the mail radius and everything was based on.

MR. DAVIS: We had this hang up once before, I remember.

CHAIR QUIGLEY: So we are faced with a continuance to a date to be determined?

MR. JOHNSON: When is your January hearing date, I do not have the sheet in front of me.

VICE-CHAIR SWANSON: January 21st.

MR. DAVIS: Thursday, January 21st.

MR. JOHNSON: Okay, we do not want to make this hard, we will come back on the 21st if staff – since they feel they need that time.

CHAIR QUIGLEY: Ms. Speicher, is this feasible to have a continuance to the January 21st board meeting?

MS. SPEICHER: I would ask for the Board to also state provided that we get the new application and the new information by when?

MRS. VARNER: December the 10th.

MS. SPEICHER: December 10th.

MR. JOHNSON: December 10th? We will get you a revised site plan by December 10th.

CHAIR QUIGLEY: Okay –

MR. JOHNSON: Everything else will basically be the same, we are just changing the site plan and we will get our engineers on it and get it to you as quickly as possible. If we can get it before the 10th we will certainly give you every bit of the time that you need.

CHAIR QUIGLEY: Okay, then the decision of the Board is that we are granting the continuance contingent on you getting your request in by December 10th and being present for a meeting January 21st. Ms. Speicher is that adequate?

MS. SPEICHER: I am sorry Chair, I just – something just dawned on me. We are currently reviewing the re-write – or review and update for the 2009 County Zoning Ordinance. Just this past week, or last Friday, the Codes committee, based upon the staff recommendation, is proposing a provision in the Zoning Ordinance that setbacks for towers cannot be varied. I discussed this issue with them that we need to either look at reducing our setbacks because every tower we get, requests a variance, and the staff voted, and the Codes committee which is made up of members of the Joint Planning Board voted to not allow a variance on the tower.

That is not in place right now, but we have it scheduled for the December 21st Planning Board meeting which typically would be the January 19th County Commissioner meeting. So I want to make sure –

MR. JOHNSON: We are not varying the setback at this point, we are fixing it, so that is consistent with what staff is coming forward with.

CHAIR QUIGLEY: Essentially what they are doing is they are moving so they will not have a requirement for a variance.

MS. SPEICHER: I just wanted that on record in case something comes up for a variance.

MR. JOHNSON: The other part of that, and I think Mr. Raynor will concur, since we have our application in, we are under the existing ordinance at the time of the application; if we are continuing that application to make an adjustment to it.

MS. SPEICHER: This would be a new application, and a new submittal.

MR. JOHNSON: I would hope that we could just change the site plan and not do a completely new application. So much of the documentation is the very same, it will not change.

MS. SPEICHER: The property is changing, apparently.

MR. JOHNSON: Just the site plan will change, we are not changing the property. The parcel is the same, we are just shifting the site plan.

MS. SPEICHER: We advertised the .34 acres, not the 90 plus acres in Cumberland County.

MR. JOHNSON: All we are going to do – we are just going to move it back enough on the same parcel to meet the setback. Every – dimensions, everything else, landscaping, everything will stay the same. The notice, you will be able to re-advertise for the January meeting with a new description.

MS. SPEICHER: The mandatory State notice property owners would not change because that is adjacent property owners. However, our County Commissioner's policy that more than adjacent property owners at a wider radius is notified, that would change depending on the location of the property.

MR. JOHNSON: In this case that will not change, I do not think there will be any others that will come within that radius. That will not change who gets the notice, it is just the description of the site plan, that is all that is going to change is the property description.

MS. SPEICHER: Okay, one more time, we advertised this .36 acre tract, the specific tract that is shown on the site plan.

CHAIR QUIGLEY: Do you understand what she is saying? The size does not change, but that .3 whatever acres is a different .3 acres when you move it.

MR. JOHNSON: But it is on the same parent parcel and we will describe the – we will have an easement for the fall zone. That is fine, we will do that, and we will make it so that it reads that it is bigger than that but it will not – if you are keeping it on the same parent parcel it should not change – there may be somebody down Whitehorse Court or whatever it is that may have to get notice that did not originally, that is okay, it will not be that many people. We will have the right description in the advertisement. I think the only real concern is that the right description and the notices get mailed out to the right people. We can do both if it is in by December 10th I don't know why that would be a problem to get them properly notified and fully notified in accordance with the Commissioner's policy.

MS. SPEICHER: We certainly would for the January meeting, but to us it is a new application because it is different property.

MR. JOHNSON: It is the same parcel, I do not know, it is not really different property.

MS. SPEICHER: But we would get it done.

MR. RAYNOR: What parcel number was on –

MS. SPEICHER: Portion of Pin 0403-02-9183.

MR. RAYNOR: Is that the parcel number for the whole –

MS. SPEICHER: Yes, sir. We advertised it at –

MR. RAYNOR: I understand that, but then it does not change – it is still a part of that pin number, and they are going to re-advertise the change in the site within that portion of that parcel, so it is not a –

MS. SPEICHER: It is, I agree, it is the same parcel, but it is different property so we have to re-notify and re-advertise which is no big deal, and we certainly do not mind doing it.

MR. JOHNSON: Do you have a copy of the notice, maybe that will help me understand, maybe there is something I am missing here. Do you have a copy of what was sent out?

MS. SPEICHER: Chair Quigley, do you want to see the notice before I show it to him?

CHAIR QUIGLEY: Go ahead, show him the notice.

MR. JOHNSON: Thank you.

CHAIR QUIGLEY: Technically let it be known that we are in recess at this moment, thank you, please.

MR. JOHNSON: Thank you.

CHAIR QUIGLEY: Okay we are reconvened. The wording of the continuance will be that this is continued subject to the refilling the appropriate paperwork and paying the costs associated with the re-advertising.

MR. JOHNSON: We have no problem with that, that is fine, that is no problem. We will go ahead and submit additional – the appropriate paperwork would be the new revised site plan, and I understand.

MS. SPEICHER: I would still like one more time just to reiterate that if this comes in by December 10th for the January 21st meeting.

CHAIR QUIGLEY: Everything has to be in by the 10th of December to be advertised by –

MS. SPEICHER: And that the staff proposal, the Committee supported Amendment to the Zoning Ordinance, there will not be an option on the table for submission for a variance, if it is approved.

MR. JOHNSON: We are fine, we are withdrawing the variance application, we are going to submit a site without any variance for the setback.

CHAIR QUIGLEY: Are there any other questions? Thank you very much, appreciate your effort here.

MR. JOHNSON: Appreciate it, thank you very much. We want to try to be cooperative in every way we can to make it easier on everybody.

CHAIR QUIGLEY: Thank you very much. We do have another case to present.

MR. JOHNSON: I am sorry, did you vote on that, or do you need to vote on that?

CHAIR QUIGLEY: It does not require a vote.

MR. JOHNSON: On the continuance?

MS. SPEICHER: It does not have to as long as it is date certain.

CHAIR QUIGLEY: I will accept a motion that the continuance be enacted, do I have a second?

VICE-CHAIR SWANSON: Made the motion.

MR. DAVIS and Mr. DYKES: Seconded the motion.

CHAIR QUIGLEY: It has been properly moved and seconded, is there any discussion? All in favor of approving the continuance, signify by saying I.

Quigley:	Y
Swanson:	Y
Davis:	Y
Tart:	Y
Dykes:	Y

CHAIR QUIGLEY: That is unanimous, thank you. Would you please present the Watershed Case, 09-01?

MR. BARNHILL: This case is as follows:

- **WS-09-01.** CONSIDERATION FOR HIGH DENSITY DEVELOPMENT WATERSHED APPROVAL FOR RIVER LANDING CENTER OFFICE PARK, IN A MXD/CUD ZONING DISTRICT, FOR UP TO 70% IMPERVIOUS AREA; CONTAINING 16.00 +/- ACRES; LOCATED ON THE SOUTH SIDE SR 1611 (ANDREWS ROAD), WEST OF SR 1612 (FARMERS ROAD); SUBMITTED BY: DOUGLAS B. COOPER WITH MOORMAN, KIZER & REITZEL; OWNED BY: RIVER LANDING CENTER, LLC.

MR. DAVIS: Is that Pine Forest High School, is that what that is?

MR. BARNHILL: Yes, Pine Forest. This is a vicinity map showing the property as you can see here off Andrews Road. This also shows the zoning in the area, the site highlighted there in blue. Hydric soils are not an issue on this site as you can see in red, the site there. The green being the hydric soils, so that is not a factor in this case. Here is an overview of the actual site of Andrews Road up at the top here, you have your access roads coming in. The site consists of four office buildings, three stories each.

The applicant has asked for up to 70% impervious, that is the maximum allowed under the high density option. That 70% also includes this area here which would be future development. You can not very well see it here, but you have the retention pond designed to catch all the runoff from this site and contain it on site. You have your Forebay area here. The Forebay area, and then your containment, that is the pond that actually contains the water. Then you have a barrel riser at the lower left hand corner for the overflow.

This diagram is just another example of a pond itself, the retention pond. You have your Forebay area, and you have the berm here, gravel berm slows the water down when you have your containment area, and your riser where the actual water will eventually make its way out and an emergency spillway, like I said, it is just another example of a wet retention pond.

If I may, I would like to read the approvals into the record:

1. The stormwater control system must meet the standards of the County Water Supply Watershed Management and Protection Ordinance. (Plans have been reviewed by the County Engineer's office and were approved on November 12, 2009.)
2. Cost estimate for the stormwater system must be a sufficient amount to complete the project. (County Engineer's office verified the sufficiency of the amount proposed in letter dated November 12, 2009.)

3. The Operation and Maintenance Plan must be legally sufficient and comply with the minimum standards of the County Water Supply Watershed Management and Protective Ordinance. (The Operation and Maintenance Plan have been found to be legally sufficient by the Interim County Attorney on November 12, 2009.)
4. The project must meet the standards of the zoning and subdivision ordinances. (The Cumberland County Board of Commissioners approved this project as a Conditional Use District and Permit rezoning case, subject to the contents of the application, site plan and Ordinance Related Conditions, P09-06, on April 20, 2009.)
5. The Operation and Maintenance Plan must be satisfactory and comply with at least the minimum standards and intent of the Ordinance. (The Watershed Review Officer has reviewed and approved this plan on October 27, 2009.)
6. The project must have an approved soil erosion and sedimentation control plan. (The North Carolina Department of Environment and Natural Resources, Land Resources Division has approved this plan on September 24, 2009.)
7. In addition to any other requirements provided by the County Water Supply Watershed Management and Protection Ordinance, the Board may designate additional conditions and requirements on the proposal to assure the use will be harmonious with the area in which the project is to be located and with the spirit of the ordinance.

That is just basically an overview of the site. If you have any questions, I would be more than happy to try to answer them.

MR. DAVIS: There has been no opposition, no concerns?

MR. BARNHILL: It is not a public hearing.

MS. SPEICHER: Did you understand that, Mr. Davis? A high density watershed is not a public hearing so we do not post the property or mail notices or advertise it.

MR. DAVIS: Right.

MR. RAYNOR: But did you understand his question? There has not been any concern or opposition, has there?

MR. BARNHILL: None has been brought to my attention.

MR. RAYNOR: Because sometimes you do not need to mail notices or do an advertisement to hear that there are concerns and –

MR. BARNHILL: Nothing that has been brought to my attention.

MR. RAYNOR: Particularly with the school right there. They obviously know what is going on, the principal, and the teachers.

MR. BARNHILL: I would think with the rezoning there was a lot of opposition.

MS. TART: My understanding is once it was rezoned this is just basically a formality, is not it?

MR. BARNHILL: This is the approval of the stormwater system on the site.

MR. DAVIS: I guess my question is how would we suppose without any technical knowledge to be able to look at this and see where the problems are. If you are recommending approval, that is good enough for me.

MS. SPEICHER: What Jeff read off are the state mandated requirements for high density watershed approval and was trying to get – or did get into the record that we in fact do have each and all approvals from the appropriate party, and that’s what this Board is responsible to find that –

MR. DAVIS: Make sure they are all there.

MS. SPEICHER: That we did it.

MR. DAVIS: Right, good job.

CHAIR QUIGLEY: Do I have a motion?

MR. DAVIS: I make a motion that we approve it.

VICE-CHAIR SWANSON: Second.

CHAIR QUIGLEY: It has been properly moved and seconded, is there any other discussion on the high density watershed approval? Hearing none, all in favor signify by saying I.

Quigley:	Y
Swanson:	Y
Davis:	Y
Tart:	Y
Dykes:	Y

CHAIR QUIGLEY: That is unanimous, thank you.

8. DISCUSSION

MS. SPEICHER: I was going to make you aware of the draft ordinance. Marili did email it, included you with our board members on the email, so feel free to call, I will read through it if you have any questions, we will do our best.

9. ADJOURNMENT

There being no further business, the meeting adjourned at 8:54 p.m.

Exhibit #1



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

BEVERLY EAVES PERDUE
GOVERNOR

EUGENE A. CONTI, JR.
SECRETARY

November 6, 2009

H. D. Bowen, Jr.
Post Office Box 1007
Hope Mills, NC 28348

Dear Mr. Bowen:

SUBJECT: Variance To Corridor Map For Fayetteville Outer Loop; Cumberland County,
TIP Project U-2519

We have reviewed the request for a variance for the parcel identified as PIN 0403-12-0077 located at 1511 Lake Upchurch Road. The Department of Transportation grants a variance which allows a telecommunications tower to be placed outside of the proposed right of way, subject to the following conditions:

1. This variance is granted based on the request and site plan received on November 5, 2009 that was submitted by Nexsen Pruet, PLLC on your behalf. Any amendments to this request would annul this variance and would require another variance approval. Any further request to amend this property will be considered on an individual basis and will be subject to the constraints of the Transportation Corridor Official Map laws.
2. All applicable local permits or regulations are to be complied with.

The Department has granted this variance according to General Statute 136-44.52. After reviewing this particular situation, the Department has decided that the property amendment does not interfere with the development of the project, and will not hamper the Department's ability to acquire the needed right-of-way in the future.

If you have any questions, or need any more information, you may contact Mr. Ray McIntyre at (919) 733-2039.

Sincerely,

A handwritten signature in cursive script that reads "Ray McIntyre".

for Calvin W. Leggett, P.E.
Manager, Program Development Branch

CWL/rm

cc: Greg Burns, P.E., Acting Division Engineer
Gary Burton, Assistant District Engineer
Judy Joines, Right-of-Way Branch
Jay Bennett, P.E., State Roadway Design Engineer
Rick Heicksen, Fayetteville MPO
Thomas H. Johnson, Jr. Nexsen Pruet, PLLC



DaVinci Engineering, Inc.

PO Box 66
Unionville Center, OH 43077

October 7, 2009

American Tower Corporation
1898 Leland Drive, Suite A
Marietta, GA 30067

Attn: William Henry III

Re: 220-ft Monopole
Located in Cumberland Co., NC: Site #273126 – Lake Upchurch NC
DaVinci Job #09235-1643 / TAPP #TP-8399

Dear Mr. Henry:

We understand that there may be some concern on the part of local building officials regarding the potential for failure of the proposed communication monopole. Communication structures are designed in accordance with the Telecommunications Industry Association ANSI/TIA-222-G, "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures". This is a nationally recognized standard developed by professional engineers experienced in the design of communication structures.

We have designed this monopole to withstand a basic wind speed of 80 mph as recommended by ANSI/TIA-222-F for Cumberland County. This basic wind speed is not a peak gust speed but is the "fastest mile" wind speed. That means it is an average speed based upon the time it takes the fastest wind to travel one mile. The TIA/EIA also includes a gust factor of 1.69 in the wind pressure calculations. The wind speed is measured at 33 feet above grade with escalation factors that increase the wind pressure with the height of the pole. The wind speed is a design wind speed, which means that the pole will safely withstand the full design wind speed and still maintain an additional load capacity know as a "Safety Factor".

This monopole has been intentionally designed to accommodate a theoretical fall radius. The upper 79' of the pole has been designed to meet the wind loads of the design, however, the lower portion of the pole has been designed to resist substantially more loading. In the unlikely event that this monopole would fall due to extreme wind load, (in excess of the design wind load), it would yield at the 141' elevation, resulting in a maximum 78' fall radius.

The pole has been properly designed by a qualified engineer with all of the applicable safety factors incorporated as required by the code. Communication poles are safe structures with a long history of reliable operation.

We hope this review of the monopole design has given you a greater degree of comfort regarding the design capacity inherent in pole structures. If you have any additional questions please call me at 614-937-4922.

Sincerely,

DAVINCI ENGINEERING, INC.

Michael F. Plahovinsak, P.E.
mike.p@davinci-engineering.com



Michael F. Plahovinsak 10.7.09
"Turning Creativity into Reality"

www.davinci-engineering.com

PO Box 1966
Santa Maria, CA 93456
(805)922-5221

PO Box 66, 110 W. Main St.
Unionville Center, OH 43077
(614)937-4922

IMPACT STATEMENT



AMERICAN TOWER*

SITE # 141-184

“LAKE UPCHURCH”

*TO BE LOCATED ON THE SOUTH SIDE OF
LAKE UPCHURCH ROAD/SR1116
WEST OF BLACK BRIDGE ROAD/SR1115*

H.D. BOWEN, JR. PROPERTY

As per submitted plans

**PREPARED BY:
GRAHAM HERRING COMMERCIAL REAL ESTATE
GRAHAM HERRING GRI
8052 GREY OAK DRIVE, RALEIGH, NORTH CAROLINA 27615**

IMPACT STATEMENT

This report addresses whether the proposed use is in compliance with the purpose and intent of the plan of development of Cumberland County, NC, Land Use and Zoning Ordinance, including §927 thereof, and is a compatible use in the area where it is to be located. In preparing this report, I inspected the site and surrounding areas in the district and reviewed the site plans for the facility provided by BC Architects Engineers PLC and Star Survey Inc., Registered North Carolina Land Surveyor, for American Tower's, application for a Special Use Permit under the Cumberland County Zoning Ordinance, §927. I have also consulted and reviewed with area local appraisers, developers, tax authorities and reviewed the public records in similar recent zoning cases in various jurisdictions in Cumberland County.

PROPOSED FACILITY

The proposed facility will consist of a Two Hundred Twenty Foot (220.0'), monopole tower. The site will be comprised of a developed area as described in the site and engineering plans that were submitted. The fencing surrounding the site will be a chain link fence at least ten (10.0') feet in height, around the seventy by seventy (70' x 70') foot compound, located in the developed area as described in the plans that were submitted. There will be a four (4) inch thick gravel weed barrier inside the fenced area and extending one (1) inch outside the fenced area. Landscaping will meet or exceed the County Ordinance requirements for this project. The area is zoned RR. The parent tract is shown in the County Records as in Tax Parcel: 0403-02-9183, 63.64 acres; DB 5170, Pg. 287. The lease area to be developed will be some 0.359+- acres in size, and is comprised of 15,625 +- sq. ft. as per the plans that were submitted.

BACKGROUND

In general we have found that the factors that primarily affect property values are use, zoning, topography, and market demand. As the factors change, so do the current market value and development potential of any parcel of real estate.

While the value of a parcel of real property may be affected by the use of adjoining or surrounding property, that use must be significant in its intrusiveness or lack of compatibility in order to override the primary factors that affect property values. Uses which generate significant traffic, noise, odor, or dangerous conditions are generally the types of uses which are so intrusive as to override the normal factors affecting property values, and result in a material adverse impact on surrounding properties. For example, hog farms, rock quarries, paper mills, manufacturing plants, adult entertainment establishments, and similar uses, are generally believed to have a negative impact on the value of surrounding properties. In addition, development of property in a manner, which is significantly incompatible with existing or planned use of surrounding property, can result in a negative impact on property immediately adjacent to the incompatible use.

Our examination of the effects of the existing transmission tower and broadcast tower sites on surrounding properties, and our examination of other studies on this subject and available data, indicates that, in general, these type towers are not the type of use, which is so intrusive as to have an inherently negative impact on surrounding properties so long as the set backs are sufficient as to not cause an adjoining property to not be able to be used or developed for its highest and best use under the jurisdictions zoning restrictions.

SUMMARY

My personal inspection of the site and surrounding areas, and public records revealed the following:

1. Located immediately to the west of the proposed site and parent tract are single family residential uses separated from the parent tract by mature trees and vegetation, rural agrarian and uncultivated land uses and mobile and modular homes.
2. Located immediately to the north of the proposed site are rural residential uses, single family homes, and a large subdivision, separated by NCRR 1116/Lake Upchurch Road.
3. Located to the east of the proposed site towards State Road 1115/Black Bridge Road is undeveloped and cultivated farmland, and treed land.
4. Located south of the proposed site are farmlands undeveloped wooded areas and single family rural agrarian uses.
5. Located to the southeast of the proposed facility are single family homes, and undeveloped land and also a large manufacturing facility, electrical substation and high power electrical transmission lines.
6. That the visibility of the facility will be very limited on the eastbound approach, at ground level due to the existing vegetation, and separation from the existing development, also the areas outside fenced compound will be left undisturbed in order to maintain the existing wooded areas near the site.

In summary, my personal inspection of this proposed site and other tower locations in North Carolina, in the counties of Cumberland, Robeson, Johnston, Wilson, Hoke, Moore, Sampson, and many others, my personal Expert Witness Testimony in over 1,700 one thousand seven hundred zoning hearings for the record in these and many other jurisdictions across the southeast, my review of industry data regarding all types of wireless transmission towers, indicates that, in general, wireless telecommunication tower facilities do not have a inherently deleterious affect on surrounding properties. Our review of the Facility to be constructed at the Site, and personal inspection of the Site and surrounding area, indicate that the planned facility is generally compatible with the area's existing and proposed uses, and developed as proposed it will have no substantial

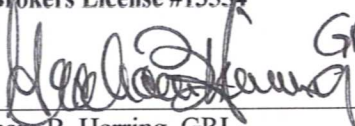
existing and proposed uses, and developed as proposed it will have no substantial negative impact on existing or currently planned development of the surrounding properties.

Moreover, and as required by §927.M of the Cumberland County Zoning Code, this Telecommunications Facility, built as planned, will have no detrimental or injurious effect on the property values of the surrounding neighborhood or other properties in the general vicinity. Finally, the nature of this location, with its separation from the residential arterials located to the north of the proposed site, the rural character, farming and mixed uses nearby, heavily wooded areas, is such that the proposed development will not create any negative aesthetic effects on scenic roadways or other unique natural features.

DISCLAIMER

This document is not to be construed as an appraisal of real property; developed or undeveloped. It is an assessment of empirical data and written expression of opinion of impact of this particular planned project, based on the experience of the author of this document. This document is not to be reproduced in whole or in part, disseminated to the public, nor is it to be used for any purpose other than the reason intended. No opinions of value or opinions of the correctness or accuracy of the engineering designs or plans submitted for this project are expressed, implied or intended by the author.

Graham B. Herring, GRI
NC Brokers License #30791
SC Brokers License #13554


Graham B. Herring, GRI

Date:

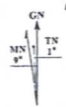
9/8/2009



0 ————— 0.2 Mi
0 ————— 1000 Ft



1:5000 Scale
 0 100 200 300 400 500 Feet
 0 50 100 150 Meters
 Universal Transverse Mercator (UTM) Projection Zone 17
 North American Datum of 1983 (NAD83)
 UTM Grid shown in Blue



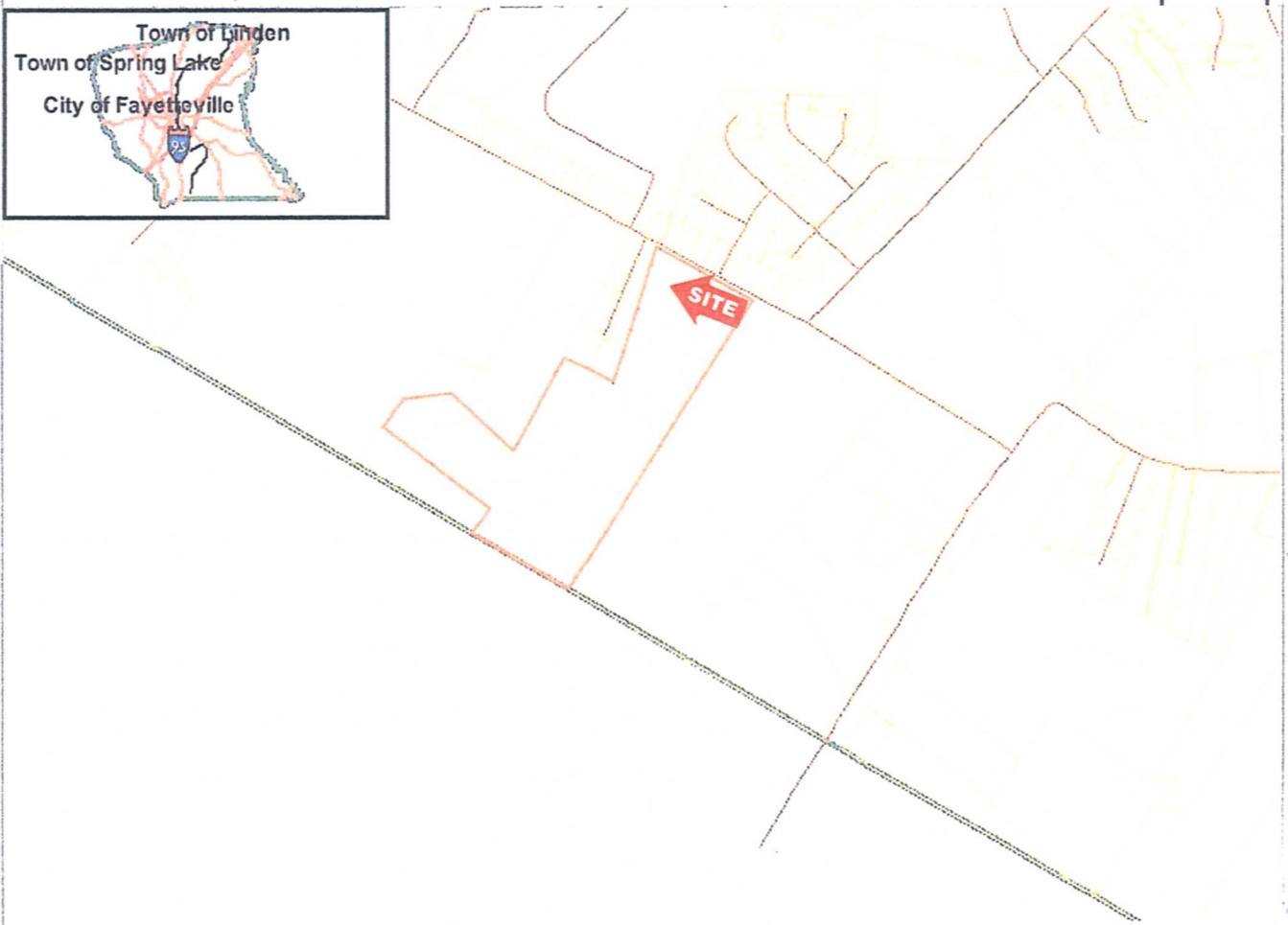
Magnetic declination at center of map on
 October 8, 2009

Community GIS, GIS Viewer



State Plane Coord: 2000651.68 , 435215.23

Search



Parcels

Rec	AREA	NAD83_PIN	MAP	FRONTAGE	DEPTH	ACRE	TRACT_NAME	BLOCK	SUB_NAME	RES_SQFT	COM_SQFT	RES_S_HGT	TOT_ASMT	TOT_L_VAL	TOT_E
1	2772302.7304406	0403-02-9183-	0403	0	0	63.64	NANCY MCMILLAN LD			2304	0	1	326000	109655	181200

OVERVIEW OF THE CREDENTIALS OF GRAHAM HERRING, LICENSED
NORTH CAROLINA AND SOUTH CAROLINA REAL ESTATE BROKER, AND
GRADUATE OF THE UNIVERSITY OF NORTH CAROLINA REALTORS
INSTITUTE.

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8052 Grey Oak Drive
Raleigh, North Carolina

Experience:

Licensed Real Estate Broker in North Carolina for 38 years
Licensed South Carolina Real Estate Broker

Mortgage Lending and Appraising, 6 Years (Single Family Residential)
Land Development (Commercial and Residential)
Shopping Center development, leasing and sales
Industrial, Office and Institutional, Commercial properties; development, leasing and sales.

Specialized Computer enhanced photography (Photo Simulations)
Site Acquisition, Telecommunications, Radio, Television, and EMS/911 Facilities
SHPO North and South Carolina/ remediation work
Residential/Builder Construction lending
Certificate of Completion, United States Savings and Loan League Single Family Residential Appraising Course.

Past Executive Director of the Nash County, and Rocky Mount Homebuilders Association

Graduate of the North Carolina Homebuilders Institute

Graduate of the North Carolina Insurance Institute

Graduate of the International Shopping Center Institute School of Management and Leasing

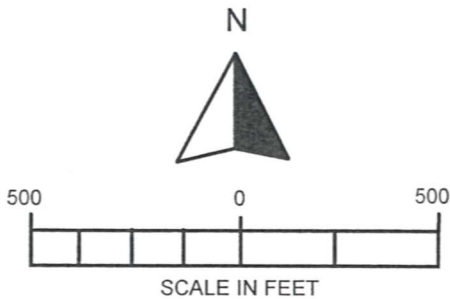
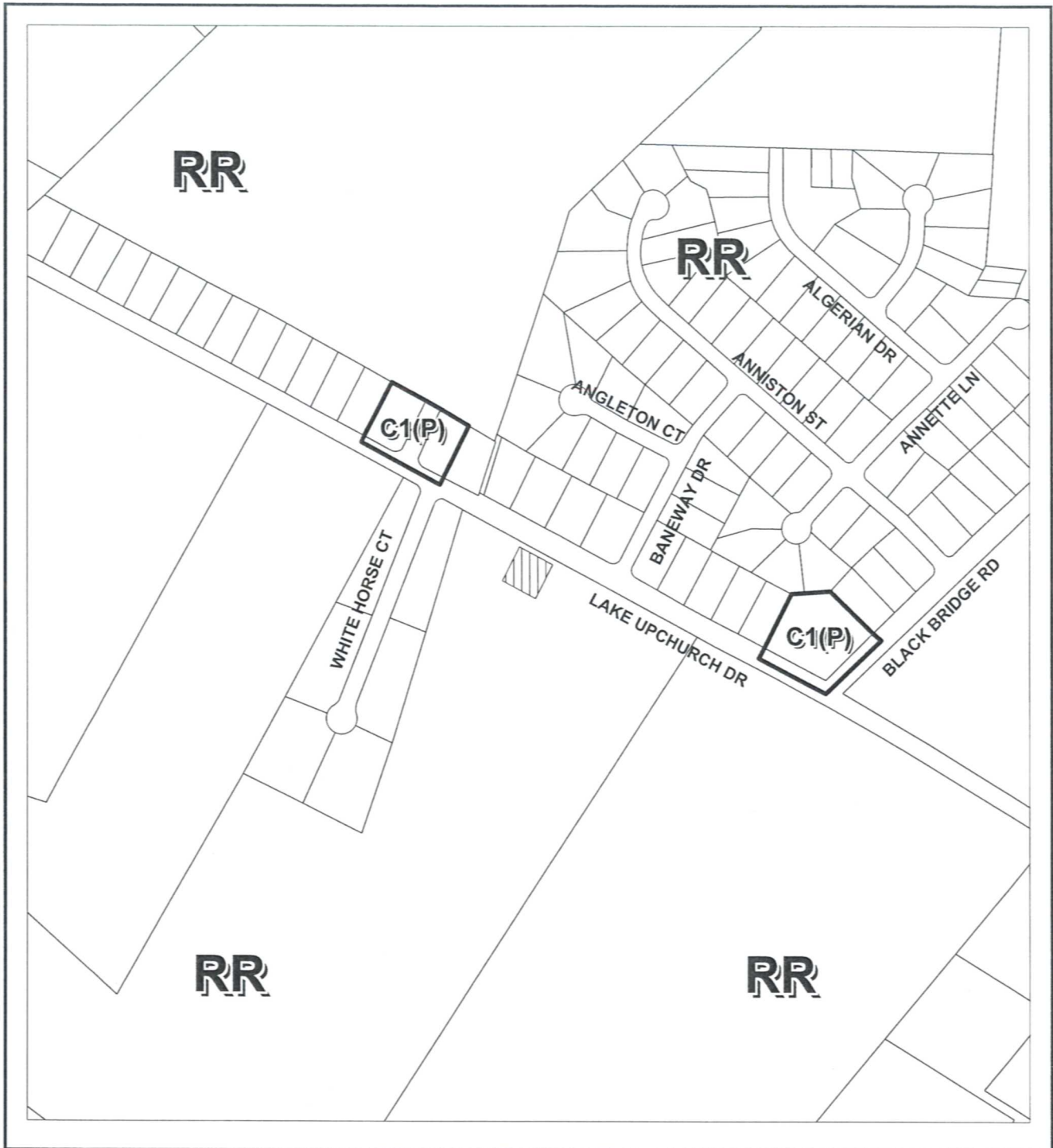
Graduate of the University of Pennsylvania/Wharton School Of Investment Real Estate
Consulted with City Municipalities and County Governments. Concerning Potential Impact of Telecommunications Facilities, in planning and study meetings.

Appeared as an expert witness in over 1700 Zoning Hearings, in 67 counties, and 65 jurisdictions in North Carolina, Virginia, Georgia, Florida and South Carolina

Consulted with developers concerning planning and placement of telecommunications facilities in planned developments, i.e.: Weston, and Wakefield.

Testified as an expert witness regarding impact on surrounding properties of Telecommunications Facilities in Board of Adjustment and Commissioners hearings throughout North Carolina, Virginia, Georgia, Florida and South Carolina.

Conducted Market and Tracking Studies in several counties including Wake and Orange counties, on the development of telecommunications facilities, and the sale of improved residential properties in developments that are surrounding such facilities, and comparison studies of such.



BOARD OF ADJUSTMENT VARIANCE/SPECIAL USE PERMIT

ACREAGE: 0.36 AC.+/-	HEARING NO: P09-09-C	
ORDINANCE: COUNTY	HEARING DATE	ACTION
GOVERNING BOARD		

P10-01-C
SITE PROFILE

P10-01-C: CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A CONVENIENCE CONTAINER AND RECYCLING FACILITY IN AN A1 AGRICULTURAL DISTRICT ON 1.39+/- ACRES, LOCATED AT 2331 POLLY ISLAND ROAD, SUBMITTED BY DONALD P. TEW ON BEHALF OF CUMBERLAND COUNTY AND MICHAEL TATE, PLS.; OWNED BY CUMBERLAND COUNTY.

Site Information:

Frontage & Location: 440'+/- on Polly Island Road

Depth: 290'+/-

Jurisdiction: Cumberland County

Adjacent Property: None

Current Use: 1-abandoned dwelling

Initial Zoning: A1- September 3, 1996 (Area 21)

Nonconformities: None

Zoning Violation(s): None

Surrounding Zoning: North, East, South, and West: A1

Surrounding Land Use: 2-Turkey farms, farmlands and woodlands

2030 Growth Vision Plan: Rural Area

Special Flood Hazard Area (SFHA): None

Water/Sewer Availability: NA/NA

Soil Limitations: None

School Capacity/Enrolled: Beaver Dam Elementary: 105/130; Mac Williams Middle: 1270/1229; Cape Fear High: 1425/1522

Subdivision/Site Plan: See attached "Ordinance Related Conditions"

Average Daily Traffic Count (2006): 160 on Polly Island Road (SR 2030)

Highway Plan: There are no road improvements/constructions specified for this area. This case has no impact on the current Highway Plan or Transportation Improvement Program

Ordinance Reference: County Zoning Ordinance, Section 905.1 Convenience Container and Recycling Facility

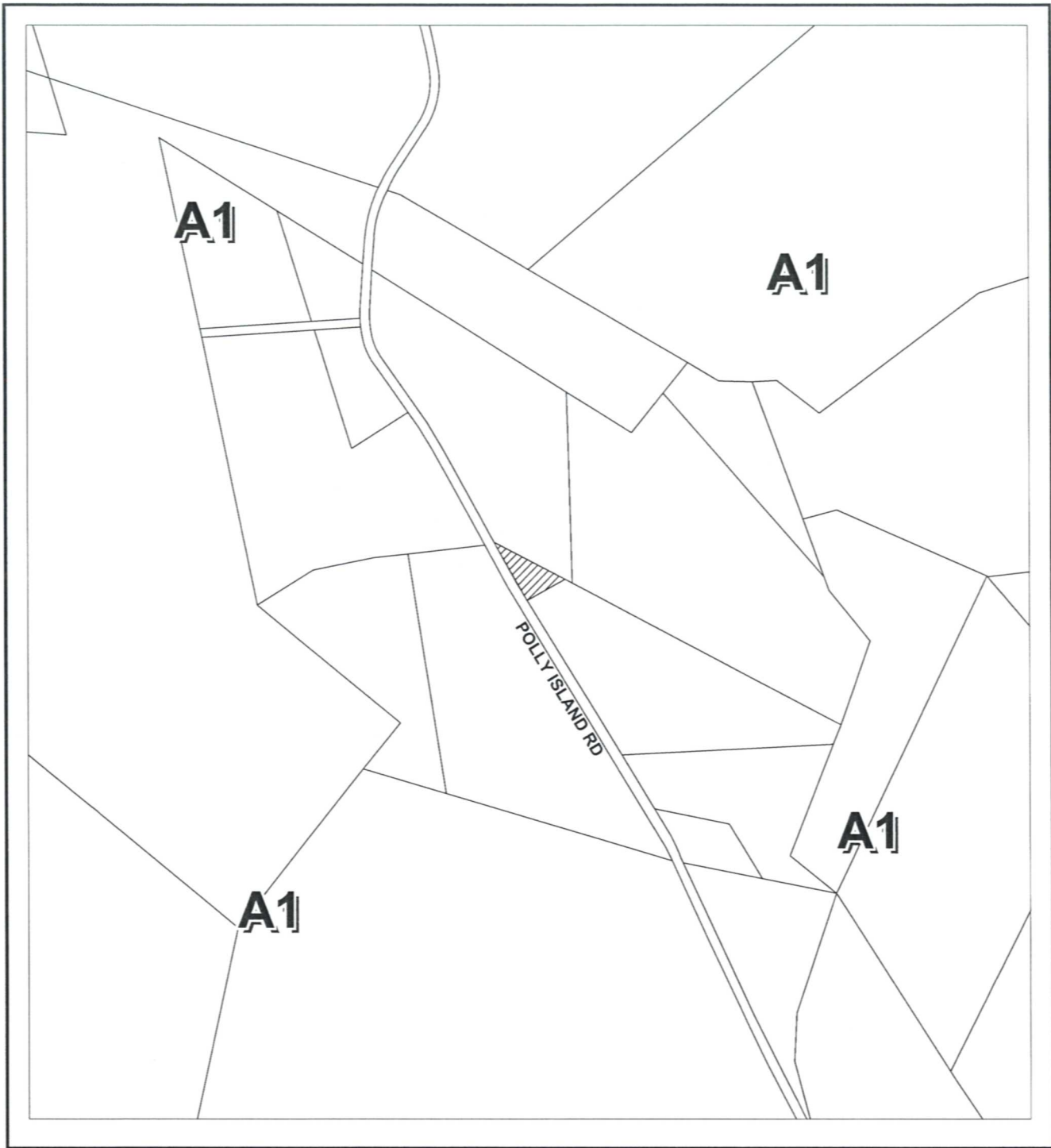
Notes:

1. Contents of the application:

- a. Hours of operation: Sunday & Wednesday (closed),
Monday & Friday (7:00am-3:00pm),
Tuesday & Thursday (10:00am-6:00pm),
Saturday (8:00am-4:00pm)
- b. Employees: One employee who will be opening and closing the facility (per applicant on phone conversation)
- c. Signage: One sign 4' x 8'
- d. Convenience Container and Recycling facility will have one portable toilet on site (per applicant on phone conversation)

First Class and Record Owners' Mailed Notice Certification

A certified copy of the tax record owner(s) of the subject and adjacent properties and their tax record mailing address is contained within the case file and is incorporated by reference as if delivered herewith. The record owners' certified receipt of notice is also included.



A1

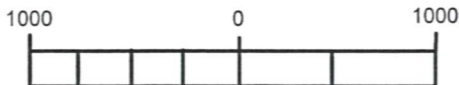
A1

POLLY ISLAND RD

A1

A1

N



SCALE IN FEET

BOARD OF ADJUSMENT SPECIAL USE PERMIT

ACREAGE: 1.39 AC.+/-

HEARING NO: P10-01-C

ORDINANCE: COUNTY

HEARING DATE

ACTION

GOVERNING BOARD

Special Use Permit – Board of Adjustment

DRAFT

Ordinance Related Conditions

Permit-Related:

1. The owner/developer(s) of these lots must obtain detailed instructions on provisions of the County Zoning Ordinance and permits required to place any structure within this development from the County Code Enforcement Section, Room 101 in the Historic Courthouse at 130 Gillespie Street. For additional information, the developer should contact a Code Enforcement Officer.
2. The County Health Department must approve water and sewer plans prior to application for any permits. Site and soil evaluations must be conducted on the property by the County Environmental Health Department prior to application for permits. A copy of the Health Department approval must be provided to Code Enforcement at the time of application for any building/zoning permits. (Note: All Health Department requirements must be met prior to issuance of final permits.) (Section 2306 A, Water and Sewer, County Subdivision Ordinance)
3. New development where the developer will disturb or intends to disturb more than one acre of land is subject to the Post-Construction Stormwater Management Permitting Program (Phase II Stormwater Management Requirements) administered by the Division of Water Quality, North Carolina Department of Environment and Natural Resources. If one acre or more of land is to be disturbed, prior to the issuance of any building/zoning permits for this site, a copy of the State's *Post-Construction Permit* must be provided to County Code Enforcement.
4. For any new development where the developer disturbs or intends to disturb more than one acre of land, the developer must provide the Code Enforcement Section with an approved NC Department of Environment and Natural Resources (NCDENR) sedimentation and erosion control plan (S&E) prior to any application for permits. (Note: If any retention/detention basins are required for state approval of this plan, then three copies of a revised plan must be submitted and approved by Planning & Inspections prior to application for any building/zoning permits.) A copy of the NCDENR approval must be provided to Code Enforcement at the time of application for any building/zoning permits.
5. The developer must provide a site-specific address and tax parcel number at the time of building/zoning permit application.
6. Landscaping must be provided in accordance with Section 1102 N, Landscaping, County Zoning Ordinance and/as shown on the site plan. Three copies of a revised site plan depicting the landscaping must be submitted to Land Use Codes. The following are the minimum standards for the required landscaping of this site:
 - a. Nine large shade trees or 17 small ornamental trees within the front yard setback area; and
 - b. Two shrubs are required in the building yard area.

In addition:

- a. Required plant materials shall be maintained by the property owner, including replacing dead or unhealthy trees and shrubs; and
 - b. All yard and planting areas shall be maintained in a neat, orderly, and presentable manner and kept free of weeds and debris.
7. The building final inspection cannot be accomplished until a Code Enforcement Officer inspects the site and certifies that the site is developed in accordance with the approved plans.

Site-Related:

8. All uses, dimensions, setbacks and other related provisions of the County Subdivision and Zoning Ordinances for the A1 zoning district must be complied with, as applicable.

9. This conditional approval is not approval of the permit for the freestanding sign. Attached signage for this development must be in accordance with the applicable sign regulations as set forth in Article XIII of the County Zoning Ordinance and that the proper permit(s) must be obtained prior to the installation of any permanent signs on the property. (Note: This conditional approval is **not** approval of the size, shape, or location of any signs.) (Note: The freestanding sign may only contain information concerning the name, address and organization occupying the premises.)
10. For new development, all utilities, except for 25kv or greater electrical lines, must be located underground. (Section 2306 C, County Subdivision Ordinance)
11. The access drive into and through the site must be paved or constructed with gravel or crushed stone surface and maintained in a dust-free manner. Also, the access drive cannot be designed so that the stacking of vehicles will impede traffic on the public street.
12. All material must be stored in appropriate waste containers and all such containers must be located on a solid impervious surface such as concrete pads.
13. The developer must obtain a driveway permit from the NC Department of Transportation (NCDOT). A copy of the approved driveway permit must be provided to Code Enforcement at the time of application for building/zoning permits.
14. All lighting is required to be directed internally within this development and comply with the provisions of Section 1102 M, Outdoor Lighting, County Zoning Ordinance.
15. All required off-street parking spaces shall be a minimum of 9' x 20' and shall be surfaced, with a permanent material such as asphalt or concrete, and striped prior to application for the building final inspection. A minimum of one space for each employee on the largest shift off-street parking spaces are required for this development.
16. The owner/developer is responsible and liable for maintenance and upkeep of this site, all structures, and appurtenances, to include ensuring that the site is kept free of litter and debris, all grass areas mowed, all buffers and shrubbery kept trim and maintained to prevent odors, rodents and any other nuisances, so that the site remains in a constant state of being aesthetically and environmentally pleasing.

Advisories:

17. The applicant is advised to consult an expert on wetlands before proceeding with any development.
18. The owner/developer is responsible for ensuring easements which may exist on the subject property are accounted for, not encumbered and that no part of this development is violating the rights of the easement holder.

If you need clarification of any conditions, please contact Ed Byrne at 910-678-7609 or Patti Speicher at 910-678-7605; otherwise, contact the appropriate agency at the contact numbers below.

Contact Information (Area Code is 910 unless otherwise stated):

Subdivision/Site Plan/Plat	Ed Byrne	678-7609
Code Enforcement (Permits):	Ken Sykes	321-6654
County Health Department:	Danny Soles	433-3685
Ground Water Issues:	Matt Rooney	678-7625
County Public Utilities:	Tom Cooney	678-7682
Corp of Engineers (wetlands):	Ronnie Smith	(910) 251-4829
NC DENR (E&S):	Sally McKinney	433-3300
E911 Site-Specific Address:	Ron Gonzales	678-7616
Tax Parcel Numbers:		678-7549
NCDOT (driveways/curb-cuts):	Gary Burton	486-1496
N.C. Division of Water Quality:	Mike Randall	(919) 733-5083 ext. 545

BOARD OF ADJUSTMENT

LOCATION OF PROPERTY: 9200' SE OF INTERSECTION OF NC HWY. 2105 & SR 2030

OWNER: COUNTY OF CUMBERLAND

ADDRESS: 2331 POLLY ISLAND RD. AUTRYVILLE, NC ZIP CODE: 28318

TELEPHONE: HOME _____ WORK _____

AGENT: MICHAEL TATE, PLS

ADDRESS: 3521 CLINTON RD., FAY., NC. 28312

TELEPHONE: HOME _____ WORK 910-4837387

APPLICATION FOR A SPECIFIED/SPECIAL/CONDITIONAL USE PERMIT
As required by the Zoning Ordinance or Code

A. Parcel Identification Number (PIN #) of subject property: 1403-81-6709
(also known as Tax ID Number or Property Tax ID)

B. Acreage: 1.39 AC. Frontage: 439.86' Depth: 274.50'

C. Water Provider: N/A

D. Septage Provider: N/A

E. Deed Book 7707, Page(s) 41, Cumberland County Registry. (Attach copy of deed of subject property as it appears in Registry).

F. Existing use of property: VACANT

G. It is proposed that the property will be put to the following use: (Describe proposed use/activity in detail including hours of operation, number of employees, signage, parking, landscaping, etc.)

CUMBERLAND COUNTY SOLID WASTE MANAGEMENT AREA
(DUMPSTER SITE - PUBLIC)

1- HOURS OF OPERATION
SUN (CLOSED) M (7AM-3PM) T (10AM-6PM) W (CLOSED)
THUR (10AM-6PM) F (7AM-3PM) SAT (8AM-4PM)

2- NO. OF EMPLOYEES - ONE

3- SIGNAGE - ONE 4' X 8'

4- PARKING - 2 SPA.

5- LANDSCAPING - 18 ORNAMENTAL TREES

STATEMENT OF ACKNOWLEDGEMENT

Regarding appearance before the Board of Adjustment, the undersigned owner(s), agents, or their assigns, by virtue of their signature(s) to this application, hereby acknowledge the following:

- That although appearance before the Board is not required, it is strongly encouraged;
- The Board will hear any and all arguments for and against this matter before them and such relevant facts will be given under sworn testimony;
- At the public hearing the Board has the authority to issue a final approval or denial decision on this request, or defer the request for additional information to be provided;
- If the petitioner or the representative of this application does not appear personally before the Board, whether there is opposition or not, the Board has full authority to consider the case and defer, approve, or deny the case.
- If the Board's action is to deny the matter before them, the course of appeal to their decision will be that of Cumberland County Superior Court. (Affected parties of the Board's decision have 30 days from proper notification which to serve notice of appeal).

Signed acknowledgement that the Planning and Inspections Staff has explained the application process and procedures regarding this request and the public hearing procedure stated above.

SIGNATURE OF OWNER(S) DUNCAN P. JEW

PRINTED NAME OF OWNER(S) COUNTY OF CUMBERLAND

DATE 9 NOVEMBER 2009

Only expressly authorized agents or assigns may sign this acknowledgement in lieu of the tax record owners' signatures.

P10-02-C
SITE PROFILE

P10-02-C CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW AN OUTDOOR RECREATION/AMUSEMENT, CONDUCTED OUTSIDE A BUILDING FOR PROFIT IN A PND PLANNED NEIGHBORHOOD DISTRICT ON 56.32+/- ACRES, LOCATED AT 533 CARVERS FALL ROAD, SUBMITTED BY NORWOOD EASON BRYAN, III AND GARRIS N. YARBOROUGH, ATTORNEY; OWNED BY CARVER'S FALLS, LLC.

Site Information:

Frontage & Location: No frontage, this property has two 60' DOT right-of-ways (Carvers Falls Rd & Old Carvers Falls Rd)

Depth: 1,150'+/-

Jurisdiction: Cumberland County

Adjacent Property: No

Current Use: Residential (1-single family dwelling), 1-old mill house, 2-portable toilets, and woodlands

Initial Zoning: PND – July 3 & August 21, 1972 (Area 1)

Nonconformities: None

Zoning Violation(s): None

Surrounding Zoning: North: R10 (Fayetteville), PND, RR & R15 (County); West: PNDM, R6MH, R5A, R6 & R5 (Fayetteville), PND & R10 (Fayetteville/County), PND/CUO (to allow a manufactured home), PND/CUO (to allow two manufactured homes) & RR (County); East: PND, RR & R15; South: PND, CD, A1, RR & R10

Surrounding Land Use: Cemetery, recreation/amusement outdoor, residential (including 2-manufactured homes, and 1-abandoned dwelling) and woodlands

North Fayetteville Land Use Plan: Low density residential and open space areas

Special Flood Hazard Area (SFHA): Yes, all along the subject property

Soil Limitations: None

Water/Sewer Availability: Well/Septic

Watershed Area: Yes

School Capacity/Enrolled: Raleigh Road Elementary: 220/234; Long Hill Elementary: 460/502; Pine Forest Middle: 820/938; Pine Forest High: 1750/1503

Subdivision/Site Plan: See attached "Ordinance Related Conditions", particular attention should be paid to Condition No. 1 & 8

Average Daily Traffic Count (2006): 24,000 on Ramsey Street (US 401)

Highway Plan: There are no road improvements/constructions specified for this area. This case has no impact on the current Highway Plan or Transportation Improvement Program

Municipal Influence Area: City of Fayetteville

Military Impact Area: Yes

RLUAC: Supports only very low impact development of the property, as proposed in the Special Use Permit, that preserves the current natural values and avoids concentrating large groups of people

Pope AFB/US Fish & Wildlife: No objection to this case

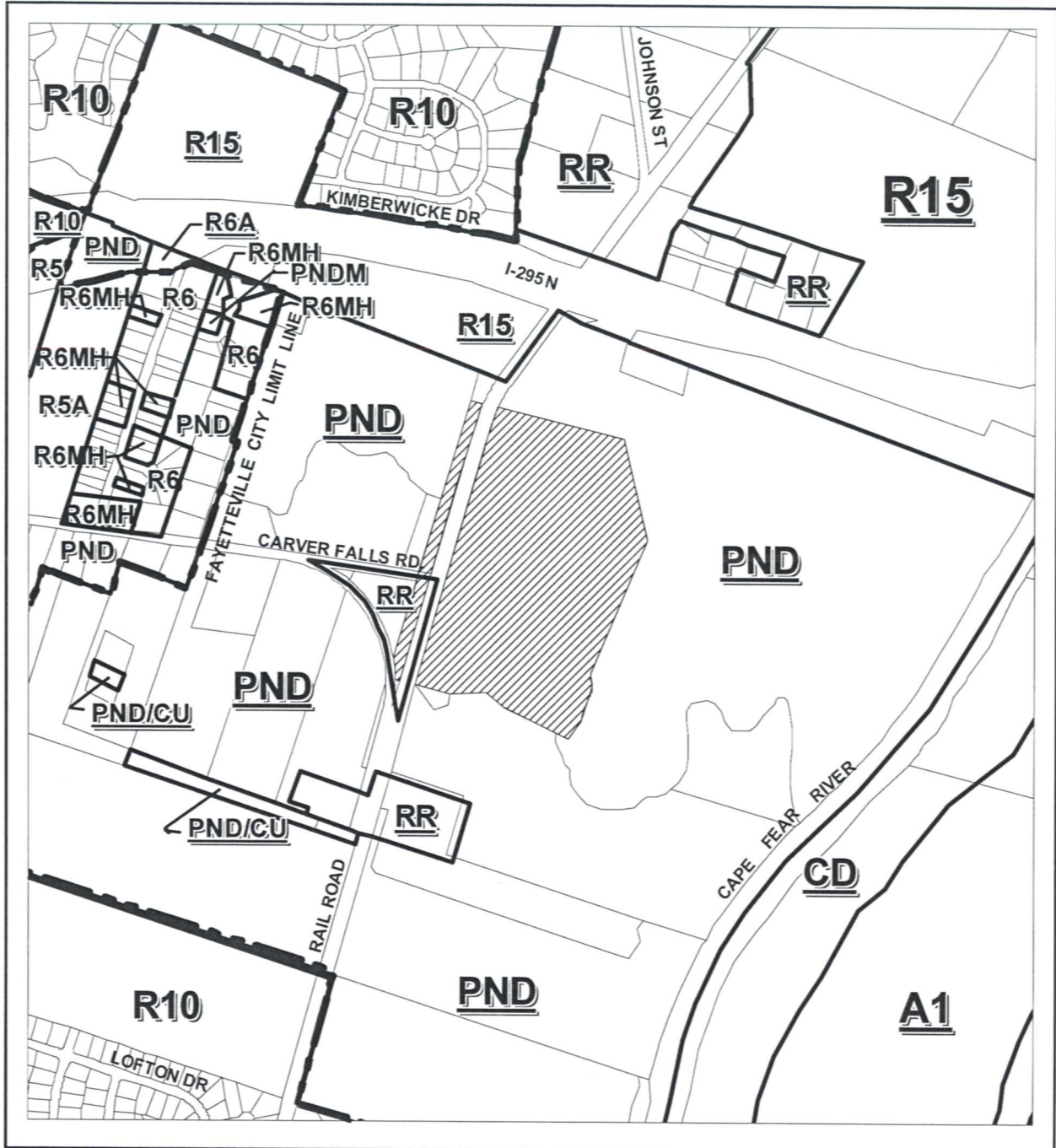
County Zoning Ordinance Reference: Section 920 Recreation or Amusement, Public/Private & Indoor/ Outdoor

Notes:

1. Contents of the application:
 - a. Employees: 1 full time/3 part time
 - b. There will be a charge fee for recreational activities
 - c. Hours: 9:00 am - 10:00 pm, Mon-Sun (days of operation will fluctuate with the seasons & weather)
 - d. Parking spaces: 12
2. Proposed activities: Outdoor recreation and education purposes including canopy tours, and eco/recreational uses. Ancillary commercial use such as sale of soft drinks and snacks; sale of activity related items such as t-shirts, caps, lip balm, etc.

First Class and Record Owners' Mailed Notice Certification

A certified copy of the tax record owner(s) of the subject and adjacent properties and their tax record mailing address is contained within the case file and is incorporated by reference as if delivered herewith. The record owners' certified receipt of notice is also included.



BOARD OF ADJUSTMENT SPECIAL USE PERMIT

ACREAGE: 56.32 AC.+/-

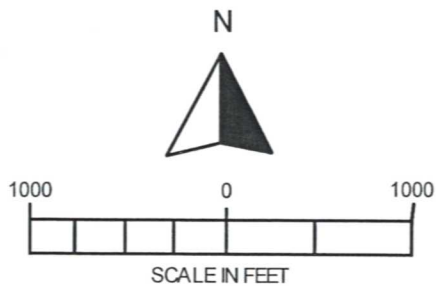
HEARING NO: P10-02-C

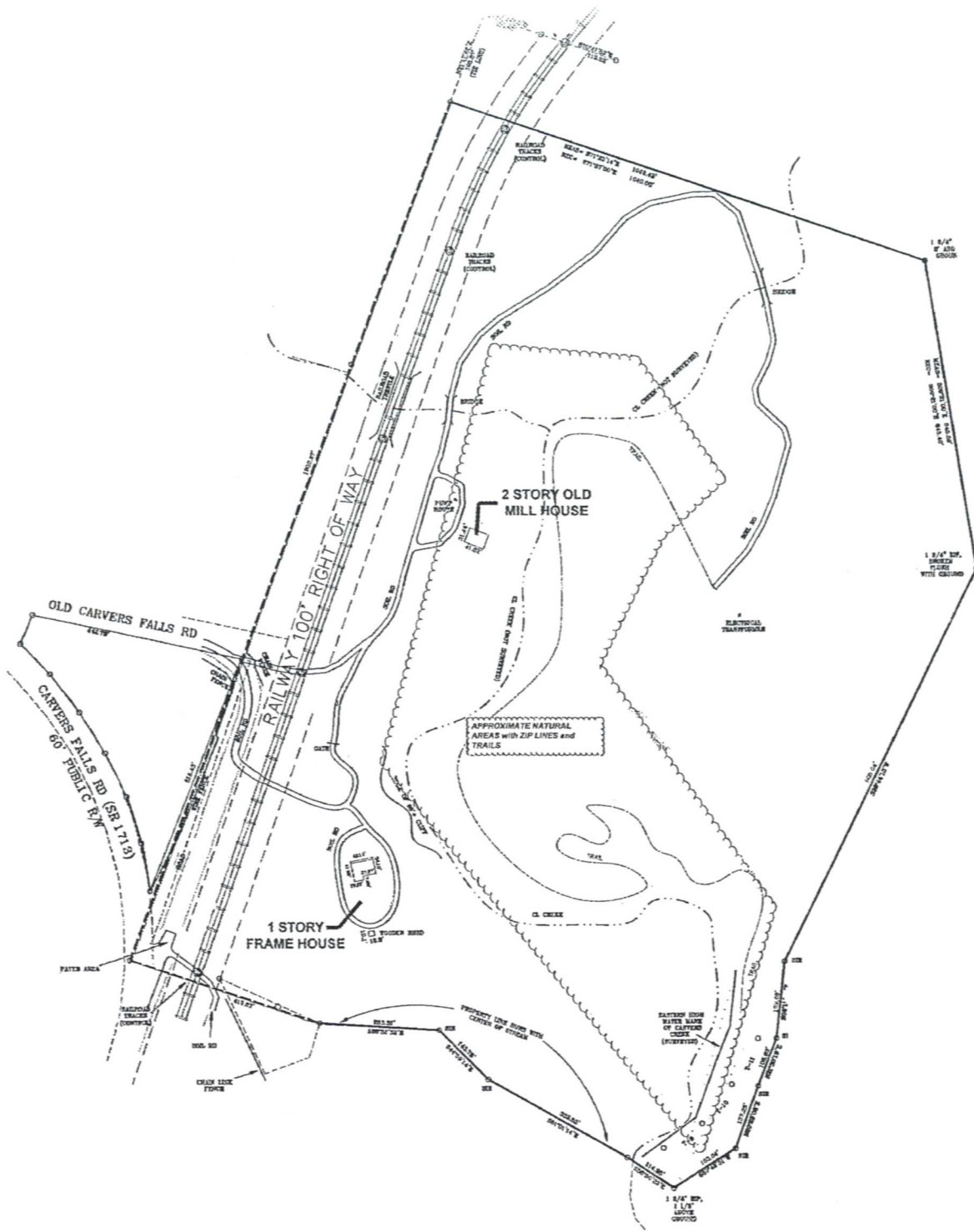
ORDINANCE COUNTY

HEARING DATE

ACTION

GOVERNING BOARD

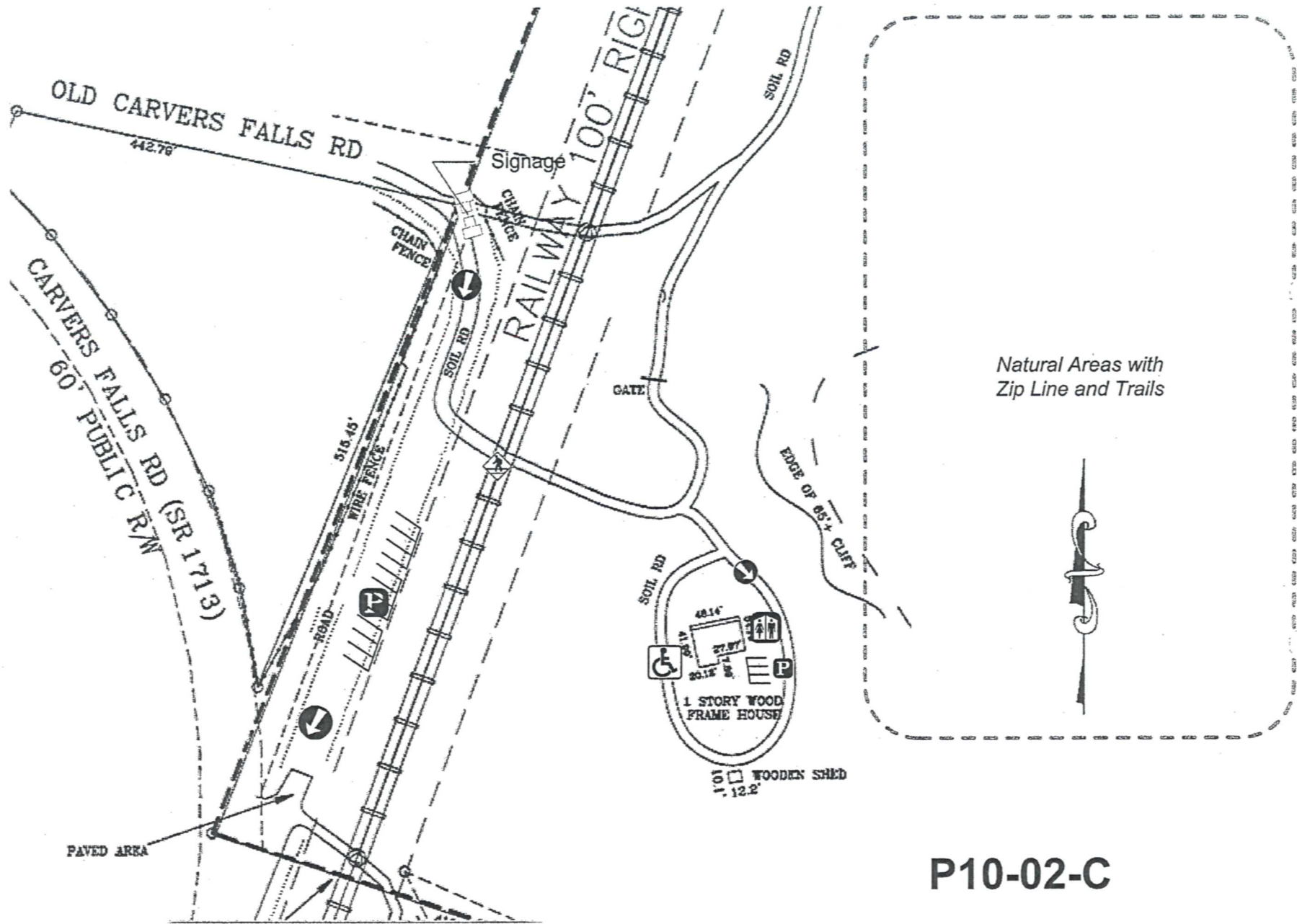




BOARD OF ADJUSTMENT
SPECIAL USE PERMIT
REQUEST: TO ALLOW AN OUTDOOR
RECREATION/AMUSEMENT, CONDUCTED OUTSIDE A
BUILDING FOR PROFIT IN A PND DISTRICT
CASE: P10-02-C ACREAGE: 56.32+/-
ZONED: PND SCALE: NTS

*SCALED DETAILED SITE PLAN IN FILE AVAILABLE FOR REVIEW UPON REQUEST

Carver's Falls Proposed Site Plan



P10-02-C

Special Use Permit - Board of Adjustment

DRAFT

Ordinance Related Conditions

Watershed-Related:

1. An application for a Watershed “No Approval Required” development must be submitted to the Watershed Review Officer (WRO) and plans must be approved by the WRO prior to final plat approval and/or prior to application for any building/zoning permits, site plan approval is required. A copy of the WRO’s approval of this plat/plan must be submitted to Code Enforcement at the time of application for any permits.

Permit-Related:

2. The owner/developer(s) of these lots must obtain detailed instructions on provisions of the County Zoning Ordinance and permits required to place any structure within this development from the County Code Enforcement Section, Room 101 in the Historic Courthouse at 130 Gillespie Street. For additional information, the developer should contact a Code Enforcement Officer.
3. The County Health Department must approve water plans prior to application for any permits. A copy of the Health Department approval must be provided to Code Enforcement at the time of application for any building/zoning permits. (Note: All Health Department requirements must be met prior to issuance of final permits.) (Section 2306 A, Water and Sewer, County Subdivision Ordinance)
4. If any new construction requires sewer system connections, connection to public sewer is required, the Public Works Commission (PWC) must approve sewer plans prior to application for any permits. A copy of the PWC approval must be provided to Code Enforcement at the time of application for building/zoning permits. (Section 2306 A.1, Public Water and Sewer Systems County Subdivision Ordinance)
5. New development where the developer will disturb or intends to disturb more than one acre of land is subject to the Post-Construction Stormwater Management Permitting Program (Phase II Stormwater Management Requirements) administered by the Division of Water Quality, North Carolina Department of Environment and Natural Resources. If one acre or more of land is to be disturbed, prior to the issuance of any building/zoning permits for this site, a copy of the State’s *Post-Construction Permit* must be provided to County Code Enforcement.
6. For any new development where the developer disturbs or intends to disturb more than one acre of land, the developer must provide the Code Enforcement Section with an approved NC Department of Environment and Natural Resources (NCDENR) sedimentation and erosion control plan (S&E) prior to any application for permits. (Note: If any retention/detention basins are required for state approval of this plan, then three copies of a revised plan must be submitted and approved by Planning & Inspections prior to application for any building/zoning permits.) A copy of the NCDENR approval must be provided to Code Enforcement at the time of application for any building/zoning permits.
7. The developer must provide a site-specific address and tax parcel number at the time of building/zoning permit application.
8. The *Special Flood Hazard Area* (SFHA) exists on this tract; any development within SFHA must have first flood elevations, including all mechanical and electrical equipment above base flood elevation (BFE) plus two feet of freeboard. Proper flood plain development permits are required, issued by the County Engineer, prior to any building/permit application. A copy of the approved flood plain permit must be provided to Code Enforcement at the time of building/zoning permit applications.
9. The building final inspection cannot be accomplished until a Code Enforcement Officer inspects the site and certifies that the site is developed in accordance with the approved plans.

Site-Related:

10. All uses, dimensions, setbacks and other related provisions of the County Subdivision and Zoning Ordinances for the PND (R7.5) zoning district must be complied with, as applicable.
11. This conditional approval is not approval of the permit for any freestanding signs. The proposed freestanding sign must comply with the C1(P) standards under the sign regulations. Attached signage for this development must be in accordance with the applicable sign regulations as set forth in Article XIII of the County Zoning Ordinance and that the proper permit(s) must be obtained prior to the installation of any permanent signs on the property. (Note: This conditional approval is **not** approval of the size, shape, or location of any signs.)
12. For any new development, an adequate drainage system must be installed by the developer in accordance with the NC Department of Environment and Natural Resources' (NCDENR) *Manual on Best Management Practices* and all drainage ways must be kept clean and free of debris. (Section 2306 D, County Subdivision Ordinance)
13. For new development, all utilities, except for 25kv or greater electrical lines, must be located underground. (Section 2306 C, County Subdivision Ordinance)
14. The developer must obtain a driveway permit from the NC Department of Transportation (NCDOT). A copy of the approved driveway permit must be provided to Code Enforcement at the time of application for building/zoning permits.
15. An internal street system may be required by the NC Department of Transportation (NCDOT) to serve any future divisions of this tract.
16. All lighting is required to be directed internally within this development and comply with the provisions of Section 1102 M, Outdoor Lighting, County Zoning Ordinance.
17. All dumpster, garbage, and utility areas shall be located on concrete pads and screened on a minimum of three sides.
18. All required off-street parking spaces shall be a minimum of 9' x 20' and shall be surfaced, with a permanent material such as asphalt or concrete, and striped prior to application for the building final inspection. A minimum of one space for every four persons in design capacity off-street parking spaces are required for this development.
19. All notes and calculations as shown on the application (including attachments to the application) and the site plan are to be considered as a part of this conditional approval.
20. Noise levels shall not exceed 60 dB(A) between the hours of 10:00 pm and 7:00 am. In any event, the noise level, regardless of the time of day, shall not become a nuisance to neighboring properties and strict compliance with the County's Noise Ordinance is required.

Advisories:

21. The applicant is advised to consult an expert on wetlands before proceeding with any development.
22. The owner/developer is responsible for ensuring easements which may exist on the subject property are accounted for, not encumbered and that no part of this development is violating the rights of the easement holder.

If you need clarification of any conditions, please contact Ed Byrne at 910-678-7609 or Patti Speicher at 910-678-7605; otherwise, contact the appropriate agency at the contact numbers below.

Contact Information (Area Code is 910 unless otherwise stated):

Subdivision/Site Plan/Plat	Ed Byrne	678-7609
Code Enforcement (Permits):	Ken Sykes	321-6654
County Engineer's Office:	Wayne Dudley	678-7636
County Health Department:	Danny Soles	433-3685

PWC:	Heidi Maly	223-4773
Fayetteville Planning:	Marsha Bryant	433-1416
Fayetteville Engineer (Easements):	Rusty Thompson	433-1660
Fayetteville Engineer (Stormwater):	Jeffrey Brown	433-1691
County Public Utilities/NORCRESS:	Tom Cooney	678-7682
Corp of Engineers (wetlands):	Ronnie Smith	(910) 251-4829
NCDENR (E&S):	Sally McKinney	433-3300
E911 Site-Specific Address:	Ron Gonzales	678-7616
Tax Parcel Numbers:		678-7549
NCDOT (driveways/curb-cuts):	Gary Burton	486-1496
N.C. Division of Water Quality:	Mike Randall	(919) 733-5083 ext. 545

cc: Marsha Bryant, City of Fayetteville (Fayetteville Municipal Influence Area)

CUMBERLAND COUNTY
BOARD OF ADJUSTMENT

LOCATION OF PROPERTY: 533 Carvers Fall Road, Fayetteville, NC

✓ OWNER: Carver's Falls, LLC (formerly Norwood Eason Bryan, III, Russ Carroll Bryan and Callan Hauser Bryan)

ADDRESS: c/o Callan H. Bryan, 18809 West Catawba Ave., Suite 102, Cornelius NC 28031

TELEPHONE: 910-512-1938

✓ AGENT: Garris Neil Yarborough

ADDRESS: 115 E. Russell Street, Fayetteville, NC 28301

TELEPHONE: WORK: 910-433-4433

APPLICATION FOR A SPECIAL USE PERMIT
As required by the Zoning Ordinance or Code

- Per applicant's permission B. I changed the acreage info.*
- A. Parcel Identification Number (PIN #) of subject property: 0540-29-6886 (also known as Tax ID Number or Property Tax ID)
Acreage: ^{56.32 ACS} ~~27~~ Frontage: This property is accessed by two sixty (60) foot DOT right-of-ways (Carvers Falls Road and Old Carvers Falls Road). Depth: It is an irregularly shaped parcel of land, generally rectangular in shape approximately 1900' x 1200'. (See survey attached.)
- C. Water Provider: Private on-site well water.
- D. Septage Provider: Septic tank.
- E. Deed Book 8301, Page 852, Cumberland County Registry. (Attach copy of deed of subject property as it appears in Registry).
- F. Existing use of property: Outdoor recreation and educational purposes.
- G. It is proposed that the property will be put to the following use: (Describe proposed use/activity in detail including hours of operation, number of employees, signage, parking, landscaping, etc.).

STATEMENT OF ACKNOWLEDGEMENT

Regarding appearance before the Board of Adjustment, the undersigned owner(s), agents, or their assigns, by virtue of their signature(s) to this application, hereby acknowledge the following:

- That although appearance before the Board is not required, it is strongly encouraged;
- The Board will hear any and all arguments for and against this matter before them and such relevant facts will be given under sworn testimony;
- At the public hearing the Board has the authority to issue a final approval or denial decision on this request, or defer the request for additional information to be provided;
- If the petitioner or the representative of this application does not appear personally before the Board, whether there is opposition or not, the Board has full authority to consider the case and defer, approve, or deny the case.
- If the Board's action is to deny the matter before them, the course of appeal to their decision will be that of Cumberland County Superior Court. (Affected parties of the Board's decision have 30 days from proper notification which to serve notice of appeal).

Signed acknowledgement that the Planning and Inspections Staff has explained the application process and procedures regarding this request and the public hearing procedure stated above.

SIGNATURE OF OWNER(S) N. Eason Bryan III

PRINTED NAME OF OWNER(S) Norwood Eason Bryan III

DATE 12-14-09

Only expressly authorized agents or assigns may sign this acknowledgement in lieu of the tax record owners' signatures.

The current use of the property for outdoor recreation and education purposes will be expanded to include zip lines (canopy tours) and other eco/recreational uses. The special use permit is now required under the zoning ordinance (as proposed) in that there will be a charge or fee for such activities and there will be some ancillary commercial use of the property such as soft drinks, snacks, lip balm, activity related items (t-shirts, caps, etc.). The property is currently zoned PND which allows for residential development under R7.5 standards and some limited commercial use.

The proposed use is environmentally friendly and will enhance the owners' ability to maintain the property over time in a low intensity manner. Hours of operation will not exceed 9:00 a.m. – 10:00 p.m. daily. However, the most likely times of operation would be 9:00 a.m. to sunset. Number of employees will be 1 full-time and 3 part-time employees initially with the possibility this could be increased to 3 full-time and 4-5 part-time employees. In that this is outdoor recreation, the days (weeks or months) of operation will fluctuate with the seasons and weather. Signage will be as permitted by the Cumberland County Zoning Ordinance. All parking will be off-street in designated areas. In that this activity is based on the natural attributes of the property, landscaping, as such, will be minimal. It is the intent of the owners to do very little by way of disturbing the natural areas in existence on this property and, in effect, preserve, maintain and take advantage of the existing natural beauty of the property.

[Note: Craver's Falls, LLC is owned by Norwood Eason Bryan, III, Russ Carroll Bryan and Callan Hauser Bryan and has been in these brother's family for nearly 50 years.]

P10-03-C
SITE PROFILE

P10-03-C: CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A 235 FOOT TOWER IN A RR RURAL RESIDENTIAL DISTRICT ON 23.77+/- ACRES, LOCATED EAST OF BLACK BRIDGE ROAD (SR 1115) NORTHEAST OF LAKE UPCHURCH DRIVE (SR 1116); SUBMITTED BY HENRY C. PARKER JR. AND JOHN F. MAZUR, JR., LAND COM, LLC ON BEHALF OF SEQUOIA WIRELESS; OWNED BY HENRY C. PARKER JR.

Site Information:

Frontage & Location: No frontage. There will be a 30' wide access & utility easement

Depth: 1,320'+/-

Jurisdiction: Cumberland County

Adjacent Property: Yes, two lots on the north of subject property

Current Use: Woodlands

Initial Zoning: RR – February 3, 1977 (Area 7)

Nonconformities: None

Zoning Violation(s): None

Surrounding Zoning: North & South: RR; East: RR & R10; West: C1(P) & RR

Surrounding Land Use: 2-substations, solid waste disposal facility, residential (including manufactured homes and 2-abandoned dwellings), farmlands and woodlands

2030 Growth Vision Plan: Urban Fringe area

Special Flood Hazard Area (SFHA): None

Soil Limitations: Yes, hydric soils: Pg-Pantego loam

School Capacity/Enrolled: Rockfish Elementary: 725/810; Hope Mills Middle: 740/744; South View High: 1,800/1,842

Subdivision/Site Plan: See attached "Ordinance Related Conditions", particular attention should be paid to Conditions No. 1, 7, 16 & 23

Municipal Influence Area: Town of Hope Mills

Average Daily Traffic Count (2006): 3,600 on Black Bridge Road (SR 1115)

Highway Plan: Black Bridge Road is identified in the Highway Plan as a major thoroughfare. This proposal calls for a multi-lane facility (4 lanes) with a right-of-way of 90 feet. No road improvements are included in the 2009-2015 MTIP

Ordinance Reference: County Zoning Ordinance, Section 927, Towers

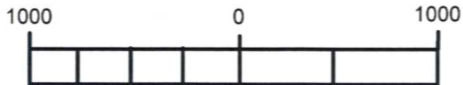
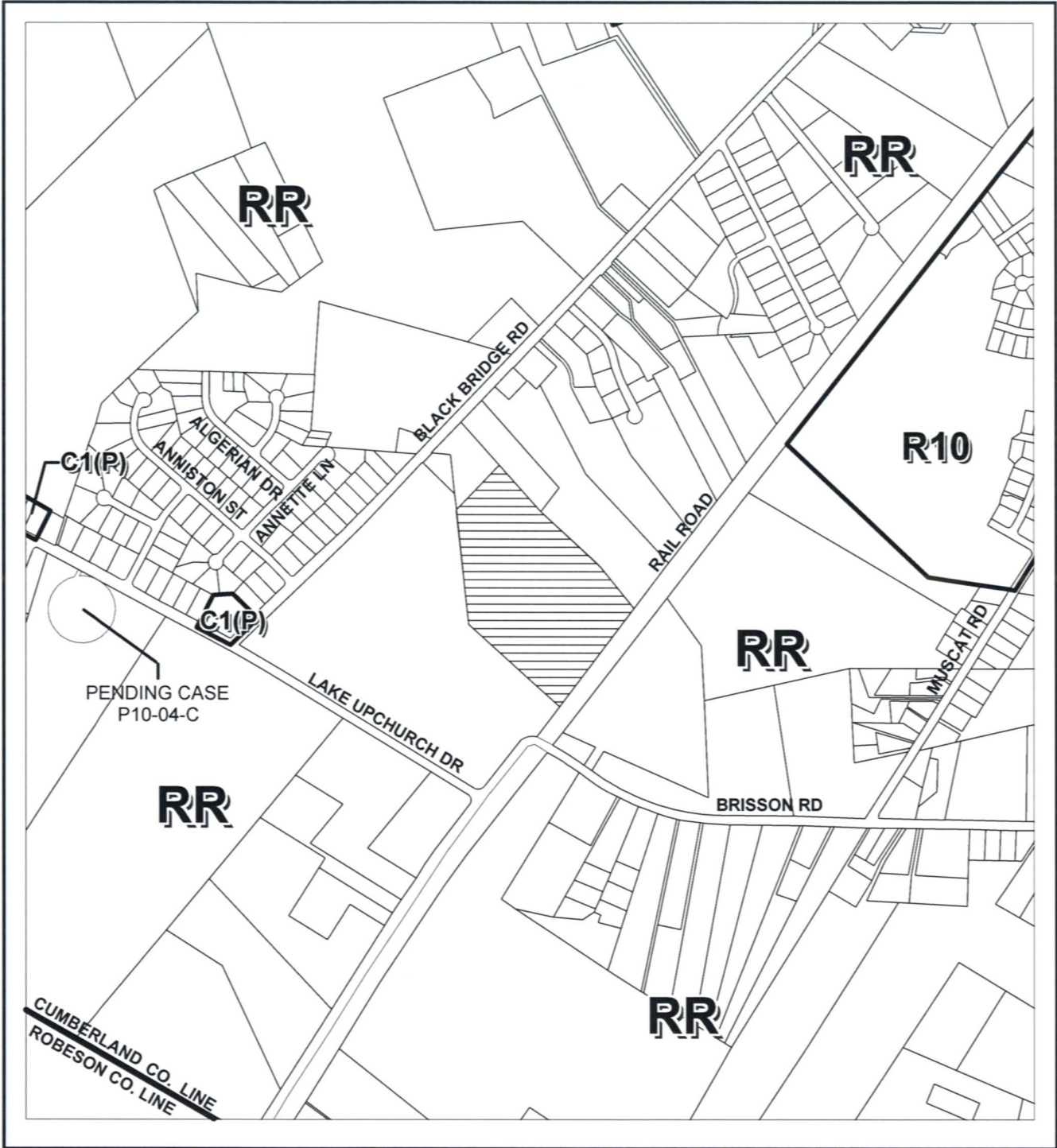
Notes:

1. Contents of the application:
 - a. Tower height: 235' stealth flagpole (monopole)
 - b. Tower will accommodate three users, and will be lighted
 - c. Proposed 30' non-exclusive access & utility easement for tower site
 - d. Not outside storage at the tower site
 - e. No employees on site, tower will be monitored and maintained monthly
 - f. Licensed appraiser's affidavit stating use will not be detrimental to property values
 - g. Licensed engineer's statement signed and sealed, stating tower will be structurally sound
 - h. Sequoia Wireless affidavit certifying tower will meet Federal, State and local laws including FCC and FAA

2. All documentation required by the ordinance is attached to the application, contained within the case file, and is available for review upon request.

First Class and Record Owners' Mailed Notice Certification

A certified copy of the tax record owner(s) of the subject and adjacent properties and their tax record mailing address is contained within the case file and is incorporated by reference as if delivered herewith. The record owners' certified receipt of notice is also included.



SCALE IN FEET

BOARD OF ADJUSTMENT SPECIAL USE PERMIT

ACREAGE: 23.77 AC.+/-

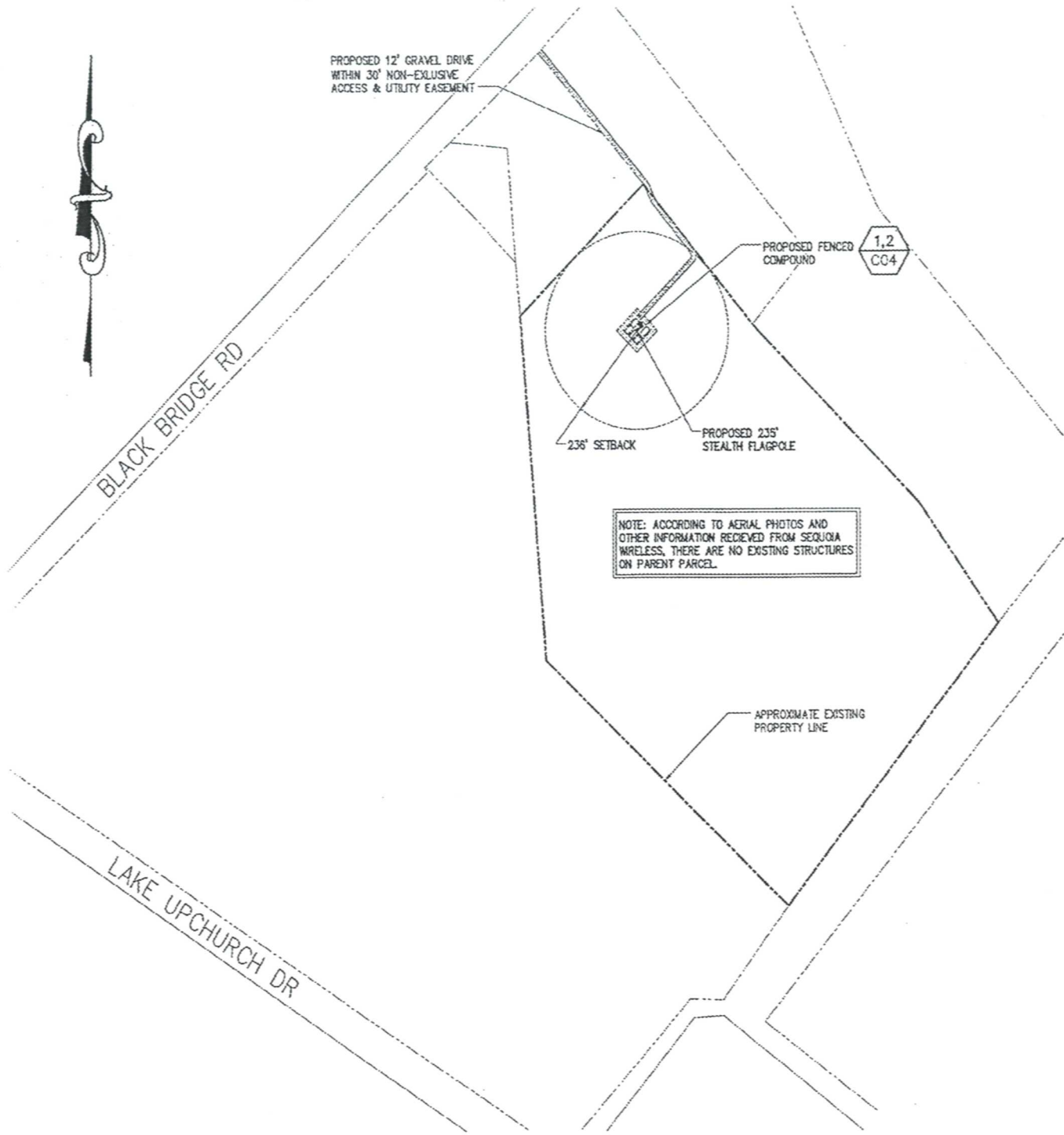
HEARING NO: P10-03-C

ORDINANCE: COUNTY

HEARING DATE

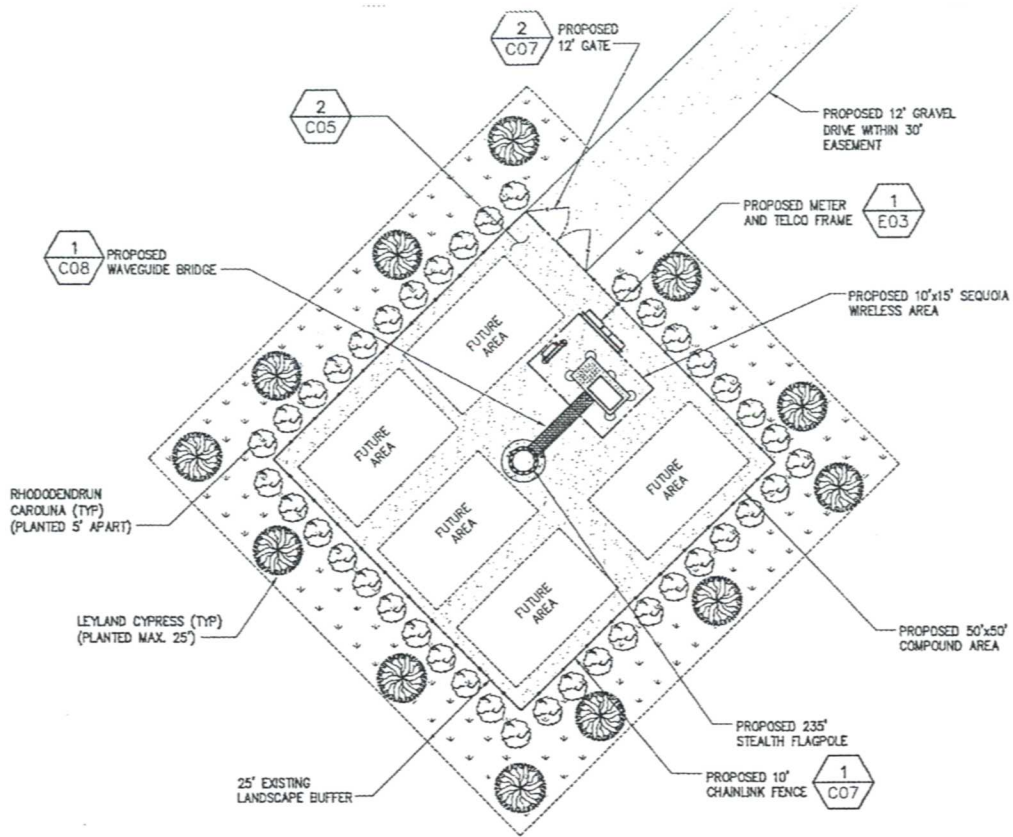
ACTION

GOVERNING BOARD



**BOARD OF ADJUSTMENT
SPECIAL USE PERMIT
REQUEST: TO ALLOW A 235 FOOT TOWER IN A RR DISTRICT
CASE: P10-03-C ACREAGE: 23.77+/-
ZONED: RR SCALE: NTS**

*SCALE DETAILED SITE PLAN IN FILE AVAILABLE FOR REVIEW UPON REQUEST



P10-03-C

*SCALED DETAILED SITE PLAN IN FILE AVAILABLE FOR REVIEW UPON REQUEST



Special Use Permit – Board of Adjustment

DRAFT

Ordinance Related Conditions

Pre-Permit /Revision Required:

1. A 25 foot wide evergreen buffer area surrounding the tower compound is required – the buffer shown on the site plan does not adequately meet this condition; therefore, three copies of a revision to Sheet C04 of the site plan must be submitted for staff review and approval prior to application for any permits. This buffer must shield the compound area from the entire remaining tract. No structures, including guyed wires or anchors, may be constructed within the buffer. The buffer area shall be planted in accordance with Section 927.F, County Zoning Ordinance.

Permit-Related:

2. The owner/developer(s) of these lots must obtain detailed instructions on provisions of the County Zoning Ordinance and permits required to place any structure within this development from the County Code Enforcement Section, Room 101 in the Historic Courthouse at 130 Gillespie Street. For additional information, the developer should contact a Code Enforcement Officer.
3. If applicable, the County Health Department must approve water and sewer plans prior to application for any permits. Site and soil evaluations must be conducted on the property by the County Environmental Health Department prior to application for permits. A copy of the Health Department approval must be provided to Code Enforcement at the time of application for any building/zoning permits. (Note: All Health Department requirements must be met prior to issuance of final permits.) (Section 2306 A, Water and Sewer, County Subdivision Ordinance)
4. New development where the developer will disturb or intends to disturb more than one acre of land is subject to the Post-Construction Stormwater Management Permitting Program (Phase II Stormwater Management Requirements) administered by the Division of Water Quality, North Carolina Department of Environment and Natural Resources. If one acre or more of land is to be disturbed, prior to the issuance of any building/zoning permits for this site, a copy of the State's *Post-Construction Permit* must be provided to County Code Enforcement.
5. For any new development where the developer disturbs or intends to disturb more than one acre of land, the developer must provide the Code Enforcement Section with an approved NC Department of Environment and Natural Resources (NCDENR) sedimentation and erosion control plan (S&E) prior to any application for permits. (Note: If any retention/detention basins are required for state approval of this plan, then three copies of a revised plan must be submitted and approved by Planning & Inspections prior to application for any building/zoning permits.) A copy of the NCDENR approval must be provided to Code Enforcement at the time of application for any building/zoning permits.
6. The developer must provide a site-specific address and tax parcel number at the time of building/zoning permit application.
7. At the time of permit application, the developer must provide recorded documentation which indicates that this site has a minimum of 20 feet of ingress/egress access to the public road. (Note: The easement shown on Plat Book 59, Page 110 is labeled only as a "drainage easement" and does not satisfy this condition.)
8. Prior to issuance of a building permit for the tower, the applicant/owner or developer must submit to Code Enforcement, drawings sealed by a licensed engineer and a certification letter from the licensed engineer who prepared the plans that the tower will meet all applicable Federal, State and local building codes and structural standards.
9. The building final inspection cannot be accomplished until a Code Enforcement Officer inspects the site and certifies that the site is developed in accordance with the approved plans.

Site-Related:

10. All uses, dimensions, setbacks and other related provisions of the County Subdivision and Zoning Ordinances for the RR zoning district must be complied with, as applicable.
11. This conditional approval is not approval of any freestanding signs. If a freestanding sign is desired, re-submittal of the site plan for staff review and approval is required prior to application for any freestanding sign permits. Attached signage for this development must be in accordance with the applicable sign regulations as set forth in Article XIII of the County Zoning Ordinance and that the proper permit(s) must be obtained prior to the installation of any permanent signs on the property. (Note: This conditional approval is **not** approval of the size, shape, or location of any signs.)
12. "Black Bridge Road" must be labeled as "SR 1115 (Black Bridge Road)" on all future plans.
13. "Lake Upchurch Drive" must be labeled as "SR 1116 (Lake Upchurch Drive)" on all future plans.
14. For any new development, an adequate drainage system must be installed by the developer in accordance with the NC Department of Environment and Natural Resources' (NCDENR) *Manual on Best Management Practices* and all drainage ways must be kept clean and free of debris. (Section 2306 D, County Subdivision Ordinance)
15. For new development, all utilities, except for 25kv or greater electrical lines, must be located underground. (Section 2306 C, County Subdivision Ordinance)
16. The developer must obtain a driveway permit from the NC Department of Transportation (NCDOT). A copy of the approved driveway permit must be provided to Code Enforcement at the time of application for building/zoning permits.
17. All lighting is required to be directed internally within this development and comply with the provisions of Section 1102 M, Outdoor Lighting, County Zoning Ordinance and if the tower is to contain lighting, the lighting shall meet or exceed the Federal Aviation Administration (FAA) standards.
18. The owner/developer is responsible and liable for maintenance and upkeep of this site, all structures, and appurtenances, to include ensuring that the site is kept free of litter and debris, all grass areas mowed, all buffers and shrubbery kept trim and maintained, so that the site remains in a constant state of being aesthetically and environmentally pleasing.
19. All notes and calculations as shown on the site plan, contained within the application and attached to the application are to be considered as a part of this conditional approval.
20. In the event the tower is not used for a period of six months, the tower shall be considered abandoned and must be removed. The owner of the tower is required to remove any abandoned, unused or structurally unsound tower within 90 days of receiving notice requiring removal. The Code Enforcement Coordinator may establish a shorter period of time for removal in the event the tower is determined to be structurally unsound.

Advisories:

21. The applicant is advised to consult an expert on wetlands before proceeding with any development.
22. The owner/developer is responsible for ensuring easements which may exist on the subject property are accounted for, not encumbered and that no part of this development is violating the rights of the easement holder.
23. An internal street system most likely will be required by the NC Department of Transportation (NCDOT) to serve any future divisions of the parent tract.

Other Relevant Conditions:

24. This conditional approval is contingent upon continued compliance with the County's Subdivision and Zoning Ordinances.

- 25. If the proposed lease area for the proposed tower is to be recorded as lease lot and split out for tax or other purposes, prior to application for any permits, the developer must submit to the Planning and Inspections Department a subdivision review to subdivide the lease lot.
- 26. The minimum acceptable road frontage for subdivision purposes in this area is 20 feet in width; if the lot is to be split out for tax or other purposes, in order to get a permit and/or subdivision approval, any lot created must have a minimum of 20 feet of frontage on a public street or approved private street.

If you need clarification of any conditions, please contact Ed Byrne at 910-678-7609 or Patti Speicher at 910-678-7605; otherwise, contact the appropriate agency at the contact numbers below.

Contact Information (Area Code is 910 unless otherwise stated):

Subdivision/Site Plan/Plat	Ed Byrne	678-7609
Code Enforcement (Permits):	Ken Sykes	321-6654
County Health Department:	Daniel Ortiz	433-3680
Ground Water Issues:	Matt Rooney	678-7625
Town of Hope Mills:		424-4555*
Asst. Town Manager/Town Clerk:	Connie Spell	
Chief Building Inspector:	Mike Bailey	
Stormwater Administrator:	Melanie Clerkley	
Zoning Inspector:	Jeff Wade	
County Public Utilities:	Tom Cooney	678-7682
Corp of Engineers (wetlands):	Crystal C. Amschler	251-4170
NCDENR (E&S):	Sally McKinney	433-3300
E911 Site-Specific Address:	Ron Gonzales	678-7616
Tax Parcel Numbers:		678-7549
NCDOT (driveways/curb-cuts):	Gary Burton	486-1496
NCDOT (subdivision roads):	David Plummer	486-1496
Transportation Planning:	Bobby McCormick	678 7632
N.C. Division of Water Quality:	Mike Randall	(919) 733-5083 ext. 545

*This is the main telephone number for the Town of Hope Mills; once connected, the caller will be directed to the various departments.

cc: Mike Bailey, Town of Hope Mills (Hope Mills Municipal Influence Area)

BOARD OF ADJUSTMENT

LOCATION OF PROPERTY: EAST OF BLACKS BRIDGE RD NORTH OF BRISSON RD ^{HEP}

OWNER: Henry C. Parker

ADDRESS: 4841 BLACKS BRIDGE RD PARKTON, NE ^{HEP} ZIP CODE: 28371

TELEPHONE: HOME 910-286-6923 WORK _____

AGENT: John Mazur, Land Com, LLC

ADDRESS: 295 Seven Farms, Ste C-118 Daniel Island, SC

TELEPHONE: HOME 843-324-9737 WORK 843-324-9737

APPLICATION FOR A SPECIFIED/SPECIAL/CONDITIONAL USE PERMIT
As required by the Zoning Ordinance or Code

- A. Parcel Identification Number (PIN #) of subject property: 0403-43-6103
(also known as Tax ID Number or Property Tax ID)
- B. Acreage: 23.77 Frontage: Appr: 400' Depth: 1700'
- C. Water Provider: N/A
- D. Septage Provider: N/A
- E. Deed Book 3164, Page(s) 782, Cumberland County Registry. (Attach copy of deed of subject property as it appears in Registry).
- F. Existing use of property: Rural - Undeveloped
- G. It is proposed that the property will be put to the following use: (Describe proposed use/activity in detail including hours of operation, number of employees, signage, parking, landscaping, etc.)

Construction of 235' Steath Flagpole
Wireless Facility.

STATEMENT OF ACKNOWLEDGEMENT

Regarding appearance before the Board of Adjustment, the undersigned owner(s), agents, or their assigns, by virtue of their signature(s) to this application, hereby acknowledge the following:

- That although appearance before the Board is not required, it is strongly encouraged;
- The Board will hear any and all arguments for and against this matter before them and such relevant facts will be given under sworn testimony;
- At the public hearing the Board has the authority to approve, deny, or defer the request for additional information to be provided;
- If the petitioner or their representative for this application does not appear personally before the Board, whether there is opposition or not, the Board has full authority to consider the case.
- If the Board’s decision is to deny the matter before them, **the aggrieved party shall file a “Notice to Intent to Appeal” with the Planning & Inspections Staff on the next business day following the meeting in which the Board’s decision was made final, or the next business day following receipt of the written copy thereof.**
- Any petition for review by Superior Court shall be file with the Clerk of Superior Court within 30 days after the decision of the Board is made final.

Signed acknowledgement that the Planning and Inspections Staff has explained the application process and procedures regarding this request and the public hearing procedure stated above.

SIGNATURE OF OWNER(S) Henry Clifford Parker Jr

PRINTED NAME OF OWNER(S) HENRY CLIFFORD PARKER JR.

DATE 12/09/09

Only expressly authorized agents or assigns may sign this acknowledgement in lieu of the tax record owners’ signatures.

P10-04-C
SITE PROFILE

P10-04-C: CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A 220 FOOT TOWER IN A RR RURAL RESIDENTIAL DISTRICT ON A 3.52+/- ACRE PORTION OF A 97.77+/- ACRE TRACT; LOCATED AT 1511 LAKE UPCHURCH DRIVE; SUBMITTED BY H.D. BOWEN, JR. AND THOMAS H. JOHNSON, JR., NEXSEN PRUET, PLLC ON BEHALF OF AMERICAN TOWERS, INC.; OWNED BY H.D. BOWEN, JR.

Site Information:

Frontage & Location: 880'+/- on Lake Upchurch Drive (parent tract); 95'+/- subject property

Depth: 2,700'+/- (parent tract); 440'+/- subject property

Jurisdiction: Cumberland County

Adjacent Property: Yes, located on the west side of Robeson County line

Current Use: Vacant land

Initial Zoning: RR – February 3, 1977 (Area 7)

Nonconformities: None

Zoning Violation(s): None

Surrounding Zoning: North & East: RR & C1(P); South: RR; West: RR & RR/CU (convenience store)

Surrounding Land Use: Residential (including 1-abandoned dwelling), farmlands and woodlands

2030 Growth Vision Plan: Urban Fringe Area

Special Flood Hazard Area (SFHA): None

Soil Limitations: Yes, hydric soils: Wo-Woodington loamy and Ra-Rains sandy loam

School Capacity/Enrolled: Rockfish Elementary: 725/810; Hope Mills Middle: 740/744; South View High: 1,800/1,842

Water/Sewer Availability: Well/Septic

Subdivision/Site Plan: See attached "Ordinance Related Conditions", particular attention should be paid to Conditions No 1, 2, 3 15 & 25

Average Daily Traffic Count (2006): 3,000 on Lake Upchurch Drive (SR 1116)

Municipal Influence Area: Town of Hope Mills

Highway Plan: Fayetteville Outer Loop is identified in the Highway Plan as a major thoroughfare. This proposal calls for a multi-lane facility (U-2519) with a right-of-way of 250 feet. Road improvements are included in the 2009-2015 MTIP. This property will be directly impacted by the Fayetteville Outer Loop (located inside the 1000 foot corridor). A variance will be required from NCDOT prior to development of this property

Cumberland County Zoning Ordinance Reference: Section 927 Towers

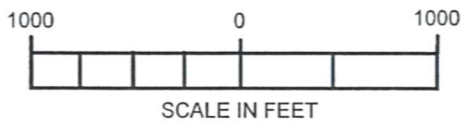
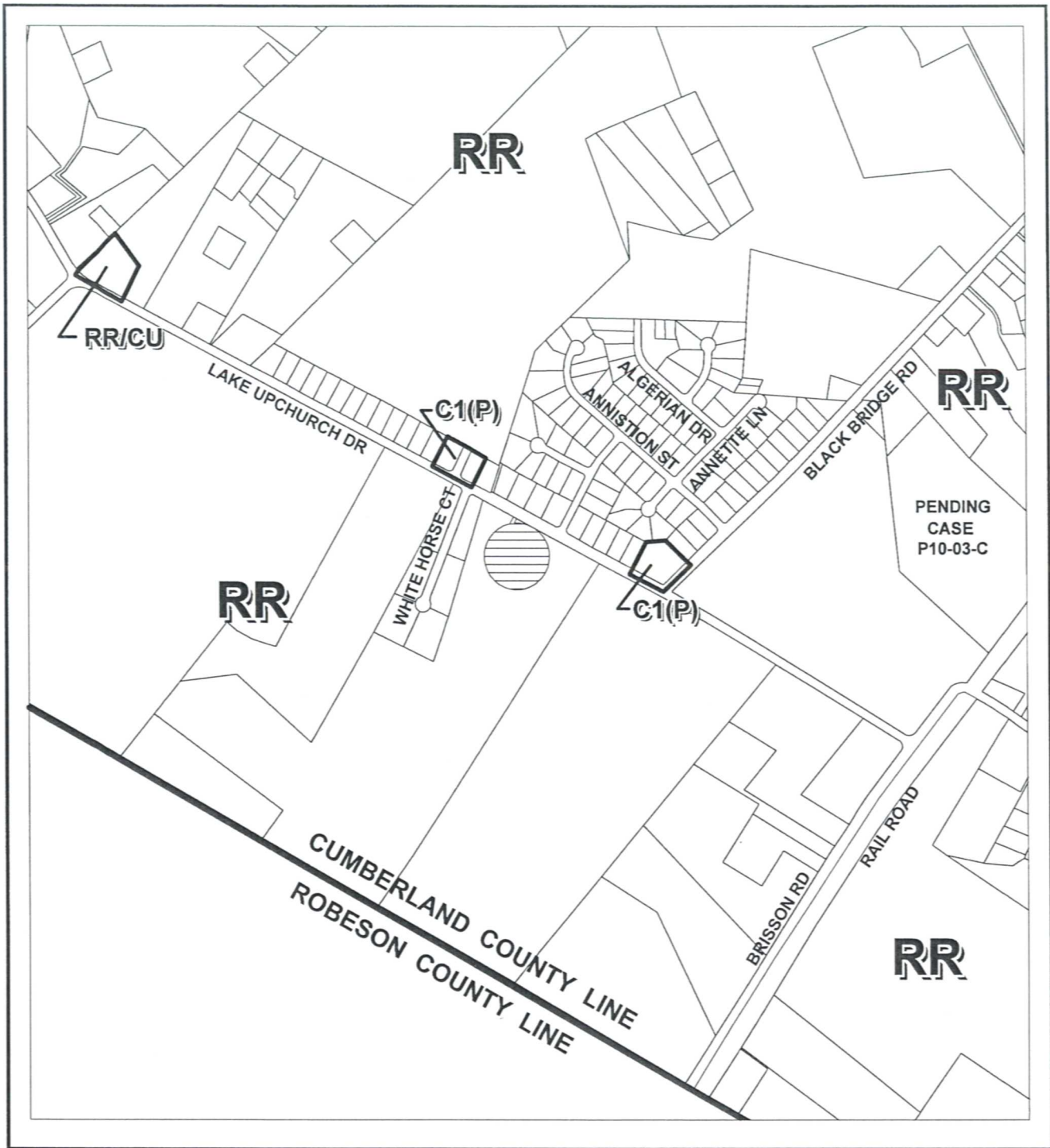
Notes:

1. Contents of the application:
 - a. Proposed tower height/type: 220' Monopole
 - b. 3.52 acre lease area
 - c. 25' access for tower site
 - d. No outside storage at the tower site
 - e. No employees on site, tower will be monitored and maintained monthly
 - f. Licensed appraiser's affidavit stating use will not be detrimental to property values
 - g. Licensed engineer's statement signed and sealed, stating tower will be structurally sound
 - h. American Tower affidavit certifying tower will meet Federal, State and local laws including FCC and FAA

2. All documentation required by the ordinance is attached to the application, contained within the case file, and is available for review upon request.

First Class and Record Owners' Mailed Notice Certification

A certified copy of the tax record owner(s) of the subject and adjacent properties and their tax record mailing address is contained within the case file and is incorporated by reference as if delivered herewith. The record owners' certified receipt of notice is also included.



BOARD OF ADJUSTMENT SPECIAL USE PERMIT

ACREAGE: 3.52 AC.+/-

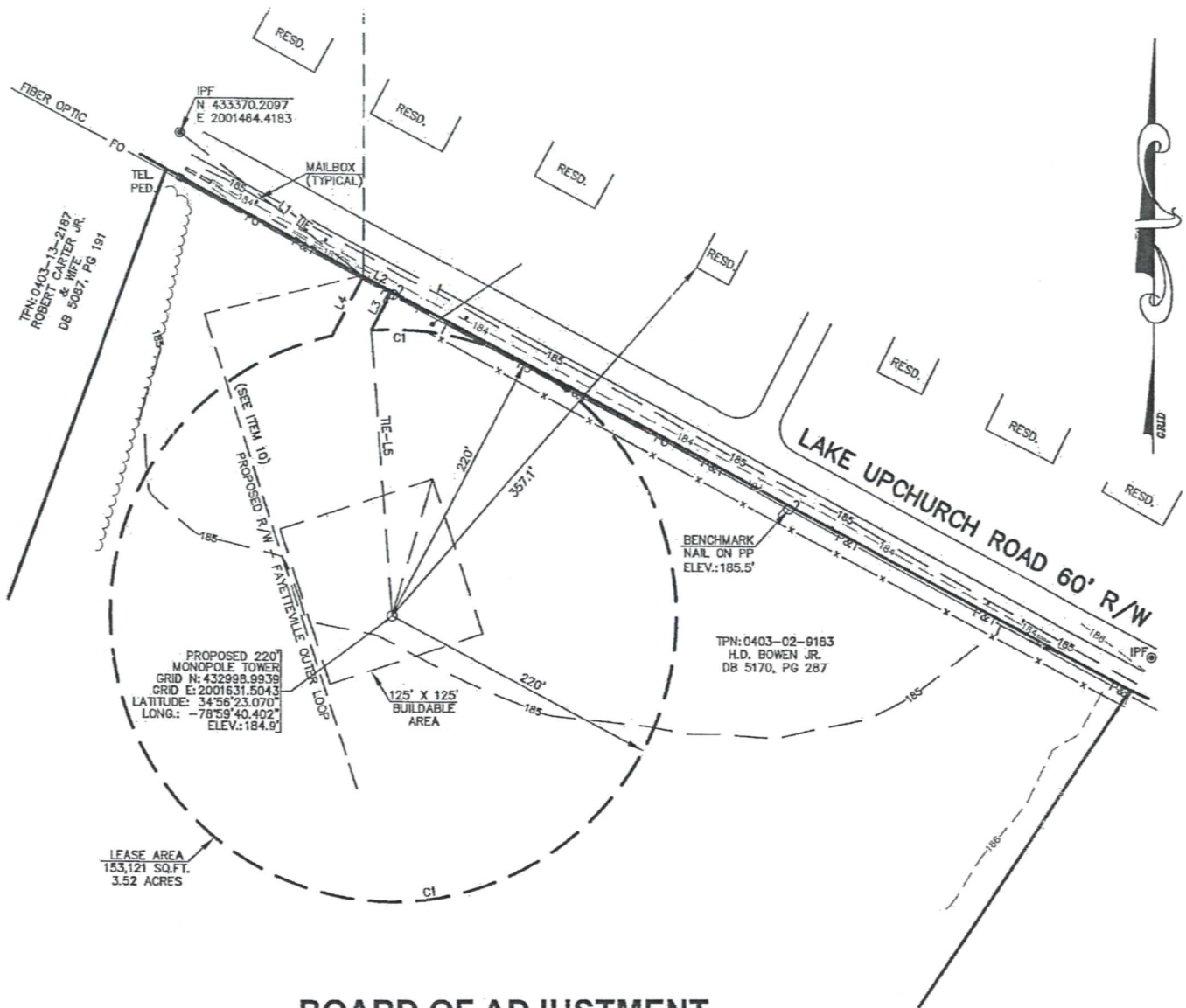
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ORDINANCE: COUNTY

HEARING DATE

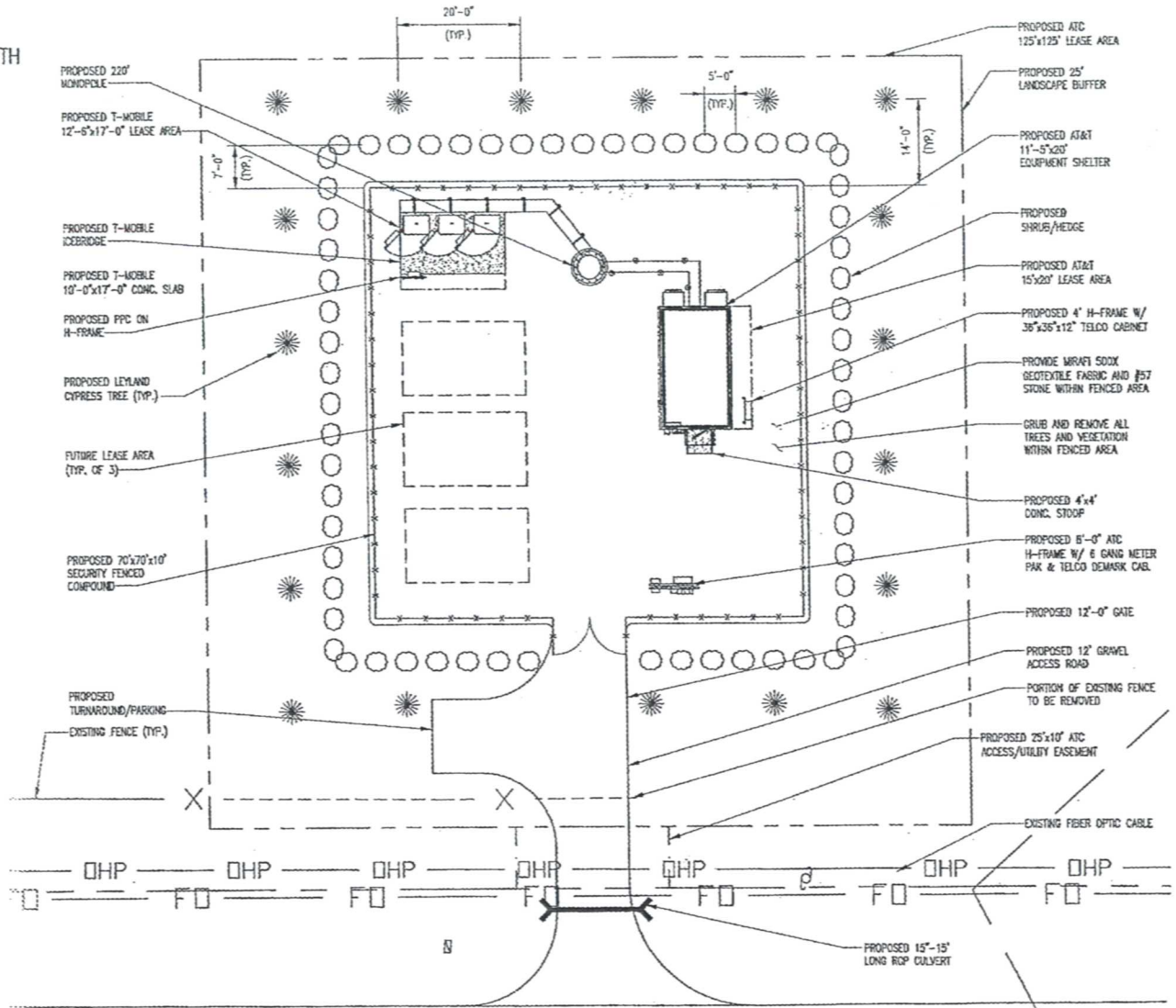
ACTION

GOVERNING BOARD



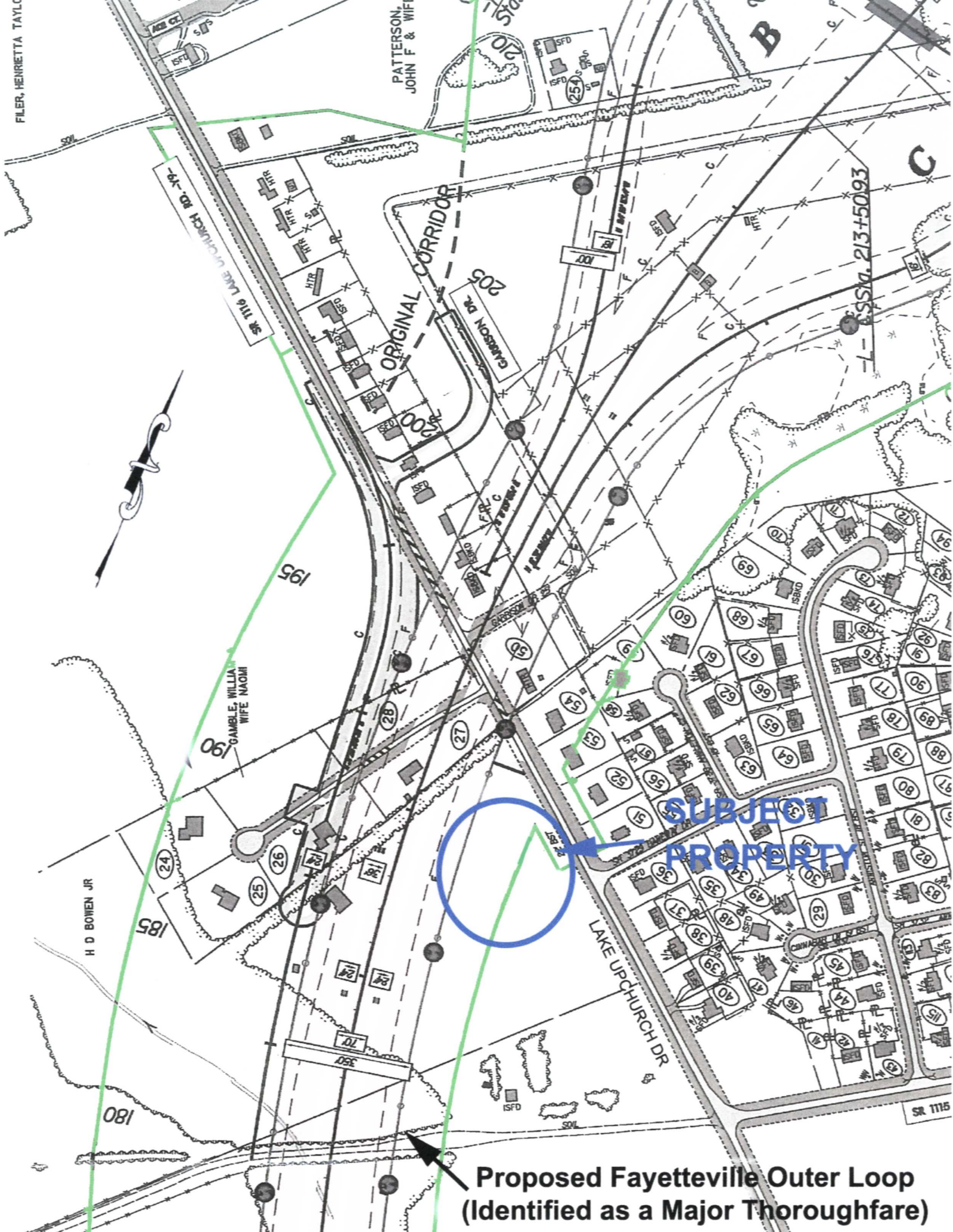
BOARD OF ADJUSTMENT
SPECIAL USE PERMIT
REQUEST: TO ALLOW A 220 FOOT TOWER IN A
RR DISTRICT
CASE: P10-04-C ACREAGE: 3.52+/-
ZONED: RR SCALE: NTS

*SCALED DETAILED SITE PLAN IN FILE AVAILABLE FOR REVIEW UPON REQUEST



P10-04-C

*SCALED DETAILED SITE PLAN IN FILE AVAILABLE FOR REVIEW UPON REQUEST



**Proposed Fayetteville Outer Loop
(Identified as a Major Thoroughfare)**

**SUBJECT
PROPERTY**

**ORIGINAL
CORRIDOR**

SR 116 LAKE UPCHURCH RD - 1/4

SR 213+5093

H D BOWEN JR

GAMBLE, WILLIAM,
WIFE NAOMI

PATTERSON,
JOHN F & WIFE

LAKE UPCHURCH DR

SR 1115

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Board of Adjustment – Special Use Permit

DRAFT

Ordinance Related Conditions

Pre-Permit:

1. Because the subject property will be directly impacted by the Fayetteville Outer Loop (located inside the 1000 foot corridor). The developer must contact the Transportation Planning Section of the Planning and Inspection Department prior application for any permits for this site – refer to project number “U-2519”. (Note: The project calls for a multi-lane facility with a right-of-way of 250 feet.)

The developer must provide the Code Enforcement Section with written verification that a NC Department of Transportation (NCDOT) variance is not required or that a variance has been approved for this specific location by the NCDOT prior to the Code Enforcement Section issuing permits for this site.

2. If the proposed lease area for the proposed cell tower is to be recorded as lease lot and split out for tax or other purposes, prior to application for any permits, the developer must submit to the Planning and Inspections Department a subdivision review to subdivide the lease lot.
3. The minimum acceptable road frontage for subdivision purposes in this area is 20’ in width; if the lot is to be split out for tax or other purposes, in order to get a permit, the area shown as an “ingress/egress easement” must be made a part of the lot and must be a minimum of 20’ in width.

Permit-Related:

4. The owner/developer(s) of these lots must obtain detailed instructions on provisions of the County Zoning Ordinance and permits required to place any structure within this development from the County Code Enforcement Section, Room 101 in the Historic Courthouse at 130 Gillespie Street. For additional information, the developer should contact a Code Enforcement Officer.
5. If applicable, the County Health Department must approve water and sewer plans prior to application for any permits. Site and soil evaluations must be conducted on the property by the County Environmental Health Department prior to application for permits. A copy of the Health Department approval must be provided to Code Enforcement at the time of application for any building/zoning permits. (Note: All Health Department requirements must be met prior to issuance of final permits.) (Section 2306 A, Water and Sewer, County Subdivision Ordinance)
6. New development where the developer will disturb or intends to disturb more than one acre of land is subject to the Post-Construction Stormwater Management Permitting Program (Phase II Stormwater Management Requirements) administered by the Division of Water Quality, North Carolina Department of Environment and Natural Resources. If one acre or more of land is to be disturbed, prior to the issuance of any building/zoning permits for this site, a copy of the State’s *Post-Construction Permit* must be provided to County Code Enforcement.
7. For any new development where the developer disturbs or intends to disturb more than one acre of land, the developer must provide the Code Enforcement Section with an approved NC Department of Environment and Natural Resources (NCDENR) sedimentation and erosion control plan (S&E) prior to any application for permits. (Note: If any retention/detention basins are required for state approval of this plan, then three copies of a revised plan must be submitted and approved by Planning & Inspections prior to application for any building/zoning permits.) A copy of the NCDENR approval must be provided to Code Enforcement at the time of application for any building/zoning permits.
8. The developer must provide a site-specific address and tax parcel number at the time of building/zoning permit application.

9. The building final inspection cannot be accomplished until a Code Enforcement Officer inspects the site and certifies that the site is developed in accordance with the approved plans.

Site-Related:

10. All uses, dimensions, setbacks and other related provisions of the County Subdivision and Zoning Ordinances for the RR zoning district must be complied with, as applicable.
11. This conditional approval is not approval of any freestanding signs. If a freestanding sign is desired, re-submittal of the site plan is required prior to application for any freestanding sign permits. Attached signage for this development must be in accordance with the applicable sign regulations as set forth in Article XIII of the County Zoning Ordinance and that the proper permit(s) must be obtained prior to the installation of any permanent signs on the property. (Note: This conditional approval is **not** approval of the size, shape, or location of any signs.)
12. "Lake Upchurch Road" must be labeled as "SR 1116 (Lake Upchurch Drive)" on all future plans.
13. For any new development, an adequate drainage system must be installed by the developer in accordance with the NC Department of Environment and Natural Resources' (NCDENR) *Manual on Best Management Practices* and all drainage ways must be kept clean and free of debris. (Section 2306 D, County Subdivision Ordinance)
14. For new development, all utilities, except for 25kv or greater electrical lines, must be located underground. (Section 2306 C, County Subdivision Ordinance)
15. This review does not constitute a "subdivision" approval by NC Department of Transportation (NCDOT). A separate submittal to NCDOT will be required prior to consideration for addition to the system of any street within this development.
16. The developer must obtain a driveway permit from the NC Department of Transportation (NCDOT). A copy of the approved driveway permit must be provided to Code Enforcement at the time of application for building/zoning permits.
17. All lighting is required to be directed internally within this development and comply with the provisions of Section 1102 M, Outdoor Lighting, County Zoning Ordinance.
18. If lighting for the tower is required by the FAA, it shall meet or exceed the FAA standards.
19. A chain link fence a least ten feet in height and located at least ten feet from the base of the tower shall enclose the tower base.
20. An evergreen buffer area at least 25 feet wide is required to surround the tower compound and must shield the compound area from the entire tract. No structures, including guyed wires or anchors, may be constructed within the buffer. The buffer area shall be planted in accordance with Section 927.F, County Zoning Ordinance.
21. The owner/developer is responsible and liable for maintenance and upkeep of this site, all structures, and appurtenances, to include ensuring that the site is kept free of litter and debris, all grass areas mowed, all buffers and shrubbery kept trim and maintained, so that the site remains in a constant state of being aesthetically and environmentally pleasing.
22. All notes and calculations as shown on the application (including attachments to the application) and the site plan are to be considered as a part of this conditional approval.

Advisories:

23. The applicant is advised to consult an expert on wetlands before proceeding with any development.
24. The owner/developer is responsible for ensuring easements which may exist on the subject property are accounted for, not encumbered and that no part of this development is violating the rights of the easement holder.

Other Relevant Conditions:

25. The owner/developer be aware that every deed created for a lot being served by an on-site water and/or sewer system must contain the following disclosure when filed with the County Register of Deeds:

“Public water and/or sewer services are not available as of the date of the recording of this deed. On-site sewer disposal systems must be approved by the County Health Department.”

If you need clarification of any conditions, please contact Ed Byrne at 910-678-7609 or Patti Speicher at 910-678-7605; otherwise, contact the appropriate agency at the contact numbers below.

Contact Information (Area Code is 910 unless otherwise stated):

Subdivision/Site Plan/Plat	Ed Byrne	678-7609
Code Enforcement (Permits):	Ken Sykes	321-6654
County Health Department:	Danny Soles	433-3685
Town of Hope Mills:		424-4555*
Corp of Engineers (wetlands):	Ronnie Smith	(910) 251-4829
NCDENR (E&S):	Sally McKinney	433-3300
E911 Site-Specific Address:	Ron Gonzales	678-7616
Tax Parcel Numbers:		678-7549
NCDOT (driveways/curb-cuts):	Gary Burton	486-1496
Transportation Planning:	Bobby McCormick	678 7632
N.C. Division of Water Quality:	Mike Randall	(919) 733-5083 ext. 545

*This is the main telephone number for the Town of Hope Mills; once connected, the caller will be directed to the various departments.

cc: Mike Bailey, Town of Hope Mills (Hope Mills Municipal Influence Area)

BOARD OF ADJUSTMENT

LOCATION OF PROPERTY: 1511 Lake Upchurch Road, Parkton, NC 28371

OWNER: H. D. Bowen, Jr.

ADDRESS: PO Box 1007, Hope Mills, NC ZIP CODE: 28348

TELEPHONE: HOME 910-423-7374 WORK _____

AGENT: Nexsen Pruet, PLLC/Thomas H. Johnson, Jr.

ADDRESS: 201 Shannon Oaks Circle, Suite 100, Cary, NC 27511

TELEPHONE: HOME 910-616-3100 WORK 919-653-7800

**APPLICATION FOR A SPECIFIED/SPECIAL/CONDITIONAL USE PERMIT
As required by the Zoning Ordinance or Code**

A. Parcel Identification Number (PIN #) of subject property: 0403-02-9183
(also known as Tax ID Number or Property Tax ID)

B. Acreage: 3.52+/- acres Frontage: 82+/- feet Depth: 440+/- feet

C. Water Provider: N/A

D. Septage Provider: N/A

E. Deed Book 5170, Page(s) 287, Cumberland County Registry. (Attach copy of deed of subject property as it appears in Registry).

F. Existing use of property: Vacant Rural Residential

G. It is proposed that the property will be put to the following use: (Describe proposed use/activity in detail including hours of operation, number of employees, signage, parking, landscaping, etc.) _____

Wireless Telecommunications Tower as shown on the Construction

Drawings previously submitted by the Applicant and prepared by BC. All materials and documents previously submitted by Applicant in connection with this Tower apply to this Application and are incorporated herein by reference.

Appointment of Agent

The undersigned H.D. Bowen, Jr. ("Owner") does hereby appoint Nexsen Pruet, PLLC as his exclusive agent for the purpose of petitioning Cumberland County for a special use permit and variance applicable to the property located at 1511 Lake Upchurch Road, Hope Mills, NC 28348 for the location of a wireless telecommunications tower as described in the attached applications for special use permit and variance, including the following:

1. To submit the proper applications and the required supplemental materials.
2. To appear at public meetings to give representation and commitments on behalf of the Owner.
3. To act on the Owner's behalf without limitation with regard to any and all things directly or indirectly connected with or arising out of the applications for special use permit and variance.


This agency agreement shall continue in effect until written notice of revocation by the Owner is delivered to Cumberland County.

This the 26th day of September, 2009

Agent's Name, Address & Telephone

Signature of Owner(s)

Nexsen Pruet, PLLC


H.D. Bowen, Jr.

201 Shannon Oaks Circle, Suite 100

Cary, NC 27511

919-653-7800

STATEMENT OF ACKNOWLEDGEMENT

Regarding appearance before the Board of Adjustment, the undersigned owner(s), agents, or their assigns, by virtue of their signature(s) to this application, hereby acknowledge the following:

- That although appearance before the Board is not required, it is strongly encouraged;
- The Board will hear any and all arguments for and against this matter before them and such relevant facts will be given under sworn testimony;
- At the public hearing the Board has the authority to issue a final approval or denial decision on this request, or defer the request for additional information to be provided;
- If the petitioner or the representative of this application does not appear personally before the Board, whether there is opposition or not, the Board has full authority to consider the case and defer, approve, or deny the case.
- If the Board's action is to deny the matter before them, the course of appeal to their decision will be that of Cumberland County Superior Court. (Affected parties of the Board's decision have 30 days from proper notification which to serve notice of appeal).

Signed acknowledgement that the Planning and Inspections Staff has explained the application process and procedures regarding this request and the public hearing procedure stated above.

SIGNATURE OF OWNER(S) 

PRINTED NAME OF OWNER(S) Nexsen Pruet, PLLC by Thomas H. Johnson, Jr.

DATE 12/10/09

Only expressly authorized agents or assigns may sign this acknowledgement in lieu of the tax record owners' signatures.

**Lori Epler,
Chair
Cumberland County**

**Roy Turner,
Vice-Chair
Cumberland County**

Garland C. Hostetter,
Town of Spring Lake
Harvey Cain, Jr.,
Town of Stedman
Patricia Hall,
Town of Hope Mills
Charles C. Morris,
Town of Linden



**CUMBERLAND
COUNTY**



COUNTY of CUMBERLAND

Planning and Inspections Department

NOTICE OF COMPLIANCE

**Thomas J. Lloyd,
Director**

**Cecil P. Combs,
Deputy Director**

Walter Clark,
Sara E. Piland,
Cumberland County

Benny Pearce,
Town of Eastover

Donovan McLaurin
Wade, Falcon, &
Godwin

December 21, 2009

Inverness on Andrews Homeowners Association – Inverness Subdivision.
3771 Ramsey Street suite 109, mailbox 286
Fayetteville, NC 28311-7675

SUBJECT: Case No. WS00-02 & WS02-02, Notice of Violation Letter, Dated March 17, 2009.

This letter is to serve as official notice that the above referenced violation notice has been voided. The responsible parties for this project has corrected the deficiencies noted in the letter and any site deficiencies along with all required documentation is as of the date of this letter in full compliance with the conditions of approval and the provisions of the Cumberland County Water Supply Watershed Management and Protection Ordinance.

I would like to express on the behalf of the Cumberland County Planning & Inspection Department that your cooperation in resolving this matter is greatly appreciated.

If you have any questions, please contact me at jbarnhill@co.cumberland.nc.us or 910-678-7765.

Sincerely,

Jeff Barnhill
Watershed Review Officer

cc: **Vera Claude, Inverness HOA Past President, 3501 Arrondale Ct. Fayetteville NC 28311**
Larry G. Gilman, Cape Fear Engineering, via email: larry.gilman@capefearengineering.com
John Hornaday, Hornaday Construction, via email: hornadaycc@aol.com
Jimmy Kizer, jr, Moorman, Kizer & Reitzel, Inc., via email: jkizerjr@mkrinc.com
Ken Smith, Odell Smith & Sons, 402 Odell Rd, Spring Lake NC 28390
James Martin, County Manager, via email: jmartin@co.cumberland.nc.us
Juanita Pilgrim, Deputy County Manager, via email: jpilgrim@co.cumberland.nc.us
Harvey Rainer, Deputy County Attorney, via email: hrainer@co.cumberland.nc.us
Bob Stanger, County Engineer, via email: rstanger@co.cumberland.nc.us
Tom Loyd, Director, via email: tloyd@co.cumberland.nc.us
Cecil Combs, CCP&I Deputy Director, via email: [ccombs](mailto:ccombs@co.cumberland.nc.us)

Lori Epler,
Chair
Cumberland County

Roy Turner,
Vice-Chair
Cumberland County

Garland C. Hostetter,
Town of Spring Lake
Harvey Cain, Jr.,
Town of Stedman
Patricia Hall,
Town of Hope Mills
Charles C. Morris,
Town of Linden



CUMBERLAND
COUNTY



COUNTY of CUMBERLAND

Planning and Inspections Department

NOTICE OF COMPLIANCE

Thomas J. Lloyd,
Director

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Deputy Director

Walter Clark,
Sara E. Piland,
Cumberland County

Benny Pearce,
Town of Eastover

Donovan McLaurin
Wade, Falcon, & Godwin

December 11, 2009

Progress Energy - Cape Fear Operations Center.
Attn: Kristen Beck
410 S. Wilmington Street. PEB 4
Raleigh, NC 27601

SUBJECT: Case No. WS08-05, Notice of Violation Letter, Dated November 23, 2009

This letter is to serve as official notice that the above referenced violation notice has been voided. The responsible parties for this project has corrected the deficiencies noted in the letter and any site deficiencies along with all required documentation is as of the date of this letter in full compliance with the conditions of approval and the provisions of the Cumberland County Water Supply Watershed Management and Protection Ordinance.

I would like to express on the behalf of the Cumberland County Planning & Inspection Department that your cooperation in resolving this matter is greatly appreciated.

If you have any questions, please contact me at jbarnhill@co.cumberland.nc.us or 910-678-7765.

Sincerely,

Jeff Barnhill
Watershed Review Officer

cc: Tom Lloyd, Director
Patti Speicher, Land Use Codes
Cumberland County Board of Adjustment.
Cindy Burchett, Wade Town Clerk