

**Town of Fairview
Regular Meeting
August 12, 2013
7:00 p.m.**

The following Council members were present: Mayor Elizabeth Long, Bradley Purser, Arnold Price, Jerry Clontz and B.B. Haigler.

Others present: Joe McCollum, Town Attorney; Darrell Baucom, Financial Officer and Ed Humphries, Land Use Administrator and Town Clerk

Agenda Changes and Approval

Mayor Long stated that the Conditional Permit Public Hearing would be moved up and heard after Agenda Changes.

Jerry Clontz wanted to add a discussion regarding a Site Solutions proposal. (E-1)

Bradley Purser stated that he would like to add comments from Phil Thomas regarding Social Media.

Jerry Clontz made a motion to approve the agenda with the above changes. Arnold Price seconded the motion. Councilmen Clontz, Price, Purser and Haigler voted yes (4-0).

New Business

Mayor Long opened the Public Hearing on Permit Request #CUP-13-031.

Ed Humphries explained the request from Crown Castle.

Request by Crown Castle for Condition Use Permit (# CUP 13-031) to extend an existing 171 foot telecommunications tower to 199.9 feet. The existing tower is located on property owned by Earl and Ruth Pigg at 306 Brief Road East Midland NC. Parcel ID # 08180006. The extension will allow AT&T to provide the town of Fairview with increased telecommunications coverage.

Conditions

Brief Road Site – 171’ to 199.9’ Monopole Telecommunications Tower Extension

These conditions contain sufficient detail to establish that the proposed special use meets or exceeds the standards and intent contained in the Land Use Ordinance. Pursuant to Article XI, Supplementary Use Regulations, Section 180E, Telecommunications Towers and Facilities of

the Town of Fairview Land Use Ordinance, please find the following information:

1. TOWER DESIGN. Pursuant to the Ordinance, the tower will be of a monopole design

and construction. The tower is designed to “telescope” or collapse inward if structural failure occurs.

2. INTENT TO CO-LOCATE. Applicant will negotiate in good faith with any provider wishing to co-locate on the extended tower.

3. MAXIMUM TOWER HEIGHT. The extended tower will be 199.9 feet in height, which

does not exceed the maximum allowable height of towers within the RA-40 zoning district.

4. TOWER LOCATION. At all times the property owners will maintain a 12-foot or wider

access easement for use by service and emergency vehicles.

5. WILL MEET RADIO FREQUENCY EMISSION STANDARDS per the attached “FCC

Compliance Certification” Statement.

6. ACCESSORY STRUCTURES. The accessory structures on the ground are and will

remain architecturally compatible with the surrounding buildings and land uses in the

RA-40 zoning district. These accessory structures will blend in with the existing characteristics of the site.

7. FENCING. The existing (as of July, 2013) 8-foot chain link and barbed wire fence will

be modified as necessary to include the entire extended 199.9 foot telecommunications

tower and equipment. Access to the tower will remain through a locked gate.

8. MINIMUM SETBACK. The extended telecommunications tower shall continue to meet

the minimum setback requirements.

9. PROXIMITY TO DWELLING UNITS. The tower will not be within 300 feet of the

nearest residential dwelling unit, with the exception of any units existing at the time of

this application.

10. CESSATION OF USE/TOWER REMOVAL. The applicant and/or property owner will

remove the tower and related facilities should they be abandoned for a period of greater

than 90 consecutive days. Such removal will take place within six months of the first day

the tower was abandoned and will be completed within the same six month period.

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11. ANTENNAE STATUS. Upon approval of the Conditional Use Permit, AT&T will certify to the Land Use Administrator on January 1st of each year the status of the antenna (operational or not in use).

12. LIGHTING. The telecommunications tower shall not be lit except as directed by the Federal Aviation Administration. If lighting is required, it shall be directed towards the telecommunications tower and/or accessory uses to reduce glare onto adjacent properties.

13. SILHOUETTE AVOIDANCE. The telecommunications tower will remain situated so as to avoid casting a dominant silhouette on ridges or in open fields.

14. SIGNAGE. No free-standing signs will be installed and warning signs shall be installed and/or mounted only on the perimeter fence and/or tower base. Posted signs will be limited to identification signage less than nine square feet in size and warning signs to discourage trespass by unauthorized persons.

15. OUTDOOR STORAGE. There will be no outside storage associated with the telecommunications tower extension.

16. INTERFERENCE WITH AIR TRAVEL. The extended telecommunications tower will not restrict or interfere with air traffic or air travel to or from any existing or proposed public or private airport. The extended telecommunications tower will comply with all Federal Aviation Administration standards.

Humphries stated that all proper requirements per the ordinance had been met. Humphries introduced Henry Campen, an attorney with Parker Poe and three men who gave affidavits as requirements of the ordinance: Ed Hord, Moser Group; Charles M. McDonnell, AT&T, and Bryce Pickens, Crown Castle.

Henry Campen read evidence, for the record, which would allow the Council to grant the CUP.

Presentation to Fairview Town Council

I am counsel for the Applicant, Crown Castle. Crown is asking for a Conditional Use Permit to extend an existing, 171-foot telecommunications tower to 199.9 feet, or approximately 28'. The existing tower is located on land owned by Earle

and Ruth Pigg, at 306 Brief Road East, Midland, NC. The subject property is 32.52 acres and zoned RA-40, Residential district. The tower was built in 1997 under a conditional use permit issued by the Fairview Town Council.

I would like to introduce into the record 3 affidavits in support of this application. These are the affidavits of:

Bryce Pickens of Crown Castle

Charles McDonnell of AT&T, and

Ed Hord of the Moser Group

Mr. Pickens is a real estate specialist with Crown. Mr. McDonnell is an engineer with AT&T, and Mr. Hord is a state certified general real estate appraiser with the Indian Trail firm, the Moser Group.

All of these gentlemen are here and are available to be sworn in and to answer questions you may have. However, in the interest of time, I will summarize their sworn affidavits and show how their affidavits and the application meet the 4 general standards, or findings of fact, of your ordinance for this Conditional Use Permit.

The purpose of the tower extension is to enable AT&T to provide coverage along Concord Highway and throughout a broader area in the Fairview community. Crown does not want to have to build a new tower. The existing tower on Brief Road can provide the needed coverage, but only if the height of the tower is extended.

Here's why. If AT&T could place its antenna at the top of the existing tower – at 177', it could provide the needed coverage. However, there is already another carrier at the top of the tower. The only usable space left is at 160'. But, an AT&T antenna at this lower height would not provide consistent coverage along Concord Highway and throughout the Town of Fairview. By placing its antenna at 199' with the proposed extension, AT&T can provide uninterrupted coverage along Concord Highway and across a much broader swath of the Town. That is why Crown needs this CUP.

Your ordinance contains 4 general standards for a CUP, and the Council must make findings of fact on each of the 4. Here is the evidence on the record which will allow you to make the necessary findings to grant this CUP.

1. The proposed use will not materially endanger the public health or safety.

- Citizens now depend on cell phones instead of landline phones. Cell phones have become for many their primary, if not sole, means of communication. Providing in-home coverage throughout a community has become a public necessity and essential to public health and safety.

- AT&T has provided a certification with its application that its facilities comply with the FCC's rules on radio frequency emissions.

- The application contains a certification from a licensed Professional Engineer that the tower has sufficient structural integrity to accommodate the added weight of the proposed extension.

- As noted in the application the existing tower facility is fenced and secured and will remain secured after the extension is completed.

- As shown by the site plan, there is no residential dwelling unit within 300' of the tower.

2. The facility will not substantially injure the value of adjoining or abutting property.

Crown has engaged a N.C. licensed real estate appraiser – Ed Hord of the Moser Group - to conduct a study to determine the effect of cell towers on the value of adjoining property. You could argue that this was not even necessary. After all, the existing 177' tower has been there for nearly 20 years. What difference will another 28' have?

However, attached to Mr. Hord's affidavit is a detailed report in which he examines sales of properties adjoining 3 separate cell towers in Union County. He then looked at sales near a tower site in Mecklenburg County. Finally, he looked at residential and land sales next to electric transmission lines.

After a thorough analysis, Mr. Hord concludes that the data indicates that properties which have been developed with cell sites or similar structures do not appear to cause adjacent or abutting properties to lose value to any discernible degree and that the proposed modification of the Brief Road tower will not substantially injure the value of property adjoining or abutting this site.

3. The facility will be in harmony with the area.

Mr. Hord's report describes the area around this site as rural in nature with active farms and a significant amount of undeveloped land. He goes on to state that there are only a few scattered homes in the area with the nearest residential subdivision nearly a mile away. I would add that the Town Council found this site to be in harmony with the area in 1997 when the tower was built. There is no evidence that this has changed.

4. The facility will be in general conformity with the land use plan

The proposed tower extension conforms to the Fairview Town Future Land Use Map which shows the subject area as classified for 0-1 dwelling units per acre. Also, a key provision of your ordinance states that it is "the intent of the Town of Fairview to encourage providers to co-locate facilities in an effort to reduce the number of telecommunications towers in the Town of Fairview." Section 180E (b). This application squarely meets this stated intent of your ordinance.

Rather than seeking a permit to build an entirely new tower, Crown and AT&T are seeking your approval to simply extend the height of a tower that has been here since 1997 by 28'. With this extension, AT&T can add its antenna and provide service to a wide area in this part of your community.

Conclusion:

Based on the evidence I have just summarized Crown Castle requests that you find that its application for a CUP satisfies each of the 4 standards in your ordinance and that you grant this CUP permit.

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Finding of Facts: Motion on each

1. Jerry Clontz made a motion that the proposed Conditional Use Permit Request would not materially endanger the public health or safety because people would benefit from the improvement and the structure is safe. Bradley Purser seconded the motion. Councilmen Haigler, Clontz, Price and Purser voted yes (4-0).
2. B.B. Haigler stated the request would not substantially inure the value of adjoining or abutting property due to the tower being on the property for approximately 20 years and the study that the applicant provided. Jerry Clontz seconded the motion. Councilmen Clontz, Haigler, Price and Purser voted yes (4-0).
3. Jerry Clontz stated that the request will be in harmony with the area in which it is located because the tower had been there for 20 years and it was not enlarging the footprint. Arnold Price seconded the motion. Council Haigler, Clontz, Price and Purser voted yes (4-0).
4. Arnold Prices stated that the CUP requested will be in general conformity with the Land Use Plan, Thoroughfare Plan or other plans the Land Use Plan encourages Carries to co-locate on existing towers. B.B. Haigler seconded the motion. Councilmen Haigler, Clontz, Price and Purser voted yes (4-0). Jerry Clontz made a motion to approve the Conditional Use Permit #CUP-13-031 above to include the following statement:

The proposed zoning amendment under consideration **is** found to be reasonable and consistent with the recommendations of the Town's adopted comprehensive plan, the Town of Fairview Land Use Plan(Revised September 13, 2010), and the Town of Fairview Land Use Ordinance (effective July 1, 2005)

Arnold Price seconded the motion. Councilmen Haigler, Clontz, Price and Purser voted yes (4-0).

Jerry Clontz made a motion to accept the 2012 Settlement for Tax Collection by Union County of Fairview taxes. B.B. Haigler seconded the motion. Councilmen Haigler, Clontz, Price and Purser voted yes (4-0).

Bradley Purser made a motion to approve the 2013 change for Union County to collect Fairview taxes. Arnold Price seconded the motion. Councilmen Haigler, Clontz, Price and Purser voted yes (4-0).

Reports

Darrell Baucom presented the Monthly Finance report.

Ed Humphries gave the Permit Report and the Tax Report.

Jerry Clontz stated that the Fire Department Project Committee would meet with the Fire Department Building Committee.

Tony Helms gave the Economic Development report and gave the work plan to the Council.

Jerry Clontz gave the Park and Recreation report, stating that the park clearing around the pond was not quite finished, but it looks good.

Jerry Clontz asked Council to review a contract with Site Solutions for the PARTIF Grant application. The fee would be between \$15 – 20,000. Jerry stated that the Town could do some of it and perhaps save some money. Clontz asked the Clerk to place this contract on the next agenda.

B.B. Haigler said the spray we were planning to use for the park is good.

Jerry Clontz stated there would be a Park and Recreation meeting next Monday night.

Bradley Purser made a motion to approve and have the Mayor sign the Charlotte Regional Transportation Planning Organization Memorandum of Understanding and approve Fairview's share of operation.

Jerry Clontz seconded the motion. Councilmen Clontz, Haigler, Price and Purser voted yes (4-0).

Bradley Purser made a motion to add a page to the website for Park and Recreation. B.B. Haigler seconded the motion. Councilmen Clontz, Haigler, Price and Purser voted yes (4-0).

Phil Thomas addressed the Council, stating a need for positive social media for Fairview.

ATTACHED STATEMENT EXHIBIT A

Jerry Clontz asked if Phil would chair a committee to study his request. Mr. Thomas agreed and two other people (Mary Ann Culbertson and Jesse Hargett) volunteered to be on the committee – “Fairview Social Media Committee”.

Arnold Price made the motion to establish a “Fairview Social Media Committee” with Phil Thomas as chairman. Bradley Purser seconded the motion. Councilmen Clontz, Haigler, Price and Purser voted yes (4-0).

Old Business

Joe McCollum, Town Attorney, presented an addendum that could be added to town contracts.

NORTH CAROLINA

TOWN OF FAIRVIEW

CONTRACT ADDENDUM

The undersigned agrees that the following shall become a part of the contract and agreement with the Town of Fairview (hereafter called "Town") as fully and completely as if set out therein:

1. That the undersigned has authority to sign contracts and make commitments;
2. That the undersigned, and whomever or whatever he represents, are lawfully organized and subject to the jurisdiction of the State of North Carolina;
3. That the undersigned or his organization has liability insurance in an amount agreeable to the Town and will hold the Town harmless from any action taken by him or his organization, including reasonable attorney fees, and will furnish the Town proof of such insurance.
4. That the undersigned is an independent contractor and is in no way an employee of the Town;
5. That the undersigned or his organization has all necessary licenses required by the State of North Carolina, County of Union, or the Federal Government to do the work contracted;
6. That the undersigned or his organization does not discriminate in employment practices on the basis of sex or race.
7. That any changes in the work contracted shall be in writing and signed by a Town official and the undersigned or his authorized representative.
8. That this contract will not be assigned without the written consent of the Town.
9. That upon request of the Town, the undersigned or his organization will furnish proof of any requirement of this agreement.

This the _____ day of _____, 2013.

_____(SEAL)

For _____

B.B. Haigler made a motion to adopt the addendum for contracts. Bradley Purser seconded the motion. Councilmen Haigler, Clontz, Price and Purser voted yes (4-0).

B.B. Haigler made a motion to discontinue use of Locate/Plus. Jerry Clontz seconded the motion. Councilmen Haigler, Clontz, Price and Purser voted yes (4-0).

Council Comments

Jerry Clontz stated that this had been a good meeting – smooth.

Arnold Price stated he appreciated people coming to the meeting.

B.B. Haigler stated that he would accept questions from anyone, anytime. He also stated that he had shown Sandra Haigler our process on the park. Ms. Haigler was pleased and stated she would like to help with the development of the park.

Attorney, Joe McCollum, stated he had gone to the Attorney Conference and had sent Ed Humphries information of laws changed concerning cell towers.

Bradley Purser stated it had been a nice meeting. He also suggested that we need to do something about people waiting outside a Closed Session meeting hearing what was discussed. Bradley also stated that we needed more chairs.

Minutes

B.B. Haigler made a motion to approve the minutes of July 8, 2013, as amended. Jerry Clontz seconded the motion. Councilmen Clontz, Haigler, Price and Purser voted yes (4-0).

Jerry Clontz made a motion to approve the minutes of the Closed Session on July 8, 2013. Arnold Price seconded the motion. Councilmen Haigler, Price, Clontz and Purser voted yes (4-0).

Arnold Price made a motion to adjourn. Jerry Clontz seconded the motion. Councilmen Price, Clontz, Haigler and Purser voted yes. (4-0)

Respectfully submitted,

Ed Humphries
Town Clerk

Elizabeth Long
Mayor

Approved this 9th day of September, 2013