

DOUGLAS COUNTY BOARD OF ADJUSTMENT
Wednesday, September 26, 2007, 9:00 a.m., Government Center Board Room
1316 North 14th Street, Superior, Wisconsin

Meeting called to order by Chair Doug Hanson.

ROLL CALL: Present – Doug Hanson, Roger Wilson, Robert Brown, Dale Johnson (Alt.), Larry Luostari (Alt.). Others present – Wes Johnson, Karen Johnson, Shane Begley, Eric Lumber, Patti Barsness, Dennis Hill, Carol Johnson, Cedric Johnson, Fred Johnson, Ray Perala, Steve Rannenberg, Sue LaVine, Linda Fritz, Committee Clerk.

ANNOUNCEMENTS: Role and conduct of the Board read.

PUBLIC HEARING

820) Application by the **Town of Hawthorne**, P.O. Box 142, Hawthorne, WI for an “area variance” to construct a structure to be used as a town hall/fire department within the town road setback requirement, located in Part of Lots 3 and 4, Block 1, HA-014-00965-00 - Potthier (seller); South 1/2 of Lot 4, Block 1, HA-014-00966-00 - Potthier (seller), and Lots 1 through 3, Block 3, HA-014-00969-00 - Town of Hawthorne, all in the Townsite of Hawthorne, Section 3, T46N-R12W (Town Hall Road), Town of Hawthorne.

Applicant not present. Hanson stated that one of the things required by applicants is to stake proposed site. That was not done and drawing submitted showed no dimensions.

ACTION: Motion by Hanson, second Wilson, to hold application until required information is provided. Rannenberg stated he is in receipt of a diagram from the architect/designer which includes contour lines, etc., and footprint of existing buildings. Motion carried.

821) Application by the **Town of Amnicon**, 8985E US Highway 2, South Range, WI appealing the decision by the Douglas County Zoning Committee on August 8, 2007, granting the conditional use permit application by Eric and Deborah (fka Slavik) Lumberg, 4498S Westline Road, Poplar, WI/Minnesota Towers, Inc. (agent), N3054 Fumee Lake Road, Iron Mountain, MI/Cellular One, Shane Begley (agent), 14114S Country Circle, Gordon, WI for a telecommunications facility to include a 300 foot tower with equipment platform and buildings, located in the Southeast 1/4 of the Southwest 1/4, Section 25, T48N-R12W (AM-002-00578-00, Westline Road), Town of Amnicon.

ACTION: Motion by Hanson, second Brown, to hear application. Motion carried.

Hanson questioned what the rationale is for Town of Amnicon to appeal decision by the Zoning Committee. He stated that first Board will hear from the land owner regarding the positioning of the tower, objections from Ray Perala, and comments from Cellular One.

Mark Liebaert, Town Board member, stated that the town was requested, by Cell One, to site a tower on a parcel in Amnicon. Cell One did not show up for the first meeting; property owner was present but could not answer questions town and residents had. Town tabled the issue until their next meeting. Cell One showed up at the second meeting, property owner did not. At that meeting, after some discussion and hearing concerns of residents from Amnicon and Poplar, action was taken to approve the site Cell One wanted, but to lower the height of the tower and no lights. The lights were a huge deal. The other option from the town was to move the tower which would meet the concerns of the adjoining property owners and Cell One would be allowed to keep the tower height of 300'. Town was told by Cell One that could be done. Liebaert continued, stating the town's recommendation to the Zoning Committee was to approve the tower with one of the two options.

Hanson questioned whether there were any written objections regarding this. Liebaert responded that he was not sure and noted this was not the first cell tower issue the town has had. He provided background information on previous tower issues over the past ten years. Hanson questioned how the town arrived at the second location site. Liebaert stated the landowner was not at the meeting so it was left up to Cell One to determine which of the two options they would choose. Wilson stated the appeal is the action by the Zoning Committee and questioned what the basis for the appeal is. Liebaert reviewed the town's process for holding hearings trying to broker a deal to satisfy both sides. He stated the fact that the town goes through the process and is asked by the Zoning Committee for a recommendation, and in this case the Zoning Committee completely denied the town's request. He stated the town came up with a compromise and if the county does not want to listen to the town's recommendation, why ask for it. He stated the process is being polluted. Discussion.

Hanson clarified that the town is appealing this because their recommendation for a 200' tower was denied. Liebaert confirmed. Discussion continued, with Hanson stating that the first line of brokering should have been with the landowner. Wilson questioned why the town did not hold this item until both the landowner and Cell One could be present at the meeting. Liebaert responded that it was asked, or implied, by Cell One that a decision was needed. The town could have had another meeting, but Cell One needed a recommendation because they needed to move forward. Hanson referenced the Zoning Committee meeting minutes, noting there is no indication that the Town of Amnicon was present and did not submit any information regarding this. Liebaert replied that if they would have been told there was going to be a problem, the town would have been present. Hanson again clarified the reason for the appeal is because the county ignored the town's recommendations. Liebaert concurred, stating they did not approve either of the town's options.

Wilson questioned whether the town was aware of the proceedings of the June 13th Zoning Committee meeting where the application was held over and the July 11th meeting when the application was again held over. Liebaert indicated he was not sure, but he does get the minutes from the meetings, as well as the town clerk. Wilson questioned why they did not go to the August meeting when they knew about the June and July meetings and that there were problems with the application. Liebaert stated that the reason the Zoning Committee was tabling the application was because they did not have an answer from the town. Liebaert further stated that the town did not make their recommendations until July 12th because of lack of information.

Hanson questioned what the objection was to the 300' tower on the proposed site. He noted that prior to town making their decision, there is no indication that Ray Perala objected to it. Wilson questioned whether the objection of the proposed site was from an adjacent landowner. Liebaert indicated it was, though not in writing. He further noted that Perala is an adjacent landowner, though not a resident of Amnicon. Discussion on objections because of the lights.

Eric Lumberg, property owner, stated that after the meetings with the Town of Amnicon and Zoning Committee, he indicated he did not want to move the tower because he did not want the additional trees cut down. Also, the proposed location for moving the tower would not change the distance from the residence in question. If the tower location was moved, the lights from the tower would still be seen. Lumberg clarified he approves the original location and does not care what the height is, as long as it stays in the original location. Hanson asked Lumberg if that is the only location on his property that he would be willing to lease or sell to Cell One. Lumberg responded in the affirmative. Hanson stated that when the Town of Amnicon met on August 23rd and arrived at their two recommendations, they apparently did not contact Lumberg to see if he was agreeable to the second option. Lumberg concurred, stating they did not contact him but soon afterwards he discussed their decision with the Town Board Chair. Discussion.

Wilson asked Lumberg, when the original site was selected, was it done by Cell One and Lumberg, or did Cell One choose the site. Lumberg responded that he and his wife chose the site. He stated they wanted a little bit of control as to the location, noting there are no residents within one-half mile. He clarified there are no visual residents within that 40 acres. Discussion continued, with Wilson referring to Zoning Committee minutes which indicate to him that Lumberg's opposition has more to do with the tower and location and not the trees. Lumberg reviewed what happened at the last Zoning Committee meeting, including his decision that he did not want that tower in another location. Hanson stated that the bottom line is it is Lumberg's property and he has a right to determine what is on his property or not. Wilson noted the Zoning Committee minutes are not a complete transcript, but feels there is information from that meeting that is important to have here.

Hanson asked Carol Johnson, Zoning Committee Chair, if she was aware of the fact that Lumberg did not want another location on his property. August 8th Zoning Committee minutes were referenced, which indicate Lumberg did not want the tower moved elsewhere on his property. Discussion continued, with Hanson clarifying that Lumberg was not asked by the Zoning Committee if he would allow the tower anywhere else on his property.

Ray Perala, adjacent property owner, distributed map of proposed building sites on the river, noting he owns the 35 acres south of the proposed tower site. He stated he attended the Amnicon Town meetings regarding this and has discussed it with Shane Begley, Cell One representative. The proposed tower site is in the line of site of all the lots on the river. If the site were to be moved back to the west end of the 40 acres, it would not be in the site line. Perala stated that Begley indicated that would not be a problem and they would put shields on the lights. Perala explained that he lives in Lake Nebagamon and intends to sell the parcels in Amnicon. Hanson questioned whether Perala has filed a plot plan on the 35 acres he owns in Amnicon, to which Perala responded in the negative. Perala indicated a surveyor is working on the surveying. Discussion continued, with Wilson clarifying that Perala's concern is from a financial aspect. Hanson asked Perala to define his specific objections of the proposed tower location. Perala stated it will impact his property value and make it more difficult to sell the lots off.

Shane Begley, Cellular One and Minnesota Tower representative, stated that with regard to him being agreeable to move the tower, a 300' tower is needed so by lowering it to 190', Cell One would likely decline building on that site. He explained that the Town of Amnicon has had a need for more than ten years for a cell tower. Begley stated he could live with moving the tower 500' to the west, but not lowering the height to 190'. He further stated the landowner is not willing to move the tower location, noting the tower impacts all landowners in the area equally no matter which site it is constructed on. Begley explained there are DNR requirements that must be met to construct a tower and when choosing a site, he looks at the impact of the land and how it will affect property owners. Discussion continued on Begley's attempts to have tower placed on town's agenda or to hold a special meeting. Hanson questioned whether or not Begley conveyed to the Zoning Committee that a 197' tower would not work, to which Begley responded in the affirmative.

Discussion turned to the range of a 300' tower, proposed location, and whether or not light shades are effective. Further discussion on town's recommendations, with Liebaert clarifying the reason for appealing the Zoning Committee decision is because they did not take the town's recommendations into account.

C. Johnson stated the Zoning Committee had the correct information at the correct time to make the correct decision. She stated the Zoning Department sends out notices of the meetings, towns have the option of doing their own zoning, but basically have left that decision up to the county. Liebaert stated that he is not naive enough to say Cell One cannot build the tower, but requests this Board send the application back to town to come to a mutually agreeable decision. He stated he has

learned something from this process and will probably never make a decision like this again without all the parties being present.

Wes Johnson spoke in favor of the tower and location, stating cell phones are not any good where there is no service. He related an incident where he had gone too far into the woods, suffered a hip injury, and had no cell phone service. He stated he specifically came to this meeting today to share his story as this is a safety issue.

Fred Johnson spoke in favor of the tower and location, stating he does not believe the mindset of people that do not want cell towers. He stated he has one in his back yard and they save lives.

Cedric Johnson spoke in favor of the tower, stating people should be thanking Lumberg for being willing to provide the land for the tower. As the landowner, he should have the right to determine what to do with his land. He stated the Town of Amnicon is against every tower and this tower is needed for safety reasons.

Perala stated he is not against the tower as it is needed. But, moving it back to the west a little does not have any bearing on anything except Lumberg who will have to see it more.

Art Amys, Amnicon Town Chair, stated the town is not against cell towers and they have always worked with them in the past. He stated the town was trying to make a good compromise and hopes this Board sees their side of this issue.

Bagley stated that Minnesota Tower made a compromise to put the light shades on the tower and moving the tower 600' one way or the other has the same impact. He stated the fact of the matter is coverage needs and he does not believe it is in the interest of the town to steer them outside of the area where coverage is needed. He stated he wants to work with the town and has made every compromise they can. There is a financial cost to Minnesota Tower to make this happen. He noted the tower is being built to provide space for additional users on this tower.

Patty Barsness, Amnicon Town Clerk, stated the whole reason to go to the Zoning Committee is because sometimes land owners want to do something with their land that is not good for the community. The information provided today is not what the town heard and she stated the Zoning Committee should have referred this back to the town. Barsness stated they are supporting the taxpayers/residents, etc., when making these recommendations. Hanson stated it is important that the towns and Zoning Department work hand in hand with each other so everyone knows what the other is doing. He stated he has heard a lot of testimony and conversation today and it appears that different branches of government are making decisions based on different or incomplete information. One committee seems to be privy to information the other is not. He stated he does not like to see that happen and that everyone should be on the same playing field. Hanson stated this Board has three options. One, to deny the appeal and Zoning Committee decision stands; two, refer this back to Zoning Committee for reconsideration, hopefully with input from all interested parties; and three, to change the Zoning Committee's decision on how this should be resolved. He stated his recommendation is to refer back to the Zoning Committee as that is in the best interest of everyone. Discussion.

ACTION: Motion by Hanson, second Wilson, to refer application back to Zoning Committee for reconsideration, with the recommendation that all parties involved be present. Rannenberg referenced state statutes as to options the Board has. Wilson stated his belief that the Zoning Committee may have erred in not delaying the decision again. He stated that without all involved parties present, a decision should have been delayed. Wilson stated that from this meeting there is enough information and alternatives that the Zoning Committee and/or Town of Amnicon can come

to some decision that will please everyone. Discussion. Roll call vote taken and passed with 3 Yes, 0 No, 0 Absent.

REGULAR MEETING

APPROVAL OF MINUTES: Motion by Wilson, second Hanson, to approve the minutes from the August 22, 2007 meeting. It was noted that Robert Brown was listed as an alternate rather than a member. Motion carried.

SUCH OTHER MATTERS AS AUTHORIZED UNDER WISCONSIN STATUTES:

Training: Information distributed and reviewed regarding shoreland zoning and stormwater management training. Training to be held October 29th at the Holiday Inn in Stevens Point.

ADJOURNMENT: Motion by Hanson, second Brown, to adjourn. Motion carried. Meeting adjourned at 11:05 a.m.

Submitted by,

Linda C. Fritz, Committee Clerk