

**BOARD OF ZONING APPEALS**

March 7, 2012

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4 *Present: Joshua McDuffie, Michael Spearman, Elbert Meetze, Torrey Rush, Susanne*  
5 *Cecere, William Smith; Absent: Sheldon Cooke]*  
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7 Called to order: 1:09 pm

8 CHAIRMAN MCDUFFIE: We will call the March Meeting of the Board of Zoning  
9 Appeals to order and recognize the fact that we have a quorum. In accordance with the  
10 Freedom of Information Act, a copy of the Agenda has been sent to radio and television  
11 stations, newspapers, persons requesting notification, and posted on the bulletin board  
12 located in the lobby of the County Administration Building. At this point the county's  
13 attorney, Ms. Amelia Linder, will present the Rules of Order and swear in anyone that is  
14 expecting to speak today.

15 MS. LINDER: I'd like to welcome everybody to this Board of Zoning Appeals  
16 meeting this afternoon. This Board is a *quasi* judicial body which means they will take  
17 evidence and their decision will be final subject to a request for reconsideration if you're  
18 unhappy with it, or an appeal to the circuit court. The Applicant is going to be able to  
19 speak first. We've got one case for a variance and then three cases for special  
20 exceptions and again the person that made the application for these requests will be  
21 able to come to the podium first, will have up to 15 minutes to speak. If there's anyone  
22 in the audience that is opposing what the Applicant is asking for they will have up to  
23 three minutes to speak. And once they are finished the Applicant again has five minutes  
24 to rebut what the opposition said. Normally we'll take up business as it's presented on  
25 the Agenda. We would ask that the audience be respectful of our Board, address all  
26 your comments to the Board and not members of the audience. You will be under oath

1 when you come to the podium and everything that we say today will be recorded.  
2 However, it's not quite as formal as a court so we do have a little more flexibility. If you  
3 have any documents that you want the Board to receive and review you may submit  
4 those, and the Board is going to give both the Applicant and the opposition the proper  
5 weight of their testimony to make a fair and impartial decision today. The decisions will  
6 become final once the Minutes are approved and I will draft an Order based on what  
7 happened today and once those Minutes are approved we'll get the Board Members to  
8 sign the Order and it will be mailed out to you, what the decision was. If you want to  
9 proceed before that, if you receive a favorable ruling and you want to proceed with  
10 whatever activity you have planned you do so at your own risk because the Board could  
11 always reconsider their decision until those Minutes are approved. If you are unhappy  
12 with the decision that happens today, you have an opportunity to ask for a  
13 reconsideration prior to the Minutes being approved, you also have the chance to go to  
14 circuit court or, you know, if you would like to do that. And you have to do that within 30  
15 days of receiving the Order. We would ask that if you have a cell phone on you that you  
16 turn off or mute it. If you plan to speak and address the Board make sure you're on the  
17 sign up sheet with your name and your address and make sure it's clear so at least I  
18 can read it and understand it because if you have that kind of an interest you will be  
19 getting a copy of the Order. The audience may come and go quietly as you need to. I  
20 don't anticipate anything, any executive sessions or anything like today, but that would  
21 be in the event the Board needs legal advice, I am their attorney and so if I need to go  
22 into a private session with them, we'll just ask the audience to be patient with us. At this  
23 time if you are planning to give testimony and come to the podium I need you to stand

1 cause you will be sworn in at this time. Would you raise your right hand, please? Do  
2 you swear or affirm that the testimony you shall give shall be the truth, the whole truth  
3 and nothing but the truth so help you God?

4 AUDIENCE: I do.

5 MS. LINDER: Okay. I don't believe anyone answered in the negative. Mr.  
6 Chairman –

7 CHAIRMAN MCDUFFIE: Alright, thank you very much. If there is no objection  
8 from the Board I would like to move the approval of Minutes from January 2012 to the  
9 end of the meeting to allow us to reconsider 12-01 Variance.

10 MR. SPEARMAN: I'll second that.

11 CHAIRMAN MCDUFFIE: Okay. So moved. And then I would also, last time this  
12 Board met we postponed having elections and I would also propose that we put that in  
13 the Other Business section of today's hearing. At this point, Mr. Price, if you're ready  
14 please call your first case.

15 **CASE 12-02 V:**

16 MR. PRICE: [Inaudible] signed up for the first case, 12-02 Variance?

17 CHAIRMAN MCDUFFIE: I have two individuals, or I have an individual signed  
18 up in favor of and no one signed up against.

19 MR. PRICE: Okay. Just wanted to make sure they were here.

20 CHAIRMAN MCDUFFIE: Yes, sir.

21 MR. PRICE: Alright, the first item is Case 12-02, it's a variance. The Applicant is  
22 requesting the Board of Zoning Appeals to grant a variance to encroach into the  
23 required setbacks on the front yards of property zoned OI. The Applicant is Doug

1 Forbes, the location is 1061 St. Andrews Road. The parcel size is about .38 of an acre  
2 and currently there's, according to county records, almost a 2,000 square foot structure  
3 which is used as a dentist office on the property. The Applicant is proposing a 740  
4 square foot addition which would encroach into the required side yard setbacks by,  
5 according to my calculations, 12.5' on St. Andrews Road and 19' along Lawrence  
6 Street. The area is commercially developed along St. Andrews Road and as you go  
7 into Lawrence Street, into that area, you run into some residential. I'm gonna pull up  
8 the aerial for you. As you can see one of the things, and we don't run into this that often,  
9 but when you have a corner lot you do not have a rear yard, what you have are two  
10 fronts which come, of course, from the, where the property abuts the streets, and then  
11 two interior property lines are considered your side yards. So in this particular case he's  
12 required to be 25' from St. Andrews and 25' from Lawrence Street. Couple of pictures  
13 of the site. This is a look from St. Andrews Road and I've got a picture here, the area  
14 right behind the sign, the grass area is, that's the area of the proposed addition.  
15 Another view of it. This is the rear of the building. And another shot, this is from  
16 Lawrence Street looking toward the rear of the building. And this is looking from  
17 Lawrence Street towards St. Andrews. And those are the, that's what Staff has to  
18 present for this particular case.

19 MS. CECERE: May I ask Staff a question? Is that a two-story building?

20 MR. PRICE: Yes.

21 MS. CECERE: Thank you.

22 MR. SPEARMAN: Mr. Chair, I've got one question for Mr. Price.

23 CHAIRMAN MCDUFFIE: Yes.

1 MR. SPEARMAN: Mr. Price, is there a stoplight out there at Lawrence and St.  
2 Andrews Road, a traffic light?

3 MR. PRICE: No, sir.

4 MR. SPEARMAN: Just a stop sign?

5 MR. PRICE: Yes, sir.

6 MR. SPEARMAN: Thank you.

7 CHAIRMAN MCDUFFIE: Alright, at this time if there are no further questions for  
8 Staff I'll call the Applicant, Mr. Doug Forbes to the stand and please state your name  
9 and address for the Record.

10 **TESTIMONY OF DOUG FORBES:**

11 DR. FORBES: I'm Doug Forbes and I'm a dentist for 27 years on St. Andrews  
12 Road. Prior to my coming there, there was another dentist there for 18 years and the –  
13 the dentist formerly had parking in the front, then St. Andrews Road was widened and  
14 they condemned the front yard, which forced that the parking had to be in the rear and  
15 to the side, and my goal is to add 740', six rooms, where I can have another dentist  
16 partner and hire about five or six more people. Lawrence Street is a dead end street  
17 with three homes; one of which has applied for commercial status. The opposite end,  
18 opposing end of Lawrence Street is owned by a church who has about an acre lot that  
19 they're gonna make a parking lot out of, it's unbuildable, it has a sewer culvert  
20 underneath of it. I've got plenty of pictures to show you and can – if you can show that  
21 side view I can sort of summarize it. There we go. So I want to extend, that second  
22 floor would come over, over a garage and I would add six [inaudible] for patient  
23 treatment into that area. And the, the property line is about where the, about 2' to the

1 side of the trees and I want to stay on the other side of the trees about 3'. And then I  
2 want to do a privacy wall around the perimeter of the property and, of course, landscape  
3 it and make the façade better cause, in conjunction with the St. Andrews corridor that's  
4 planned. And I can show you a picture – okay. That's what we want it to look like, and  
5 then it would encroach into St. Andrews Road because of the extension. In other  
6 words, the building's grandfathered in, but the extension would be encroaching into the  
7 St. Andrews Road area with up to 4' of a porch, cause I have to make a porch for a  
8 handicap entrance. So that's my goals.

9 CHAIRMAN MCDUFFIE: Are there any questions at this point – while we look  
10 over this are there any questions for the Applicant?

11 MS. CECERE: Mr. Forbes, are you using the, both floors of that building right  
12 now?

13 DR. FORBES: Yes, ma'am.

14 MS. CECERE: There are offices downstairs or?

15 DR. FORBES: A lab and a bathroom. Formerly it was a hair salon many years  
16 ago.

17 MS. CECERE: I'm sorry?

18 DR. FORBES: It was a hair salon many years ago and the dental office was  
19 upstairs, but currently that's a dental lab that I use.

20 MS. CECERE: Okay, thank you.

21 CHAIRMAN MCDUFFIE: Any questions for –

22 MR. SPEARMAN: I've got a couple.

23 CHAIRMAN MCDUFFIE: Please.

1 MR. SPEARMAN: How long have you been practicing there, Dr. Forbes?

2 DR. FORBES: Twenty-seven years.

3 MR. SPEARMAN: In the same building?

4 DR. FORBES: Yes, sir.

5 MR. SPEARMAN: Okay. Can you give us some idea as far as when St. Andrews  
6 Road was widened, the four lanes and also the middle lane there?

7 DR. FORBES: '78 I believe.

8 MR. SPEARMAN: '78, that long ago.

9 DR. FORBES: Yes, sir.

10 MR. SPEARMAN: Do you happen to know of any traffic counts and so forth that,  
11 for St. Andrews Road? I know that it's a very heavily traveled road.

12 DR. FORBES: Approximately 12,000 cars per day.

13 MR. SPEARMAN: This addition that you're gonna add on, how close will it be to  
14 Lawrence Street?

15 DR. FORBES: It would be, from the property line it'll be 6'11", from Lawrence  
16 Street itself it'll be about 15'.

17 MR. SPEARMAN: Okay, this addition, is it gonna be lined up with the front of  
18 your, of the house as it sits right now?

19 DR. FORBES: Yes, sir.

20 MR. SPEARMAN: How many residences are on Lawrence Street?

21 DR. FORBES: Three.

1 MR. SPEARMAN: Three? And you had mentioned in your testimony if memory  
2 serves me correct that there is a church that owns some property toward the end of  
3 Lawrence Street?

4 DR. FORBES: Yes, sir. Directly across from that house.

5 MR. SPEARMAN: Is this church planning on building or are they already built or  
6 is this property that they have used for a parking lot? I don't remember what you said  
7 exactly in your testimony.

8 DR. FORBES: Ms. Dickerson met with them and then met with me, the County  
9 Councilwoman and thought that they had plans for parking there. I don't think it's  
10 buildable. The, the lot across the street.

11 MR. SPEARMAN: Okay. How many parking spaces do you think it may be?

12 DR. FORBES: Nineteen.

13 MR. SPEARMAN: Nineteen for the, for the church?

14 DR. FORBES: Oh, for me?

15 MR. SPEARMAN: Yes, sir, for the church.

16 DR. FORBES: I don't know, it would be, it would be a lot, it would be 100.

17 MR. SPEARMAN: Fifty, 100?

18 DR. FORBES: A hundred.

19 MR. SPEARMAN: A hundred and fifty, something like that?

20 DR. FORBES: Yes, sir.

21 MR. SPEARMAN: Okay. And you have 19 parking spaces in –

22 DR. FORBES: Planned.

23 MR. SPEARMAN: Okay, how many parking spaces do you have now?

1 DR. FORBES: Twelve.

2 MR. SPEARMAN: Twelve? I would imagine that this church would meet on  
3 Sundays and Wednesdays and then other times when they have some issues or some  
4 type of service or whatever to conduct?

5 DR. FORBES: Yes, sir.

6 MR. SPEARMAN: Would this addition that you're gonna add on to the side of  
7 your current office, would that be an obstruction since – the traffic count you said was  
8 12,000 on St. Andrews Road, would this be some type of an obstruction for folks to get  
9 in and out of Lawrence Street to where they won't have to pull up into the right-of-way, I  
10 guess, for St. Andrews Road just to see to get in and out? Would it be a problem there?

11 DR. FORBES: No visibility issue pulling up. There's more than enough room to  
12 make a right or a left turn.

13 MR. SPEARMAN: Okay, but what I'm saying is your house or your office is very  
14 close to St. Andrews Road as it is now. If you come perpendicular to the front and you  
15 add your addition, will that hinder the traffic trying to get off of Lawrence Street onto St.  
16 Andrews Road, either to make a right turn or a left turn?

17 DR. FORBES: No, sir. Plenty of view.

18 MR. SPEARMAN: Plenty of view without going into the right-of-way.

19 MR. FORBE: Yes, sir.

20 MR. MEETZE: I believe he stated there were three residences on that street, but  
21 the property next to yours as I understand it has just been approved for a rezoning to  
22 commercial. Do you have any idea what kind of business would be going there?

1 DR. FORBES: No, sir, it's an elderly couple gave the home to their daughter who  
2 takes care of them and I don't think she has that planned yet.

3 MR. MEETZE: Well, it's a very low lying area in there, very low.

4 DR. FORBES: Yes, sir.

5 MR. MEETZE: And as far as getting out from the dead end street to St.  
6 Andrews, just like this gentleman said, you're gonna have to go to a point because you  
7 have to get up on the, to even see St. Andrews Road because the angle coming up  
8 there.

9 DR. FORBES: Yes, sir.

10 CHAIRMAN MCDUFFIE: Mr. Price?

11 MR. PRICE: Just for the record, the parcel that is north of the subject site went  
12 before the Planning Commission which is the first step in having the rezoning, but they  
13 have not gone to Council and they have not received all required readings and approval  
14 from Council.

15 CHAIRMAN MCDUFFIE: Is that the parcel that's currently highlighted there?

16 MR. PRICE: Yes, sir, so there is a, currently that parcel still has the, the  
17 residential multi-family zoning designation until, you know, all steps have been  
18 approved by Council.

19 CHAIRMAN MCDUFFIE: But that would not affect this particular parcel that we  
20 are speaking of today?

21 MR. PRICE: No, sir.

22 CHAIRMAN MCDUFFIE: I guess I have a question, Mr. Forbes, or I guess Dr.  
23 Forbes. The, I guess the first requirement for being able to grant, for the Board to be

1 able to grant this variance is show that the subject parcel, in this case the parcel that  
2 you're proposing to expand the office on, you know, has some sort of an extraordinary  
3 or an exceptional condition that does not apply to all of the parcels in the general vicinity  
4 and I noticed on the, on the application that has been filled out here it doesn't seem to  
5 really address anything that has to do with the parcel in question, it's simply, you know,  
6 addressing the requirements in the Code, the need for the setback. Can you, is there  
7 anything that you can, can bring to light that, that might be an extraordinary or  
8 exceptional condition on this particular parcel?

9 DR. FORBES: Well, I have no way to grow otherwise. The, the adjoining property  
10 across Lawrence Street is definitely within, exceeds the setback variance and I think the  
11 long-term plan is the church is gonna buy that whole block that the, the top square, and  
12 make parking and facilities there. And so I think it, under the circumstances I would not  
13 interfere with their activities nor they mine.

14 MR. PRICE: Maybe the Applicant can speak of why he may need to encroach on  
15 this particular side of the home, the structure –

16 CHAIRMAN MCDUFFIE: Sure, sure.

17 MR. PRICE: - as opposed to the other side.

18 CHAIRMAN MCDUFFIE: Absolutely.

19 DR. FORBES: Oh, well because my ingress and egress is, I can't build into that  
20 side of it or I'd lose all the parking and the handicapped entrance that's on the plans.

21 CHAIRMAN MCDUFFIE: So this would be basically your only direction that you  
22 would be able to, to grow your business.

1 DR. FORBES: Yes, sir, I had it evaluated every which-way and I either had to go  
2 up somehow or to the side.

3 MR. RUSH: Could they switch parking, how many parking spaces do you have  
4 on the right side, well if I'm facing it, on the right side?

5 DR. FORBES: On the right side I have two handicapped and four normal spots,  
6 and the difficulty with the left side is that there's a large grade running down into the  
7 valley as I call it, and it made, you can see how it drops off and patients couldn't walk up  
8 that very easily, it'd be really a nightmare for folks to get into the office. That's really – it  
9 doesn't quite show it, that's a sharp drop. Now you can see it better.

10 MR. MEETZE: That's about an 8' drop is it not?

11 DR. FORBES: Oh, at least. Yes, sir.

12 CHAIRMAN MCDUFFIE: Thank you. Are there any, are there any further  
13 questions for either Staff or for the Applicant?

14 MR. SPEARMAN: Dr. Forbes, this house was built when? Do you know when it  
15 was constructed?

16 DR. FORBES: I think in the '50s.

17 MR. SPEARMAN: In the '50s?

18 DR. FORBES: Yes, sir.

19 MR. SPEARMAN: And it was built as a residence?

20 DR. FORBES: Yes, sir. There you can sort of see, if it backs down a little bit you  
21 can see that there's plenty of visibility coming out onto St. Andrews. Can you go back  
22 toward Lawrence? There we go, see you'll have a good – that's perfect – as you pull up  
23 you'll have a good 40, 50' of visibility as you come up to the stop sign. Now you can

1 really see how the, how it drops off and the church has that bottom portion to the left.  
2 And where the little white car is that's where the application is, that's the neighbor for  
3 the commercial.

4 CHAIRMAN MCDUFFIE: Mr. Price, could you swivel the display there about 90°  
5 to the, to the right, as if I'm facing up St. Andrews there? Okay.

6 DR. FORBES: I'm coming this way 25' 6", and the front porch over toward the far  
7 end of the building.

8 CHAIRMAN MCDUFFIE: Alright, thank you. Mr. Spearman, would you care to  
9 go through the Findings of Fact?

10 MR. SPEARMAN: Sure. The property is zoned OI. Notice was placed on the  
11 property regarding the variance and today's meeting date and time. It was published in  
12 the newspaper. As far as extraordinary and exceptional conditions pertaining to the  
13 particular piece of property, I would say no. And the reason I'm saying that, testimony  
14 from Dr. Forbes stated that the house was constructed some time in the '50s, maybe  
15 even the '60s. At that time it was a residence and Richland County didn't even have  
16 zoning until the late '70s. The legislature adopted Home Rule in the mid-'70s and the  
17 first County Council I think was 1975. The first zoning ordinance I believe was in the,  
18 was '77 and they hired the first Zoning Administrator in '79 or '80. I understand Dr.  
19 Forbes' position as far as expanding his practice and, and allowing his patients to be  
20 more comfortable and to bring in another physician as well, but you know, this house  
21 was built as a residence and personally I would think that if the additional was allowed  
22 that it would definitely impede the visibility triangle of people trying to get on St.  
23 Andrews Road, which is an extremely heavily traveled road. And, you know, I

1 understand what you're trying to do, I really do and I think that's admirable, but you've  
2 pretty much outgrown this residence and I believe it would be a safety issue if we  
3 allowed this variance to go forward.

4 MR. PRICE: Mr. Chairman?

5 CHAIRMAN MCDUFFIE: Yes?

6 MR. PRICE: I [inaudible] discussion period, but I just want to address two issues  
7 with your statement. One, potentially could be in the visibility triangle and I think Staff  
8 did reference that during the discussion. Once again if it's granted that will be  
9 something that he would have to show on his site plans that would be submitted and if it  
10 was determined that it was in the visibility triangle, it couldn't be built anyway, so right  
11 now without, you know, that –

12 CHAIRMAN MCDUFFIE: So we can, we could effectively disregard that, that line  
13 of reasoning at this point, then.

14 MR. PRICE: I can show you cause it's kind of hard to tell right, you know, what  
15 was shown, but potentially could be.

16 CHAIRMAN MCDUFFIE: Okay.

17 MR. PRICE: That's one, and secondly one of the things that, you know, I would  
18 just point out to the Board to take into consideration, there are a number of areas in  
19 Richland County where, whether you're looking at Decker Boulevard or St. Andrews  
20 Road, there's a number of them where they were, you know, even Clemson Road now,  
21 where they were developed residentially and as time has gone on and growth has  
22 expanded really the residential, I guess, status of those homes, of those structures is

1 really what is considered to be more out of place rather than the commercial character  
2 that has taken over the areas.

3 CHAIRMAN MCDUFFIE: Certainly, most of St. Andrews Road I would say is, is  
4 fronted by, or at least at significant amount of it is fronted by properties that are used  
5 commercially at this point.

6 MR. PRICE: Yes.

7 CHAIRMAN MCDUFFIE: I would say very few people are probably looking to  
8 move onto, to front on that road for residential purposes. Is there any discussion about  
9 whether or not extraordinary and exceptional conditions in fact do apply to this  
10 property?

11 MS. CECERE: Well, I feel that the problem is that when St. Andrews was  
12 widened that limited that he had to put the parking in the back, that already I think puts a  
13 burden on this piece of property. Also that he cannot build on the other side because of  
14 the deep drop off, the deep grade. I think those two things are, should be taken into  
15 consideration.

16 MR. MEETZE: Additionally, that building was practically level with the roadway.  
17 When they widened St. Andrews they elevated it which made the drop off even more,  
18 and I've been by this property and I will have to agree with the good doctor, the addition  
19 as I see it, strictly a layman, it would have no bearing on the visibility cause you've only  
20 got three houses there now, one is going to be probably commercial before long and  
21 you've got almost no traffic there. And as I said, you have to go up that embankment to  
22 the stop sign anyway before you can even see St. Andrews Road. I don't see where  
23 this is nothing but just a no-man's land here, anything that he would do to this I think

1 would be an improvement and would, well not only enhance the neighborhood but I  
2 don't think it would have any detriment to the traffic visibility at all. How many people  
3 are gonna be coming out of that side street?

4 MR. SPEARMAN: Well, you've got the church parking that he referred to earlier.  
5 If there was a stop, if there was a stop light there, a traffic light there, you know, I think  
6 that that would, me personally, would be an assistance in probably making a motion to  
7 approve, but since it's just a stop sign and the nature of the drop right there, I think that  
8 it would just, and the heavy traffic on St. Andrews Road, I think it would be a detriment  
9 to all these folks trying to get out.

10 CHAIRMAN MCDUFFIE: Dr. Forbes, is there a –

11 DR. FORBES: I wasn't very clear on that. The church has a big entrance on its  
12 own on down the street and they'll be entering into that.

13 CHAIRMAN MCDUFFIE: Is, is –

14 DR. FORBES: The next street over from Lawrence.

15 MR. SPEARMAN: But if that's a dead end is the church, does the church have  
16 some type of drive where it goes up to the church building or is that just kind of remote  
17 parking or overflow parking for the church?

18 DR. FORBES: See the Lynn Street? Alright, the current parking for the church is  
19 on the left, on the bottom of the screen. Okay, there. And that's an office building  
20 where his pointer is now. That's the current church parking. Then go across the street,  
21 that's an office building. And then all the other sites are owned by the church, the one  
22 on St. Andrews Road, right, and the next one over, okay, and the next one down, right,  
23 and the next one over. And then a retired builder has the corner in that one. So the

1 church has all of that and they've just applied, Councilwoman Dickerson said for a  
2 different commercial status and I'm not familiar with what the church is gonna do there.

3 MR. PRICE: Yes, I believe this area is part of one of the master plans, you've  
4 seen it maybe, the Broad River Master Plan Area.

5 MS. CECERE: I'm sorry, what?

6 MR. PRICE: I'm sorry, I believe this area may be one of our master planned  
7 areas.

8 CHAIRMAN MCDUFFIE: I mean, I think what we need to try to identify though  
9 is, is the extraordinary on this particular parcel, not on the church's parking or on any,  
10 you know, any sort of, the adjacent parcels and, you know, I'm inclined to think that,  
11 given that he's precluded from, from expanding the other direction based on, you know,  
12 based on his parking needs and based on the slope of the lot, you know, that that would  
13 in fact create an exceptional condition for this particular piece of property.

14 MR. MEETZE: Agreed.

15 CHAIRMAN MCDUFFIE: But, you know, I think we need to limit our, our, you  
16 know, discussion here to this parcel, not to what may or may not occur on, you know, on  
17 a parcel several parcels away owned by a different owner, you know. Any other  
18 thoughts on whether or not we have an extraordinary and exceptional condition here?

19 MR. SMITH: I believe we do.

20 MR. SPEARMAN: I would move, you know, I would make a motion to deny, and  
21 then we can hear that and then we can go forward on the other.

22 CHAIRMAN MCDUFFIE: You're free to make a motion.

23 MR. SPEARMAN: I'd make a motion to deny variance 12-02 V.

1 CHAIRMAN MCDUFFIE: Okay, we have a motion to deny variance 12-02, is  
2 there a –

3 MR. RUSH: Can I ask a question?

4 CHAIRMAN MCDUFFIE: Oh. Go ahead and ask the question.

5 MR. RUSH: Mr. Price, with the other sort of relevant I guess, with the frontage  
6 the properties that are fronting St. Andrews Road, are they, do they have that similar  
7 grade? Even the next street over, well the property across the street, that one right  
8 there, does it have the same grade?

9 MR. PRICE: [Inaudible] Doesn't seem to be quite as steep.

10 MR. RUSH: Has a similar grade to it though. So all the properties up and down  
11 that street are basically the same.

12 MR. SPEARMAN: Mostly residences on the side but the doctor's on the other  
13 side heading toward 26 are more commercial type buildings that, you know, the  
14 residences have been demolished and other commercial type buildings have been put  
15 in its place.

16 MR. RUSH: And the reason why I ask that is, and this can go to the Board for  
17 discussion if you guys would like, if it's an extraordinary condition to that property that  
18 means that, and exceptional, does that mean that it doesn't relate to any other  
19 properties on that street? But judging from that last view it seems like all of them  
20 basically have the same, the same issue.

21 MR. SPEARMAN: Same or similar circumstances.

22 MR. RUSH: Yeah.

1 CHAIRMAN MCDUFFIE: Alright, so we have a motion at this time. Is there a  
2 second?

3 MR. RUSH: I'd like to second that.

4 CHAIRMAN MCDUFFIE: Alright, so we do have a motion and it's been  
5 seconded to deny, to deny variance 12-02 based on lack of an extraordinary or  
6 exceptional condition. All in favor?

7 MR. PRICE: Those in favor: Spearman, Rush.

8 CHAIRMAN MCDUFFIE: All opposed?

9 MR. PRICE: Those opposed: Meetze, McDuffie, Cecere, Smith

10 *[Approved to deny: Spearman, Rush; Opposed: Meetze, McDuffie, Cecere, Smith;*  
11 *Absent: Cooke]*

12 CHAIRMAN MCDUFFIE: Okay, Mr. Spearman your motion has failed for lack of  
13 majority. At this point I think, if there's not a, if there's not another motion then maybe  
14 we can continue with the discussion of if there are extraordinary and exceptional  
15 conditions on this parcel.

16 MR. MEETZE: I would make a motion that we grant the gentleman what he's  
17 asked for.

18 CHAIRMAN MCDUFFIE: Well, we would still need to look at the other, at the  
19 other facts of the case, so would you please resume the Findings of Fact at .5 then?

20 MR. MEETZE: Okay. Do these conditions generally apply to other property in  
21 the vicinity? I would say generally no because it's on a very, I would say bad graded lot  
22 and it's a corner lot on top of that.

1 MR. RUSH: I think that goes to my comment I just made. If you look across the  
2 street at the next lot it has the same topography as the lot that the, the Applicant's lot,  
3 it's the same slope on it, I mean, [inaudible].

4 MR. MEETZE: But that building across the street is only a few feet from the  
5 street. This gentleman's property is, I mean, it's probably what, 75, 100' from the side of  
6 the street?

7 [Inaudible discussion]

8 MR. RUSH: No, I'm sure it's not that far.

9 MR. MEETZE: No, I'm talking about from the curb.

10 MR. RUSH: It's only 14'.

11 MR. MEETZE: No, I'm talking about from the curb to the side of his current  
12 building.

13 MR. RUSH: Oh, that's –

14 DR. FORBES: It's a retaining wall in the, in the county property line and, and put  
15 parking in the county's parking. If you look at the front of that building to the left.

16 MR. MEETZE: Well, I believe that driveway comes right out to Lawrence Street.

17 DR. FORBES: Yes, sir.

18 MR. MEETZE: Across the road there.

19 DR. FORBES: He, he built a wall up to the sidewalk and built –

20 MR. MEETZE: Exactly.

21 DR. FORBES: - parking, actually on the county property.

1 MR. RUSH: Yeah, I mean, other than what's been built on the property, the  
2 property itself has the same or similar topography as far as the slope. So if we're talking  
3 about is this the general condition of the properties in the vicinity, I –

4 CHAIRMAN MCDUFFIE: Well now, just because these two adjoining, essentially  
5 adjoining properties may share some similarity or condition that doesn't mean that that's  
6 the general rule for, for properties fronting St. Andrews Road in the Lawrence vicinity. I,  
7 I mean, I'm not –

8 MR. RUSH: Could you put the overlay of topography, the topography map over  
9 that?

10 MR. SMITH: That's the only way to be able to look at it is by looking at the whole  
11 street. We're only looking at two properties now and so, and with that, with them having  
12 parking in the back where the building beside him has parking on the side of the  
13 building. And I would think that there is a difference.

14 CHAIRMAN MCDUFFIE: It definitely flattens out.

15 MR. SMITH: And it flattens, yeah.

16 CHAIRMAN MCDUFFIE: To the, I guess that's east. And to the – we're sort of, I  
17 think this is sort of the, it looks like we're at about the steepest point on the street,  
18 though, right at, right adjacent to Lawrence Street there, just judging by the spacing of  
19 the contour lines. So, I mean, I guess I would, I would agree that, that you know, this  
20 property has some particular characteristics that aren't generally the case for other  
21 properties in the vicinity. Do you want to keep, continue?

22 MR. MEETZE: Alright, Would application of this chapter to this particular piece of  
23 property effectively prohibit or unreasonably restrict the utilization of the property

1 because of the aforesaid extraordinary and exceptional conditions? Let's see, I would,  
2 let's see, I would say yes.

3 CHAIRMAN MCDUFFIE: And what would the prohibition or restriction be?

4 MR. MEETZE: Effectively prohibit – well if he builds this then actually there is  
5 nothing else could be put there, that is it.

6 CHAIRMAN MCDUFFIE: However, it, I mean, it can still be operated as an office  
7 without, without the variance. I mean, it's being operated as an office right now. Now, it  
8 may be preferable, and it would be to the Applicant to expand.

9 MR. MEETZE: That's right, it would restrict his expansion plans.

10 CHAIRMAN MCDUFFIE: But it doesn't necessarily, it doesn't necessarily restrict  
11 the, the utilization of the property. It certainly would be more profitable, would be  
12 desirable to, to have the variance and to expand, but it doesn't necessarily restrict him  
13 from utilizing the property.

14 MR. MEETZE: Right. I think you've got a situation here that we've got to look a  
15 common sense issue and I'm looking at it from a common sense standpoint. You've got  
16 an area there that's a no-man's land, it's a tremendous drop off, and I laud the  
17 gentleman for the expense and what he's gonna do to even improve that cause there's  
18 gonna have to be a lot of filling in there to even build what he wants to build. And like I  
19 say, when St. Andrews was widened, I remember that, most of those buildings along St.  
20 Andrews were level with the roadway, but when they built it up, and unfortunately this  
21 particular piece of property was right there at that gully so to speak and I guess they did  
22 the best they could with what they had at the time. But we've got something here that I  
23 guess trying to make lemonade out of a bucket of lemons and I think it can be done.

1 MR. RUSH: So what's the answer to number 6?

2 CHAIRMAN MCDUFFIE: I'm not sure that we have one yet. Anybody else care to  
3 weigh in?

4 MR. MEETZE: I would say common sense needs to be considered on number 6.

5 MR. RUSH: So what, what would that answer be?

6 MR. MEETZE: I'm sorry?

7 MR. RUSH: Common sense, I don't think we can do it based on common sense.  
8 What would be the answer, what are the restrictions that would allow this to go forward?  
9 If we're looking at, based on the ordinance that we're given to make decisions on?

10 DR. FORBES: I've committed to building a \$70,000 retaining wall because I'm  
11 the lowest point on St. Andrews Road there, and all the water from Broad River Road  
12 comes onto my property and I'm willing to build a retaining wall with, with drainage to  
13 take the water where it ought to be.

14 MR. MEETZE: At your expense?

15 DR. FORBES: Yes, sir. And it would greatly enhance the neighborhood. If, if I  
16 can't expand I'll have to relocate unfortunately.

17 MS. CECERE: The unfortunate thing here, Dr. Forbes, is that when County  
18 Council made these rules and regulations to protect properties, the only way that we  
19 can actually go about granting that is if it meets these criteria, and when, when this, with  
20 would this application restrict the utilization of this property, that's one of the criteria but  
21 it – the answer to that is no it wouldn't, it could still operate as a business, so basically  
22 there is, I mean –

1 DR. FORBES: When I met with two Councilmembers they were really,  
2 encouraged me to go forward with this project. And I'm, six more jobs, half a million  
3 dollars in construction, and, and yes, it could be continued to operate it's just that I  
4 wouldn't be able to operate a dental office there anymore. I can't, my facility won't  
5 cover the patients and the needs of the community.

6 MS. CECERE: I understand.

7 CHAIRMAN MCDUFFIE: Well, I mean, you know, and that, that in my mind  
8 could be, you know, could, could restrict the utilization of the property potentially. The  
9 fact that, you know, it's not currently meeting the needs of the business, that being said  
10 –

11 DR. FORBES: And the new rooms will be handicap accessible, I don't have that  
12 now, I can't take care of wheelchair patients and, and all that'll be changed cause it will  
13 all be brought up to Code according to the county.

14 MR. SMITH: I'd like to say I honestly think that there are extraordinary issues  
15 with this pertaining to the St. Andrews Road being brought into the property, one. When  
16 you look at the actual community, I'm listening to what everybody's saying here, it's not  
17 a common sense statement this is more of a recognition of what use the property will  
18 have after this done. And we're looking at the betterment for the community. I truly  
19 believe, not by common sense but by the laws that we have here pertaining to what  
20 direction you can go into is on the wrong way, one. Two, you have issues that will be  
21 taken care of in the future if we do approve this with the DOT in regards to if it can be  
22 built. I think, Geo, Mr. Price you were saying there won't – it will be a situation where  
23 they won't have opportunity to build if you can't see around, am I correct, through DOT?

1 MR. PRICE: Yeah, the requirement of our Code require businesses or any  
2 structure to observe, to meet our, what we call a visibility triangle.

3 MR. SMITH: Yes.

4 MR. PRICE: And that's something that [inaudible] more detail site plan that's  
5 presented to the county, we would definitely have to take a look at that. And if it can't  
6 meet it then they could revise the plans but that would just give them some alternatives.  
7 But that, that particular section of our Code, those provisions would have to be met.

8 MR. SMITH: So if we actually approve it now, the opportunity to take care of the

9 –

10 CHAIRMAN MCDUFFIE: The safety aspect of it would still be considered.

11 MR. PRICE: Right.

12 MR. SMITH: So I see no reason why –

13 CHAIRMAN MCDUFFIE: I mean, I'm inclined to think that, that – I'm inclined to  
14 think that a strict application of the setbacks of the ordinance here would in fact  
15 unreasonably restrict the utilization of the property personally. You know, given that it  
16 would prevent the business from being able to continue to operate there as a dentist  
17 office at this point, and the fact that even if he were to say go in and do a lot of fill work  
18 and that kind of thing, he still wouldn't be able to reconfigure the lot, you know,  
19 reconfigure the, the, the structures there to be able to park, you know, to say on, you  
20 know, within the setback and move the addition to the other side, there's just not,  
21 there's physically not, there wouldn't be enough room to, you know, move the cars and  
22 move the people without, you know, having a steep grade, that kind of a thing. You

1 know, so I'm inclined to think that it, you know, that it would unreasonably restrict the  
2 utilization of, of the property.

3 MR. SMITH: Mr. Meetze, can you, can you finish the Finding of Facts?

4 MR. MEETZE: Okay. Will the granting of this variance be of substantial detriment  
5 to the adjacent property or to the public good or will it harm the character of the district?  
6 I would say no.

7 CHAIRMAN MCDUFFIE: Mr. Meetze, would care to make a motion at this time?

8 MR. MEETZE: I make a motion that it be granted.

9 MR. SMITH: Second it.

10 CHAIRMAN MCDUFFIE: Based on?

11 MR. MEETZE: Contingent upon –

12 CHAIRMAN MCDUFFIE: Based on the Finding of Fact or?

13 MR. MEETZE: Yeah, no on the ruling of the, of the Highway Department.

14 CHAIRMAN MCDUFFIE: We don't, I don't think we can make something  
15 contingent upon that, but it would of course still be subject to their approval.

16 MR. MEETZE: Yeah.

17 CHAIRMAN MCDUFFIE: But based – can I amend your motion to, to say based  
18 on the Finding of Fact?

19 MR. MEETZE: Sure.

20 MR. SMITH: And I'll second that motion based on the Findings.

21 CHAIRMAN MCDUFFIE: So we have a motion to approve variance request 12-  
22 02 variance based on the Findings of Fact and it has been properly seconded. All in  
23 favor?

1 MR. PRICE: Those in favor: Meetze, McDuffie, Cecere, Smith.

2 CHAIRMAN MCDUFFIE: And all opposed?

3 MR. PRICE: Those opposed: Spearman, Rush.

4 *[Approved: Meetze, McDuffie, Cecere, Smith; Opposed: Spearman, Rush; Absent:*  
5 *Cooke]*

6 CHAIRMAN MCDUFFIE: Okay, Dr. Forbes you have your variance and Staff will  
7 be in touch.

8 DR. FORBES: Thank you.

9 CHAIRMAN MCDUFFIE: Mr. Price, please call your next case.

10 **CASE NO.: 12-03 SE:**

11 MR. PRICE: The next item is case 12-03 special exception. The Applicant is  
12 requesting the Board of Zoning Appeals to grant a special exception to permit the  
13 construction of a communication tower in a GC district. The Applicant is, it would be  
14 Clear Talk, I believe Carol Bausinger is the Applicant. The location is 2080 Dutch Fork  
15 Road. The parcel is currently undeveloped. The Applicant proposes to erect a 250'  
16 telecommunications tower within a 4,477 square foot leased area. The areas is  
17 developed primarily with commercial and institutional uses. On the rear of the property  
18 is a railroad track. And I have the same exhibits that you have in your packet in case  
19 you would like to see them on the screen, I won't go through those for this particular  
20 case. And that's it from Staff.

21 CHAIRMAN MCDUFFIE: I don't have the sign up sheets for this one. I don't  
22 believe. Could you give me the sign up sheet for this one? I don't think I ever got those  
23 back. Thank you. Alright, anything else Mr. Price?

1 MR. PRICE: No, that'll be it.

2 CHAIRMAN MCDUFFIE: We have several people signed up in support. And at  
3 this time Michael – I can't read it. Looks like Michael FEIGENBAUM(?) is that –

4 MR. FEIGENBAUM: Yeah, very good.

5 CHAIRMAN MCDUFFIE: Okay. Please state your name and address for the  
6 Record.

7 **TESTIMONY OF MICHAEL FEIGENBAUM:**

8 MR. FEIGENBAUM: My name's Mike FEIGENBAUM. I am the site development  
9 manager for Clear Talk Wireless. I've been with Clear Talk since its inception.

10 CHAIRMAN MCDUFFIE: Please state your address for the Record.

11 MR. FEIGENBAUM: Oh, my address, 2101 Main Street, Columbia, South  
12 Carolina 29201.

13 CHAIRMAN MCDUFFIE: Thank you, continue.

14 MR. FEIGENBAUM: As I started to say, well first thank you for allowing us to, to  
15 appear before you. I've been the site development manager for Clear Talk Wireless  
16 since its inception back in 1999. We just launched our service here in the Columbia and  
17 Greenville area. We are a low cost provider of advanced telecommunication services  
18 that we offer to the general public. Our basic principal that we operate under is that  
19 wireless, you know, should be, you know, simple and it should be affordable and  
20 available to everybody. We, you know, as I said we just commenced delivering services  
21 to both the Columbia markets and the Greenville market several months ago. We've, I  
22 think had a lot of success. The, our primary way of getting our sites built is by  
23 employing co-location. We all know that's just using existing towers to put our

1 equipment on there, we can illustrate that by noting that for the first 44 sites that, that  
2 we put on the air to launch a Columbia area, we co-located on 38 of them. So you can  
3 see our primary objective is to use existing towers wherever we can, it makes sense, it's  
4 a responsible way to develop your network and, and it's, and it's faster to market and  
5 more economical. So that's the background of Clear Talk. I'm here to answer any  
6 questions that, that the Board may have and that's where we are.

7 CHAIRMAN MCDUFFIE: Are there any questions for either Staff or the  
8 Applicant?

9 MR. SPEARMAN: I've got a couple for the Applicant.

10 CHAIRMAN MCDUFFIE: Please.

11 MR. SPEARMAN: Data and voice or?

12 MR. FEIGENBAUM: Yes. Both data and voice.

13 MR. SPEARMAN: Okay, wi-fi for computers or anything, just data and voice?

14 MR. FEIGENBAUM: Exactly. You know, to compete pretty much directly with  
15 what Verizon Wireless may offer for, you know, \$150 a month, you know, we're \$40 a  
16 month kind of thing.

17 MR. SPEARMAN: Okay. Do you, for this particular location, it's a 250', is this a  
18 lattice tower?

19 MR. FEIGENBAUM: Yes, it is.

20 MR. SPEARMAN: Why exactly 250'? Why does it have to be so high?

21 MR. FEIGENBAUM: Well, and that's an excellent question. You want to, you  
22 know, once we have this framework of sites that we've already developed and co-  
23 located on, it's sort of changes the, or it kind of, your constraint, your search areas

1 where these things become just a little bit smaller, what we want to do is develop much  
2 fewer sites and then have the, the, you know, the particular site cover a greater area  
3 and a better impact of our footprint, you know, for, for the citizens, for highways, for  
4 residents, without having to be real close to them. A taller tower will propagate better,  
5 not only that a taller tower as in a 250' tower, which is not on the high end of the  
6 spectrum by the way in terms of tower heights, but a higher one also provides lots of  
7 space for other carriers to co-locate with us. We do, you know, offer our facilities for co-  
8 location to Verizon or Sprint, you know, or AT&T or whoever else would like to go on  
9 there which, you know, in the end reduces the number of towers that are needed to  
10 achieve, you know, a wireless footprint, you know, in the area.

11 MR. SPEARMAN: How many, how many antennas can you hang on your tower  
12 as far as co-location?

13 MR. FEIGENBAUM: This particular one is designed for four carriers, us being  
14 one, and then there would be room for potentially three others. Every time somebody,  
15 you know, a potential co-locator wants to come and, and become, you know, install their  
16 equipment on these towers, their proposed antenna configuration would be given back  
17 to our engineering company that designed the tower to make sure that it's structurally,  
18 you know, cabled for that. For right now, we kind of design them with a standard  
19 configuration that, that all the carriers use and it's designed out of the box to, to hold  
20 four carriers.

21 MR. SPEARMAN: So your company owns your personal tower?

22 MR. FEIGENBAUM: Yes, we do.

1 MR. SPEARMAN: You're not a tower builder, in other words you're a provider  
2 and a –

3 MR. FEIGENBAUM: No, we're – this is, yeah we are, you know, Clear Talk  
4 Wireless develops towers for its own use when they can't co-locate.

5 MR. SPEARMAN: As far as the fall radius for this tower right here what are we,  
6 what are we looking at in worse case scenario?

7 MR. FEIGENBAUM: That's an excellent question. These towers may be  
8 designed specifically to fall within a specific fall zone radius. This one here, I do not, I  
9 have not ordered the engineering for this but my request to the engineering firm that's  
10 going to do the engineering for this tower, and I've done it many times before, will be for  
11 a fall zone radius of about 75'.

12 MR. SPEARMAN: Yeah, you've got traffic and you've got a railroad track behind  
13 –

14 MR. FEIGENBAUM: Yes, we do.

15 MR. SPEARMAN: - behind it, it's a relatively pie-shaped piece of property, you've  
16 got Dutch Fork Road out there which is heavily traveled, you've got a gas station right  
17 there beside it, so it, you know, I'd be kind of interested to see what, what your proposal  
18 is in that regard since it's so much congestion right, right there where this tower's gonna  
19 be.

20 MR. FEIGENBAUM: That's true and we, you know, tower development has  
21 been, you know, through the last, you know, 10 years or so has been rather  
22 controversial in lots of parts of the country and a big part of it is that very reason, and  
23 the tower manufacturers, you know, in order for them to be able to actually, you know,

1 build stuff that they can sell in the marketplace need to be able to design these things,  
2 you know, to collapse within a much smaller radius than the height. I will say, you  
3 know, in a 50 year career in, in buildings these things and being involved in the telecom  
4 industry I've never seen one fail. We had, just as an example, one of the markets that,  
5 one of the first ones that we developed was in Jackson, Tennessee and we built, it was  
6 our, for our main switch building we built a tower in conjunction with that right in the  
7 middle of downtown Jackson. And shortly after the building was completed and ready to  
8 accept our, our equipment Jackson was hit with a gigantic tornado, it went right through  
9 the middle of town, flattened the building that we were, had just completed, were ready  
10 to turn on the, our switches, the tower was not damaged and is still there. These things  
11 are, you know, engineered to an extremely high standard. I can understand why people  
12 want to have assurances about fall zones and things of that nature for the safety of the  
13 general public, and these are, these are well designed, I've never personally heard of  
14 anything, you know, failing in that manner.

15 MR. SPEARMAN: Your lighting package, in the daytime it's really not a problem  
16 but at nighttime with the retirement facilities and stuff just right across the street, is that  
17 gonna be an annoyance as far as your nighttime lighting? Cause I'm sure it's gonna  
18 have to be lit per FAA circumstances as far as aircraft and so forth, how will you, how  
19 do you address that as far as your nighttime lighting?

20 MR. FEIGENBAUM: That's an excellent question. I will – since we made the  
21 application and this meeting, in that time between it, we did receive our FAA approval to  
22 do this. I think what I had turned in in the application was our application to the FAA. I  
23 want to just, you know, before I get to that I want to state that we did actually get FAA's

1 approval to do this. Any tower that is constructed that is in excess of 200' needs to be  
2 lighted in accordance with, you know, the FAA regulations for that to provide safety for  
3 avigational uses. In this particular case they're gonna, they're asking for, and it's not an  
4 uncommon configuration, it's actually the normal configuration, consists of a strobe light,  
5 a white strobe light during the day, but at nighttime that switches from a strobe to a red  
6 beacon that is, you know, 1/10 of the intensity of a strobe, and also it's not that flashing,  
7 it's more of a blinking kind of a thing. I've not, again, the towers that we've constructed  
8 never had any complaints about lighting. We do try to be very responsible in the way  
9 that we develop stuff and take into account things like that and, and what the highest  
10 and best use, you know, of a piece of property is, so I think that, with respect to the  
11 lighting I think that, I don't see an issue with that.

12 MR. SPEARMAN: If there was an issue with it from adjoining property owners,  
13 residences, whatever, would you be willing to meet with them and address that issue to  
14 where you'd get the problem solved, are y'all that flexible in doing –

15 MR. FEIGENBAUM: Absolutely.

16 MR. SPEARMAN: - in trying to be, you know, a good neighbor in the community?

17 MR. FEIGENBAUM: Absolutely, and, and that's another excellent idea, you  
18 know, that I want to expound upon for a second. You know, we're requesting for  
19 permission to construct this sort of thing to serve our customers. You know, we operate  
20 here, we're a local carrier, we need to take our product into the local marketplace and  
21 have it be accepted by potential customers here. You know, and that goes back to the  
22 responsibility in that we need to, that tower developers need to use in building these  
23 things is you don't want alienate your customers by putting something, you know, in an

1 area that's, that will likely get them angry. You know, so if in the unlikely event there is  
2 some negative feedback from this, from the people that may be in that institution, we'd  
3 be more than happy to meet with them and try to find some way to mitigate it, you know,  
4 or solve the problem for the residents in that facility.

5 CHAIRMAN MCDUFFIE: The lighting requirement though, the particular style  
6 and the decision whether it needs to be lit or not though is mandated by the FAA,  
7 correct?

8 MR. FEIGENBAUM: It is. And one thing I'd like to add on that, these are  
9 designed to, you know, be, you know, a signal if you will for people using the air space.  
10 They're not designed to radiate, you know, the majority of its light down but more, you  
11 know, in an upward fashion so that, you know, airplanes can see it.

12 CHAIRMAN MCDUFFIE: Sure. But regardless of whether or not it's having an  
13 effect on adjacent or nearby parcels, I guess that's not up to the, to your company  
14 thought, that's mandated by the FAA.

15 MR. FEIGENBAUM: Yeah, absolutely.

16 CHAIRMAN MCDUFFIE: Are there any other questions for either Staff or for the  
17 Applicant?

18 MR. SMITH: I have a question for Staff. Geo, in the past towers that we've  
19 worked on have we been provided – excuse my ignorance on this pertaining to the  
20 specifics, but the past towers we've worked with, have we had the engineering for the  
21 fall zone in place?

22 MR. PRICE: No, not that I'm aware of.

23 MR. SMITH: Okay, I was just wondering.

1 MR. PRICE: Most – and that question has come up a number of times and I  
2 believe based on the testimony of the Applicant is what you've used in your decision  
3 making regarding the fall zone.

4 MR. SMITH: Okay. Thank you.

5 CHAIRMAN MCDUFFIE: Any other questions? Mr. Smith, would you care to go  
6 through the Findings of Fact?

7 MR. SMITH: Sure would. Alright.

8 CHAIRMAN MCDUFFIE: Oh, wait. Hold on, I apologize. We also have two other  
9 individuals that are signed up to speak if, if they wish to. Mr. William Howard?

10 **TESTIMONY OF WILLIAM HOWARD:**

11 MR. HOWARD: [Inaudible] I'm at 12 South Edisto Avenue, Columbia, South  
12 Carolina 20205 and I am Clear Talk Wireless' RF Engineer. I'll simply defer to any  
13 questions.

14 CHAIRMAN MCDUFFIE: Are there any questions for Mr. Howard at this time?

15 MR. SPEARMAN: One question if you don't mind. For this tower right here, will it  
16 do the job that y'all want it to do in that particular area or will there be other towers have  
17 to be added in that area to, for hand off?

18 MR. HOWARD: This tower actually meets the design objective perfectly. It  
19 extends our coverage from our sites in Irmo up to the county line, and then making hand  
20 off with our neighboring sites in Newberry.

21 MR. SPEARMAN: So y'all won't be back again for an additional tower up in that  
22 –

23 MR. HOWARD: Not in this neck of the woods?

1 MR. SPEARMAN: - neck of the woods?

2 MR. HOWARD: Correct.

3 MR. SPEARMAN: Okay.

4 CHAIRMAN MCDUFFIE: Any other questions? And then also we have Mr.  
5 Andrew McNeal signed up.

6 AUDIENCE: [Inaudible]

7 CHAIRMAN MCDUFFIE: Alright, Mr. McNeal defers to, to the other gentleman  
8 then. At this point please resume the Findings of Fact, thank you.

9 MR. SMITH: Alright. [Inaudible] request for case no. 12-03, property is zoned  
10 Commercial. Notice of public hearing posted on the property for which the special  
11 exception sought, I would think yes. Was the notice published in the newspaper? Yes.  
12 Will the proposed tower have a maximum height of less than 300'? Yes, it will, 250. If  
13 the proposed tower will be located on a building four stories or less in height, will the  
14 tower have a maximum height of 20' above the roof line? Yes, it will.

15 CHAIRMAN MCDUFFIE: Not applicable.

16 MR. SMITH: Not applicable, I'm sorry, yeah. Not applicable, I apologize. And is  
17 the base of the proposed tower located at least one foot from a residential zoning  
18 district? This is not in a residential area, so. And – okay, let me skip to 6. Has the  
19 applicant shown proof of attempt to co-locate on existing communication towers? The  
20 applicant showed that the alternative towers, buildings or other structures were not  
21 available for use within the applicant's tower site search area that was structurally  
22 capable of supporting the intended antenna or meeting the applicant's necessary height  
23 criteria or providing a location free of interference from other communication towers?

1 Yes. Is the applicant willing to allow other users to co-locate? Yes. Will the proposed  
2 tower meet the illumination requirements of regulatory agencies such as the FCC or the  
3 Federal Aviation Administration? Yes. Will the communication tower and associated  
4 buildings be enclosed with a fence at least 7' in height by which you incorporated? Yes.  
5 Has the applicant agreed to landscape the communication tower site with the  
6 requirements of §26-176? Yes. Has the applicant agreed to place no signage to any  
7 portion of the communication tower unless the sign is for the purpose of identification,  
8 warning, emergency function or contact? Yes. Has the applicant agreed to dismantle or  
9 remove the communication tower within 120 days of the date that tower is taken out of  
10 service? Yes. Will the traffic be impacted by the proposal? No. Will the proposal affect  
11 vehicle and pedestrian safety? No. Is there a potential impact of noise, light, fumes, or  
12 obstruction of airflow on adjoining properties? No. Does the proposed communication  
13 tower have an adverse impact on the aesthetic character of the environment? No. Is the  
14 orientation or spacing of improvement or building appropriate? Yes. With that being said  
15 I would like to grant approval –

16 CHAIRMAN MCDUFFIE: You've got to make a motion first [laughter].

17 MR. SMITH: I would like to make a motion to approve case 12-03 special  
18 exception with the, in regards to the Finding of Facts.

19 MR. MEETZE: Second.

20 CHAIRMAN MCDUFFIE: Okay, we have a motion –

21 MR. RUSH: One thing I wanted to mention. One thing I wanted to mention and  
22 maybe I overlooked it was the proposed landscaping for –

1 MR. PRICE: In part of the Applicant's submittal they stated that they would meet  
2 the requirements of the landscaping requirements.

3 CHAIRMAN MCDUFFIE: Alright, we have a motion and it has been properly  
4 seconded based on the Findings of Fact. All in favor?

5 MR. PRICE: Those in favor: Spearman, Meetze, Rush, McDuffie, Cecere, Smith.  
6 *[Approved: Spearman, Meetze, Rush, McDuffie, Cecere, Smith; Absent: Cooke]*

7 CHAIRMAN MCDUFFIE: Alright, and that would be non opposed. Alright, you  
8 have exception and Staff will be in touch. And I think you're up again. Mr. Price, please  
9 call the next case.

10 **CASE NO.: 12-04 SE:**

11 MR. PRICE: The next item is case 12-04, special exception. The Applicant is  
12 requesting the Board of Zoning Appeals to grant a special exception to permit the  
13 construction of a communication tower in the RU district. Once again, the Applicant is  
14 Clear Talk. The location is on Bluff Road and it would be within a four and a half acre  
15 tract, I believe it's gonna be subdivided from an apparent 30 ½ acre tract. The parcel is  
16 currently undeveloped. The Applicant proposes to erect a 250' telecommunications  
17 tower within a 5,625 square foot leased area. The surrounding area consists of a  
18 mixture of agriculturally and residentially developed uses on large tracts. Staff has, you  
19 know, Staff reviewed the submittal and determined that as far as, at least from what  
20 we've seen it would meet all of the setback requirements as required under the special  
21 exception standards that's before you.

1 CHAIRMAN MCDUFFIE: Are there any questions for Staff at this time? If there  
2 are no questions for Staff then I'll call the Applicant back to the podium. Please state  
3 your name and address again for the Record.

4 **TESTIMONY OF MICHAEL FEIGENBAUM:**

5 MR. FEIGENBAUM: My name is Michael Feigenbaum. I'm the site development  
6 manager for Clear Talk Wireless. My address is 2101 Main Street, Columbia, South  
7 Carolina 29201. I'm going to spare you all a rehash of who we are and let you know  
8 that what we're trying, our objective here is to build this site for the expansion out of the  
9 core network area and this is to provide some coverage along Bluff Road from I77 east,  
10 usually towards Eastover. We're committed to, to serving a lot of the smaller towns in  
11 this trading area as they call it that other guys don't generally do because they want to  
12 spend their budget money elsewhere so we're actually working out towards Eastover,  
13 we're working out towards Sumter. This is, you know, kind of part of, you know, our link  
14 to get from the metropolitan area to these smaller places. And we do want to provide  
15 some coverage over at the Westinghouse plant that's in that particular area. And I'll be  
16 happy to answer any questions specific to this site.

17 MR. CECERE: I have a question. What attempts were made to co-locate with  
18 other towers?

19 MR. FEIGENBAUM: We did make some attempts over here and I've got some  
20 notes specific to that right here in front of me. Again, we're starting again into an area  
21 where others are, are not, you know, offering coverage at this point in time. Or not  
22 extensive coverage, so you know, this, the nearest tower that we have to this particular  
23 area is more than four miles away, so there is nothing, you know, right in this vicinity

1 that, you know, can offer the engineering solution that we need to make this network  
2 work in this particular. Four miles is pretty far in respect to the design of these sorts of  
3 things.

4 MS. CECERE: Let me ask you this, now I'm not an engineer or anything so how,  
5 how many miles radius will your tower cover?

6 MR. FEIGENBAUM: That's a good question and I'm gonna have our RF  
7 engineer, if it's okay with the Board, talk a little bit about that in laymen's terms, not  
8 technical engineering terms -

9 MS. CECERE: Thank you.

10 MR. FEIGENBAUM: - but in terms that, that anybody can understand. So Bill  
11 Howard will take over for a couple of minutes here and answer any questions in that  
12 respect.

13 MS. CECERE: Okay, thank you.

14 MR. FEIGENBAUM: Thank you.

15 MR. HOWARD: Hello, William Howard, 912 South Edisto Avenue, Columbia,  
16 South Carolina 29205. That's a difficult question to answer. Rural areas and urban  
17 areas both have very specific needs when designing an RF network. In downtown area  
18 Columbia for instance, our cell sites generally will propagate about a mile, anywhere  
19 from ½ mile to a mile and a half, and that's, the logic for that is based on, on a capacity  
20 issue. Each cell phone tower can only handle a specific number of users, so in a  
21 densely populated area like downtown Columbia, we do not want to propagate very far.  
22 If we do then what you experience is a blocked call. People will make a call but they'll  
23 be too many users on that tower cause it's covering too many people. When you get

1 into a rural area, obviously the population density is much less so you can build a much  
2 taller site that can propagate much further. We are actually the only cell phone provider  
3 in South Carolina currently broadcasting on the AWS network, which is a new band of  
4 spectrum released by FCC two years ago, and AWS is a much higher frequency than  
5 standard cell phones. Initially cell phones broadcast at 800 MHz, then they transitioned  
6 in 1998 to 1900 MHz. We are now broadcasting at 2100 MHz. And the issue that is  
7 involved at, with broadcasting such a high frequency is the signal tends to attenuate or  
8 be absorbed by surrounding structures, and this can be anything from a house to a tree  
9 to billboards, things of that nature. So at 2100 MHz we are really limited in our range,  
10 our signal range. So to answer your question, out in a rural area we're looking to get  
11 four to four and a half mile radius from each, from a 250' cell phone tower. Which, when  
12 compared to say Verizon or AT&T which broadcast at 800 MHz, or Verizon in this  
13 market broadcasts at 800 MHz, AT&T is 1900, they can go up to 10 miles, so they get  
14 much more bang for their buck. But that's what we get for being a late player in the  
15 game and not having the budgets that the big guys have.

16 MS. CECERE: Thank you.

17 CHAIRMAN MCDUFFIE: So in order to get the range and, you know, that you  
18 need at the AWS frequency that you're operating on you need to be at this 250' –

19 MR. HOWARD: We need tall sites in rural areas and we need a high cell  
20 density. If you think of it as a hose you can cover a much larger area if you're up above  
21 shooting down than rather than shooting through blades of grass. It's not exactly the  
22 same but it's a good way to visualize it.

1 CHAIRMAN MCDUFFIE: So even though you're dealing with a relatively say flat  
2 area –

3 MR. HOWARD: Even though it's a flat area if you, think of it this way, if you're  
4 say down at 150' and the trees are 100', your slope is a lot more gradual and you will, in  
5 order to get the same distance you will have to penetrate through a foliage canopy for  
6 quite some ways. As opposed to looking down upon it and just penetrating through the  
7 initial canopy.

8 MR. SMITH: How long are the tests, did you guys have a test for the AWS  
9 system, and how long, cause 2100, I mean, that's, you deal with that level of MHz, what  
10 area do you guys actually use this?

11 MR. HOWARD: We are using 2100 MHz in Columbia currently.

12 MR. SMITH: And where was it before that?

13 MR. HOWARD: Our first AWS market was Lubbock, Texas.

14 MR. SMITH: Okay, and you guys are the only ones in this, in the nation that uses  
15 2100?

16 MR. HOWARD: We are the only ones broadcasting in South Carolina on the –  
17 we are not the only holders of AWS.

18 MR. SMITH: Okay.

19 MR. HOWARD: Again, the big players, AT&T, T-Mobile, Verizon own extensive  
20 blocks of AWS, but they don't need it right now, they're holding it.

21 MR. SMITH: They don't use it in –

22 MR. HOWARD: They're not using it at all in South Carolina.

23 MR. SMITH: Okay. Alright, I appreciate it.

1 MR. HOWARD: I have actual drive test data too I can send you that'll –

2 MR. SMITH: I would love to see that, but that's [inaudible]. Thank you.

3 MR. SPEARMAN: Is the equipment that you use for 2100 MHz, is that different  
4 from what the carriers at 800 MHz are using right now? Can you elaborate on that?

5 MR. HOWARD: The size of the equipment, are you –

6 MR. SPEARMAN: The, the –

7 MR. HOWARD: The technology is the same, the –

8 MR. SPEARMAN: But does it affect, I guess what I'm trying to say, does it affect  
9 the environment differently at 2100 MHz than at 800 MHz?

10 MR. HOWARD: Not at all, it's all –

11 MR. SPEARMAN: As far as birds or –

12 MR. HOWARD: - it's all non-ionizing energy.

13 MR. SPEARMAN: - interference with residences close to the tower or so forth?

14 MR. HOWARD: No difference at all. It's actually less, it's a lower frequency that  
15 what you are broadcasting with when you have a wi-fi network. The wi-fi network in  
16 your house for your laptop is 2400 MHz.

17 MR. SPEARMAN: And, and one more question. You know, you had mentioned  
18 that, you know, some of the bigger carriers and so forth have blocks of this that they're  
19 not using. If they were to go to that would they have to retool each tower as far as using  
20 that, that frequency?

21 MR. HOWARD: They would want to optimize their network for that frequency,  
22 correct. They would probably have to add sites down the road. It's probably just a  
23 matter of time before AT&T and Verizon start trying to get more sites. There was an

1 article in the paper just the other day in the front page of the *New York Times* business  
2 section where AT&T is lobbying the government for more spectrum, because they're  
3 running out of bandwidth for their users.

4 MR. SPEARMAN: Currently how many folks in the United States use a cell  
5 phone?

6 MR. HOWARD: Verizon has more than 50,000,000 subscribers I know that  
7 much, and they're the largest.

8 MR. SPEARMAN: How many subscribers do y'all have?

9 MR. HOWARD: Here in Columbia we are just shy of 12,000.

10 MR. SPEARMAN: So what, 100, you said – what was Verizon again?

11 MR. HOWARD: About 50,000,000.

12 MR. SPEARMAN: Fifty million.

13 MR. HOWARD: We have about 50,000 in Texas markets.

14 CHAIRMAN MCDUFFIE: How many towers do you anticipate having total to say  
15 build up the Richland County segment of your network?

16 MR. HOWARD: Currently I think Mike mentioned we are looking to move towards  
17 Sumter, that's our latest marching orders. Right now we have a lease agreement with  
18 Eastover to co-locate on their water tank and to get the rest of the way there we are  
19 looking along the Bluff Road, if you, at the southern route, probably two more towers,  
20 but we are in, we are waiting structural engineering from Tower Co., which owns several  
21 towers in the area.

22 CHAIRMAN MCDUFFIE: But I think that one of the applications, it said that you  
23 had maybe 44 towers right now, of which 38 were co-locations?

1 MR. HOWARD: Correct.

2 CHAIRMAN MCDUFFIE: How many total sites would, will you need to provide  
3 effective coverage for, you know, or to provide coverage for the county?

4 MR. HOWARD: For Richland County we are probably looking to develop about  
5 six more sites. And not necessarily build them.

6 CHAIRMAN MCDUFFIE: Sure, sure, sure.

7 MR. HOWARD: I mean, we're waiting for, again structural engineering to come  
8 back on several other towers.

9 CHAIRMAN MCDUFFIE: Okay. Any other questions for Mr. Howard? Alright, we  
10 also have one individual signed up in opposition today, Ms. Tracy Swarthaut. Please  
11 state your name and address for the Record.

12 **TESTIMONY OF TRACY SWARTHAUT:**

13 MS. SWARTHAUT: I'm Tracy Swarthaut, superintendent of Congaree National  
14 Park, located about 2 ½ miles from the project area, and our address is 100 National  
15 Park Road, Hopkins 29061. So I'm here in front of you today as I've been in other  
16 instances when we have proposed cell towers coming to a close vicinity of the  
17 Congaree National Park. We've had Alltel and AT&T in the last several years in varying  
18 distances away from the park. Our concerns really center around the height of the  
19 tower and the structure of the tower. As you may know when the towers are above 200'  
20 in height, they do require supplemental lighting by the FAA, which can have a negative  
21 impact on migratory birds. Additionally, not using a monopole, using the tower type  
22 design, they're significant guy wires, so I've submitted to you a letter that has detailed  
23 information about our concerns as they relate to the protection of Congaree National

1 Park, South Carolina's only national park, 26,000 acres of wilderness very close to the  
2 City of Columbia. Our concerns are as much as they have been with other sites. One  
3 thing I will note that's a little bit different is that in this package what you don't have  
4 before you is where the saturation is for other network cell towers; certainly there is cell  
5 coverage existing out there right now. The site's search criteria though put before you  
6 from this particular Applicant certainly meet the business needs of their company,  
7 however, there is coverage out there existing and, and they set their own search  
8 criteria. The tower height may cause negative impact on migratory birds, and the  
9 reason that this is important is not only is this South Carolina's only national park, but  
10 it's a globally important birding area and we're [inaudible] international importance for  
11 wetlands, so it's a unique natural environment, it's a unique natural preserve that  
12 protects the habitat for migratory birds and it's in existence on a place called the mid-  
13 Atlantic flyway, a very important area for migratory birds to make their way down, and if  
14 they're disrupted from that habitat we could lose some of the essential species for which  
15 the park was created, for which Congress designated the park. We have almost  
16 150,000 visitors a year, many of whom come with a bucket list, who want to make it to  
17 every national park in the country and this is one of those sites. We are a primary driver  
18 of tourism with impacts of several million dollars a year in the Richland County area,  
19 bringing in people from all 50 states and upwards of 25 foreign countries every year. A  
20 huge driver, and so the impact is large. And what you've heard is that the tree cover  
21 could cause impact on cell coverage. So I certainly won't stand before you say that our  
22 average visitor will have their cell coverage improved by the existence of these towers, I  
23 certainly can't say that, partially because of the tower coverage, partially because of the

1 distance to the site. So just to summarize again our concerns have to do with the tower  
2 height. If you do decide to approve this, the bolded paragraph at the end of our letter  
3 highlights our main suggestions, is that we recommend that it be conditioned such that  
4 the height's below 200' to eliminate the need for the supplemental FAA lighting. You  
5 can have additional towers, shorter towers, that would improve the impact to the  
6 migratory birds. We also ask that a monopole design be considered, one that would not  
7 require the use of the guy wires and therefore minimize impact to these bird species  
8 that are important to the existence of the park. Thank you.

9 CHAIRMAN MCDUFFIE: Thank you. Are there any questions at this time for  
10 Superintendent Swarthaut?

11 MR. SPEARMAN: I've got a couple of questions if you don't mind, Mr. Chairman.  
12 How do other national parks deal with these circumstances?

13 MS. SWARTHAUT: Similarly. Similarly, just put before the folks who are making  
14 the decisions on the zoning and the zoning exceptions, the information that will allow  
15 you to be able to make an informed decision.

16 MR. SPEARMAN: I guess what I'm trying to get at, you know, there are so many  
17 visitors to the national parks, I mean, they're a treasure but there has to be some type of  
18 a balance, and I'm wondering, you know, I hear their side and I hear what you're saying  
19 but how do other parts of the country deal with these type issues, similarly to what  
20 you're, what you've put in your letters or?

21 MS. SWARTHAUT: Yeah, more frequent, in which I have a second document  
22 that I submitted to you, thanks for asking about this, it's the Interim Guidance from the  
23 Fish and Wildlife Service identifying measures that you can take to enable similar sort of

1 coverages but to allow for less impact to the natural environment. And one of those is  
2 more frequent, less than 200' towers. In national park units that are extremely remote,  
3 Yosemite, that sort of thing, you do have location on tops of buildings, there are, you  
4 know, many more smaller towers, you know, we're surrounded by towers.

5 MR. SPEARMAN: Out in the rural area you're limited on the height of buildings  
6 and so forth.

7 MS. SWARTHAUT: Sure.

8 MR. SPEARMAN: The tower on Blackferry Road, was that ever constructed and  
9 is that being utilized at this time?

10 MS. SWARTHAUT: Not to our knowledge.

11 MR. SPEARMAN: So they never built that tower?

12 MS. SWARTHAUT: Not to our knowledge, not – I don't know that it was  
13 completed. I know it was initiated but I don't believe it was completed. They were  
14 granted the permit.

15 MR. SPEARMAN: That was maybe three or four years ago, something like that?

16 MS. SWARTHAUT: Yeah, I think it was 2010? 2010 or 2008, you'd have to look  
17 back in the records and see.

18 MR. SPEARMAN: So that tower has never been built out and there's no  
19 equipment around it, it's not being utilized?

20 MS. SWARTHAUT: I don't believe it's utilized. I believe they initiated it but didn't  
21 complete it but I don't have the records on that. But we do have, you know, spotty cell  
22 coverage, absolutely, within the park but we, of course, utilize per our radio system the  
23 800 MHz system. So clearly it's a balance.

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MR. SPEARMAN: Well, it is, and you know, and I can appreciate what you're saying, I really can, but on the other hand you've got a lot of folks out there that in this day and time a landline in somebody's home is nonexistent, you know, people live by their cell phones anymore and that area out there is very sporadic as far as, you know, being able to utilize a cell phone.

MS. SWARTHAUT: I can use my cell phone continuously from downtown Shandon all the way to the park without a drop.

MR. SPEARMAN: So you're saying –

MS. SWARTHAUT: With two different coverage providers.

MR. SPEARMAN: I've driven Bluff Road a number of times over the years but around Bluff and Old Bluff, in that area, Lower Richland Boulevard, you know, heading, you know, toward 601 on Bluff Road, there seems to be a fallout, especially as you pass Old Bluff Road heading to, you know, Hopkins Road and so forth. So –

MS. SWARTHAUT: Sure.

MR. SPEARMAN: - you know, I understand the balance, but it's a very difficult thing. On one hand you've got, you've got regulations from the FAA and the FCC that allow these and so forth, and then you have situations, the beautiful park that you oversee for the aesthetics of it, so it's a very difficult balancing act when you're sitting up here unfortunately.

MS. SWARTHAUT: Sure, and I think it's important to note because you brought up the word aesthetics, I know that the Code requires that you consider the aesthetics of the environs, but the aesthetics is more than just what it looks like, you know,

1 whether or not it's the tower height or the design of the tower, but also the impact on the  
2 natural resources that exist within that aesthetic environment. So the ability for birds to  
3 be able to migrate. You asked about the coverage, like I said, I travel from downtown  
4 Columbia to Congaree National Park every single day and take business calls typically  
5 throughout, do not lose coverage, I very rarely lose coverage. Not only do I travel, let's  
6 see, from the location of the tower I go an additional four and a half miles, continue to  
7 have coverage all the way to Congaree National Park Road and then a mile and a half,  
8 1.2 miles into the park barely drop out there and that's under 100' tree canopy.

9 MR. SPEARMAN: What carrier do you have?

10 MS. SWARTHAUT: We have both AT&T and Verizon, and they both work.  
11 Sporadic for a couple of them once you get deep into the 100' canopy, but there's – we  
12 could have a tower in the park and we'd still have sporadic coverage because of the  
13 testimony provided by the Applicant.

14 MR. SPEARMAN: What type of birds would you, would you consider would be in  
15 this migratory path around this tower? If you could just elaborate on that.

16 MS. SWARTHAUT: Sure, and I'm gonna ask Terry Hogan to identify some of the  
17 species, she's our chief of natural resources who's here with me, but I will point you also  
18 to the information sheet I submitted to you from the Fish and Wildlife Service that talks  
19 specifically about the range of migratory birds that can be impacted, which states that  
20 construction of new towers creates a potentially significant impact on migratory birds,  
21 especially some 350 species of night migrating birds and communication towers are  
22 estimated to kill 4 to 5,000,000 birds per year. But we can talk specifically –

23 MR. SPEARMAN: What, what are customary type birds and stuff in our area?

1 MS. SWARTHAUT: Terry, do you want to elaborate?

2 MS. CECERE: Before we go on to the, Mr. Price, when we had this problem  
3 before where the towers were too close to the national park, did we reach a  
4 compromise with those people to lower their tower? We didn't?

5 CHAIRMAN MCDUFFIE: If I recall correctly it was eventually sent to the circuit  
6 court and the circuit court basically ordered us to grant the, the special exception I think.  
7 I'm actually kind of surprised that it wasn't constructed given the lengths that they went  
8 to to secure the exception for it personally.

9 MS. SWARTHAUT: There was a second one that was, I don't know if Staff  
10 suggested to them to contact us, but Alltel communicated with us in February of 2011  
11 regarding a site very similar to this site right near the border, the connection of Bluff and  
12 Old Bluff. But they didn't go forward with that site either.

13 MR. PRICE: Yeah, I believe we may have.

14 CHAIRMAN MCDUFFIE: Alright.

15 MS. SWARTHAUT: Would you like specific information about bird species in our  
16 park or is the –

17 MR. SPEARMAN: Just briefly. Just, you know, if y'all will indulge me, I would  
18 just be kind of curious to see what, what is in our area.

19 MS. CECERE: Well, let me ask this, let me ask this before we go on into all this  
20 other stuff. Is the Applicant willing to lower the tower because of –

21 MR. FEIGENBAUM: Mike Feigenbaum, Clear Talk Wireless. We are actually  
22 not, we – you know, in pursuit of trying to do responsible development, you know, we,  
23 we only ask for what we need and we would also allow for co-location for other carriers.

1 One very important distinction I want to make is the particular tower that we're  
2 proposing does not have guy wires. This is a lattice type tower. It's vertical profile is  
3 just a little bit wider than that of a monopole, and I think that's a very important  
4 distinction to make. There are no guy wires, and I do understand how, I do understand  
5 how guy wires negatively, you know, impact migratory birds, so I think that's a real  
6 important thing to, to note.

7 MR. SMITH: How much wider are the poles in comparison to a monopole?

8 MR. FEIGENBAUM: The top, the top section of the, of this particular lattice tower  
9 will be 7 ½' on the side I think. Yes, 7 ½' on the side as opposed to 3' in diameter of a  
10 monopole at that height.

11 MR. SMITH: Okay. So it's a four foot difference, and no wires?

12 MS. CECERE: And, and –

13 MR. FEIGENBAUM: Excuse me?

14 MR. SMITH: A four foot difference in width, and no wiring –

15 MR. FEIGENBAUM: Correct, no guy wires.

16 MR. SMITH: No guy wires at all, so.

17 MR. FEIGENBAUM: No, and I also, you know, want to just state for the Record,  
18 you know, there is this balance and it's a difficult balance to make and, and we, you  
19 know, we love nature. I can tell you that I do and I'm speaking for many people that  
20 work for our company, and we really try to be responsible in the way that we site these  
21 and we are, you know, two and a half miles away from the park boundary. And, and I  
22 do appreciate, you know, the comments made by the, by the representatives of the  
23 park.

1 MR. SMITH: Are you on the north or the south side of it?

2 MR. FEIGENBAUM: Northwest.

3 MR. SMITH: Northwest side, okay.

4 CHAIRMAN MCDUFFIE: Mr. Spearman, did you want to get some more  
5 specifics about –

6 MR. SPEARMAN: Yeah, I would be, this is more of his rebuttal to what they've  
7 said.

8 CHAIRMAN MCDUFFIE: Sure yeah, we, we should move that to the end.

9 MR. SPEARMAN: Hopefully we haven't taken that away from him.

10 CHAIRMAN MCDUFFIE: No, no, no.

11 MR. SPEARMAN: You know, I would just, I'm just kind of curious to see what's,  
12 what's, you know, what's South Carolina, you know, what birds kind of fly through South  
13 Carolina, and specifically you know, utilizing their park?

14 MS. SWARTHOUT: We do have tons of birds at the park but specifically ones  
15 that would be migratory would be the range of waterfowl; ducks, geese and others that  
16 are actively hunted. I, I'd note that the park is, as it has always been, 100% surrounded  
17 by active hunt clubs that have been in families for generations and it is utilized for  
18 waterfowl habitat. As well as a range of warblers, a whole variety in the warbler species  
19 and the robin, of course. But the reason that the park is globally significant,  
20 internationally significantly obviously, is for the range of species and that has to do with  
21 the biodiversity, a much longer conversation that you probably want to have right now.  
22 But yeah, that's the ones that we would expect to be migrating through the area.

23 MR. SMITH: Does it make you comfortable that there's no wiring on the –

1 MS. SWARTHAUT: Oh, absolutely and we love it when, you know, private  
2 industries make those kind of changes to the design that will enable the protection.  
3 That's gonna be much more beneficial than with the guy wires.

4 MR. SMITH: Do you feel as if they're actually helping in doing something for  
5 you?

6 MS. SWARTHAUT: I do. I think that that should not go unnoticed. I think that  
7 the bigger concern frankly is being over 200' and the requirement for the supplemental  
8 lighting. Because the birds get confused when they're traveling at night, and certainly in  
9 terms of the average citizen, impact on the average citizen having an additional tower  
10 there, I don't know what that will be, 12,000 carriers versus 50,000,000 carriers,  
11 however many there are, but I can tell you, you know, that the experience of the staff  
12 who work out there is that we have coverage.

13 CHAIRMAN MCDUFFIE: One final question from me. Can you give us some  
14 specific examples of night, of birds that are migratory at night?

15 MS. SWARTHAUT: I believe that the warblers are migratory at night primarily.  
16 And I don't know about the waterfowl as much. I'm less of the bird expert, but I would  
17 call upon my backup if you press me.

18 CHAIRMAN MCDUFFIE: No, that's alright.

19 MR. SPEARMAN: How long have you been the superintendent out there?

20 MS. SWARTHAUT: I've been the superintendent at Congaree National Park for  
21 about five and a half years, but my family's been a resident of Richland County for over  
22 100 years.

1 MR. SPEARMAN: Okay. Since you've been out there what have you, how have  
2 you seen the population grow out there on Bluff Road, Old Bluff Road, in regard to, to  
3 surrounding your park and even if you go in toward Gadsden.

4 MS. SWARTHAUT: Sure, I – human population?

5 MR. SPEARMAN: Human population, yeah.

6 MS. SWARTHAUT: Gosh, you know, that's a good question. I think, you know,  
7 I'm looking at the faces of the other folks and I think they know I like to talk, so I don't  
8 know if you really want me to expound on that.

9 [Laughter]

10 MR. SPEARMAN: Yeah, but the bottom line is, is I guess the point I'm trying to  
11 make is it is significantly over the last 5, 10 years.

12 MS. SWARTHAUT: Yeah, there's a huge growth of people out there, clearly.

13 MR. SPEARMAN: With the population growth out there. And it's gonna continue.

14 MS. SWARTHAUT: I can say this specifically because I'm not up on my  
15 demographics for Lower Richland County and I wouldn't try to stand up here and say  
16 that I am, it'd be anecdotal information at best, I know the limitations of my knowledge. I  
17 can tell you that since the park went from being a national monument to being a national  
18 park in 2003, visitation's doubled. We have over 150,000 now with an economic impact  
19 of several million dollars a year and it's essential to the economy of Lower Richland  
20 area and we're talking about economics, and I think a lot of the folks out there will  
21 benefit from being in a neighborhood where a national park exists that has international  
22 draw.

1 MR. SMITH: Just for myself I want to thank you guys for doing what you do with  
2 the, at the park and we support you guys, but I also, if we do approve this truly think that  
3 this would be beneficial being somebody that visits the park with my child a lot and, but I  
4 want to thank you in advance on the Record. And if we don't have any other questions  
5 can somebody make a motion?

6 CHAIRMAN MCDUFFIE: Actually we still need to have a rebuttal from the  
7 Applicant and –

8 MS. SWARTHAUT: And Mr. Chairman, I just want to say when you sign in you're  
9 forced to either say you're for or against, I wish there was another one that's, we're just  
10 here to provide information.

11 CHAIRMAN MCDUFFIE: Thank you.

12 MS. CECERE: Mr. Spearman, I just want to say one thing, please go the park  
13 and have a personal experience.

14 MR. SPEARMAN: Oh, I've been there. Believe me, I've been there.

15 CHAIRMAN MCDUFFIE: I guess, before the rebuttal begins I guess I have a  
16 couple of questions more for you, sir. Obviously it's a business decision of course, the  
17 monopole versus, you know, versus tri-fold, you know, tri-fold style tower and also the  
18 heights of the tower. Would I be a significant, I mean, would it be possible, I guess even  
19 economically feasible to utilize a lower, you know, a 200' tower, you know, that does not  
20 require to be lighted in this, in this area?

21 MR. FEIGENBAUM: Well, in order to meet that engineering objective, and again  
22 to provide for co-location, which ultimately will result in fewer towers period, we really  
23 can't make that adjustment. I will note that with respect to a monopole, instead of a

1 lattice type tower that I explained, they don't make those, you know, I imagine anything  
2 is possible to, you know, construct something like that, but they don't make them, the  
3 cost would be astronomical. One last, I want to rebut, unless you have another  
4 question.

5 CHAIRMAN MCDUFFIE: That was –

6 MR. FEIGENBAUM: It's not really a rebuttal. First I want to echo, you know, your  
7 sentiments with respect to the work that the national park people do, it's, it's, you know,  
8 I can't understate the importance of that to our nation and, you know, at large in the  
9 state and Richland County. One thing that we do do that I did not mention is in the  
10 course of doing our due diligence for these types of proposals, we, we have to meet  
11 with the FCC's section 106 requirements from an environmental perspective and one of  
12 the elements of that is submitting the application to the Fish and Wildlife Service for  
13 their approval of the proposal. If we get a negative response from our engineering firm  
14 that does the environment [inaudible] for us, you know, that would be in essence  
15 response from the Fish and Wildlife group that it's not acceptable and then we won't  
16 build it, we can't. So I think that's an important thing that you, to add to the Record.

17 CHAIRMAN MCDUFFIE: Alright, anything further, any further questions at all  
18 from, from the Board?

19 MR. SPEARMAN: I've got one. Did y'all have a chance to sit down and discuss  
20 the tower, you and the superintendent?

21 MR. FEIGENBAUM: No, I did not.

22 MR. SPEARMAN: Or somebody from your company?

1 MR. FEIGENBAUM: You know, I didn't know that there was concern, you know,  
2 on their part until this meeting today. We have been in contact with, with the Staff and  
3 nothing was brought to my attention.

4 CHAIRMAN MCDUFFIE: Well, that's the purpose of a public hearing.

5 MR. SMITH: I just want to make a recommendation, just for the future. If you  
6 guys could put into your criteria for tower location to be able to have communication  
7 with any neighboring parks, of course, they have the opportunity to be able to be at a  
8 public meeting, but just to have your engineers be able to speak with them, and if that  
9 could be done I think that would be a wonderful start to start it here in Richland County  
10 and I think –

11 MR. FEIGENBAUM: Well, you know, we welcome that idea and, you know, and,  
12 you know, again to reiterate, you know, we're not guys that come in here and build a  
13 bunch of stuff and disappear, I mean, we are guys that build stuff and then we need to  
14 be, you know, in sync with, with the area in general, we can't come in and do a bunch of  
15 irresponsible and then disappear to some other place. So it's to our benefit to have  
16 those kinds of dialogues with, with any interested group.

17 CHAIRMAN MCDUFFIE: Ms. Cecere, would you care to go through the Findings  
18 of Fact?

19 MS. CECERE: This is special exception 12-04, the property is zoned Rural.  
20 Notice was posted, also notice was published in the newspaper. Will the proposed  
21 tower have a maximum height of less than 300'? It will be exactly 300'. If the proposed  
22 tower – I'm sorry, 250' – if the proposed tower will be located on a building 40' or –

23 CHAIRMAN MCDUFFIE: Not applicable.

1 MS. CECERE: Okay. Is the base of the proposed tower located at least one foot  
2 from residential zoning district? Not applicable? Okay. That's it, the base, right here, is  
3 the base of the proposed tower located at least the minimum setback required by the  
4 zoning district from a nonresidential zoning district without a habitable dwelling? Yes.  
5 Has the Applicant shown proof of an attempt to co-locate on existing on communication  
6 towers? Yes. Is the Applicant willing to allow other users to co-locate on the proposed  
7 tower in the future subject to engineering capabilities of the structure? Yes. Will the  
8 proposed tower meet the illumination requirements of regulatory agencies such as the  
9 Federal Communications Commission or the Federal Aviation Administration? Yes. Will  
10 the communication tower and associated buildings be enclosed with a fence at least  
11 seven feet in height? Yes. Has the Applicant agreed to landscape the communication  
12 tower site in accordance with the requirement of §26-176? Yes. Has the Applicant  
13 agreed to place no signage to any portion of the communications tower unless the sign  
14 is for the purpose of identification, warning, emergency, function or contact or other as  
15 required by applicable by state or federal rule, law or regulation? Yes. Has the Applicant  
16 agreed to dismantle and remove the communication tower within 120 days of the date  
17 the tower is taken out of service? Yes. Will the traffic be impacted by this proposal? No.  
18 Will the proposal affect vehicle and pedestrian safety? No. Is there a potential impact of  
19 noise, light, fumes, or obstruction of airflow on adjoining properties? No. Does the  
20 proposed communication tower have an adverse impact on the aesthetic characters of  
21 the environs? No. Is the origination and spacing of the improvement or building  
22 appropriate? Yes. I make a motion that special exception 12-4 be approved.

23 CHAIRMAN MCDUFFIE: Okay, is there a second?

1 MR. SPEARMAN: I'll second.

2 CHAIRMAN MCDUFFIE: Okay, we have a motion and it's been seconded. All in  
3 favor?

4 MR. PRICE: Those in favor: Spearman, Meetze, Rush, McDuffie, Cecere, Smith.

5 CHAIRMAN MCDUFFIE: All opposed? That was all, that's okay.

6 *[Approved: Spearman, Meetze, Rush, McDuffie, Cecere, Smith; Absent: Cooke]*

7 CHAIRMAN MCDUFFIE: Alright, Mr. Feigenbaum, you have your special  
8 exception and Staff will be in touch. Mr. Price, if you would call the next case.

9 **CASE NO.: 12-05 SE:**

10 MR. PRICE: The next item is case 12-05 special exception. The Applicant is  
11 requesting the Board of Zoning Appeals to grant a special exception to permit the  
12 construction of a communication tower in an RU zoned district. Once again the  
13 Applicant is Clear Talk. The location is on Lower Richland Boulevard and they're gonna  
14 use about a 2.2 acre tract. The parcel is currently undeveloped. The Applicant  
15 proposed to erect a 195' telecommunications tower within a 75 x 75 square foot leased  
16 area. The immediate surrounding area consists of agriculturally developed parcels.  
17 That's kind of it from a Staff standpoint. One of the things we wanted to point out to you  
18 and this is, I think this is one of the first times that it has come before the Board, at least  
19 in this particular case like this, according to §26-21, the rules of construction of the Land  
20 Development Code, specifically (C)(4), no excuse me, let's go to subsection C, when  
21 we identify the type of districts are zoned within the county, you know, we have our  
22 residential zoning designations, we have our commercial zoning designations and we  
23 have industrial zoning designations. Now under (C)(4) it talks about the rural, the PDD,

1 and the Town & Country. Just to help you out, if you look on page 5 in your Land  
2 Development Code, but what it does it leaves the responsibility of the Zoning  
3 Administrator to look at those districts, once again we're talking about rural, PDD, Town  
4 & Country, to determine if those particular zoning designations, the uses on there are  
5 either residential, commercial or industrial. And so they're gonna, and this is kind of a  
6 unique case, you know, for us because when, especially as you go out into rural areas,  
7 especially those that are, I guess you could say it looks like they are primarily  
8 agricultural in use, there becomes that question of, okay is this residential or  
9 commercial, it's not necessarily industrial. One of the, at least my position is within that,  
10 you know, when you're looking at these large tracts of land where it's primarily  
11 agricultural, that's, I deem that to be more commercial. And the reason why I bring this  
12 to your attention is because that does have, it does and it can have an affect upon the  
13 required setbacks of the special exception standards for a, for a PDD, excuse me for a  
14 cell tower. I just wanted to kind of bring that before you cause you may actually start to  
15 see this.

16 CHAIRMAN MCDUFFIE: Alright, any questions for Staff? Alright, at this time I'll  
17 call Mr. Feigenbaum to the stand. Please state your name and address for the Record.

18 **TESTIMONY OF MIKE FEIGENBAUM:**

19 MR. FEIGENBAUM: Hi. Mike Feigenbaum, my address is 2101 Main Street,  
20 Columbia 29201. And again, I'm going to spare the Board all the details that I've  
21 already explained before about who we are, unless there's any questions that you may  
22 have in that respect. And kind of open it back up to you, any questions about this  
23 particular proposal I'll be more than happy to answer.

1 MS. CECERE: I want to ask you again, you tried to co-locate?

2 MR. FEIGENBAUM: Yes, we did. And in this particular case we have, there is,  
3 there is an AT&T tower that's a little bit more than a mile from the site that's very short,  
4 it's only 150' tall and it will not, just does not, you know, meet our criteria. We, we  
5 wouldn't be able to make it to, you know, to the next site so there'd be a gap, you know,  
6 in the coverage when you think of some big circles, you know, on a map, the two circles  
7 wouldn't come together so it just, you know, we need more height than 150'. And it also  
8 goes toward what my colleague Bill Howard was talking about with respect to the  
9 absorption of the signal by, by trees and things like that. So we do need to be a little bit  
10 higher, you know, to be able to do this, so. And there's also a 250' tall tower that is  
11 about 9/10ths of a mile north, it was built by AT&T, or American Tower, I'm sorry, but it  
12 just, it again does not cover what we're trying to accomplish here and there's a question  
13 of structural capacity on that particular tower. I want to emphasize once again, you  
14 know, our primary mode of development is to do co-location if we can do it. If we can  
15 make that work then that is the way that we would go.

16 MS. CECERE: Thank you.

17 CHAIRMAN MCDUFFIE: Are there any questions for the Applicant at this time?

18 MR. SPEARMAN: What does it cost to build towers?

19 MR. FEIGENBAUM: Less development, you know, specific development costs  
20 like land acquisition costs shall we say; engineering, you know, for a typical 250' tower,  
21 you know, the engineering that is typical and the, and the, for the construction and for  
22 the purchase of the tower and for a typical electrical situation, which is not a, like a one  
23 mile run of electricity, probably be in the range of about \$125,000.

1 MR. SPEARMAN: And what would it cost, if there was a tower available for you  
2 to co-locate on what would be that cost?

3 MR. FEIGENBAUM: [Inaudible] can you hear me?

4 MR. SPEARMAN: Yeah.

5 MR. FEIGENBAUM: Okay, that is, all the, the majority of the towers that you  
6 see, you know, in a metropolitan area like this are owned by, not by the carriers but by a  
7 tower holding company or two or three, and they set their rents for – it's much like an  
8 apartment building and they set those rents based on those three key words in real  
9 estate, location, location, location, so obviously certain areas would be, you know, quite  
10 expensive, like we're trying to do something in an area that there's a lot of demand they  
11 would charge more for us to co-locate on that particular facility than they would, you  
12 know, in an outlying facility.

13 MR. SPEARMAN: But ultimately it's cheaper to co-locate than to start  
14 construction –

15 MR. FEIGENBAUM: It is.

16 MR. SPEARMAN: - of a brand new tower.

17 MR. FEIGENBAUM: It's cheaper, it's smarter for a lot of reasons because what's  
18 important for us to do is, you know, if you, it's like serving a half-baked cake, you know,  
19 we have enough, you know, stuff on the air to adequately serve customers but if they  
20 get a few miles out of the area and then they start dropping calls or something like that,  
21 it looks bad. So, you know, part of it is, you know, to make sure that we can get our  
22 network deployed in a timely way. And tower construction takes a long time, you know,  
23 the whole development process by it's very nature is just a time consuming process.

1 MR. SPEARMAN: When did you start the process for this particular piece, for this  
2 particular tower?

3 MR. FEIGENBAUM: October of 2011. And, you know, to maybe take one step  
4 further and maybe answer your real question, if we would've found an appropriate  
5 tower, you know, to do a co-location it, if we contacted the tower company on October,  
6 we would've been on the air in the beginning of December. It's, basically all that entails  
7 is checking with the use, probably make sure that there's no zoning issues, then getting  
8 a structural analysis done on the tower to make sure that it's adequate to support our  
9 facilities and then installing our equipment and plugging it in.

10 MR. SPEARMAN: Is this just gonna be a monopole with no lighting, this 195?

11 MR. FEIGENBAUM: This will not be a monopole, this will be a lattice type  
12 structure similar to the 250' one, but in this particular area its proximity to other towers,  
13 we don't need that full 250' height, and as such it does not need to be lighted for the  
14 FAA and the FCC either. Which is really, again it is our preference not to, not to light  
15 these things for many reasons, not the least of which are, you know, are the cost of  
16 actually lighting them is very expensive.

17 MR. SPEARMAN: And you're available to allow co-location on this tower as well?

18 MR. FEIGENBAUM: Absolutely.

19 CHAIRMAN MCDUFFIE: Are there any other questions for –

20 MS. CECERE: Why is this tower only 195 and the other one 250?

21 MR. FEIGENBAUM: I'm gonna defer to our RF engineer to give you, you know,  
22 I've given kind of a, you know, not a real specific answer and Bill is much more able to

1 provide that, again in laymen's terms hopefully, and if there's something that he says  
2 that you don't understand, just ask him, he'll explain it in the simplest terms.

3 CHAIRMAN MCDUFFIE: Please, please state your name and address again for  
4 the Record.

5 **TESTIMONY OF WILLIAM HOWARD:**

6 MR. HOWARD: William Howard, 912 South Edisto Ave., Columbia, South  
7 Carolina 29205. Finally get to use my exhibits. The question came up of why is this  
8 one only 200' versus 250, or I'm sorry yeah, 195. This is a quick map of the previous  
9 tower and the area, general area in which it'll cover, it's designed to cover. You can see  
10 down here about 2 ½ miles away is the tip of the park. What we're trying to do with this  
11 tower is cover the Westinghouse plant which is about a mile away and then get back all  
12 the way down Bluff Road towards 77. So that's about, about a 6 ½ mile stretch. So  
13 we're just making it back to 77. This map illustrates the area in Hopkins where the 195  
14 would self support. The big icons are existing towers in our network that are currently  
15 broadcasting. These are co-locations, this is an American Tower co-location we are on,  
16 another American Tower, SBA, and a third American Tower. We're only about 3 ½  
17 miles from this American Tower site as the crow flies, so we do not need a substantially  
18 larger tower than 195. The other primary reason for that is the coverage objective. We  
19 are focused on covering and giving solid in building coverage to the people of Hopkins.  
20 The area, although it's not a densely populated area, does have a greater concentration  
21 of people than the Bluff Road site, so we want to keep that cell coverage area a bit  
22 smaller to avoid capacity issues in the end. So that's the primary reason for going 195  
23 there on that tower. And then just to speak to what Mike was saying earlier, we did try

1 co-locating on the existing SBA tower which is about a little less than a mile south of the  
2 site in Hopkins, however, that has four carriers on it currently and we would be stuck  
3 down at 140' and we would not be making our coverage objective or hand off to our  
4 existing co-locations. And then the other factor was the tower, we did contact SBA  
5 about six months ago when we started this process and initially signed 30 leases with  
6 them to co-locate on 30 more sites that they own in Columbia and Greenville, and that  
7 was one of the towers we were interested in. However, it did come back with a failing  
8 structural, meaning it would not be able to accommodate our equipment without  
9 significant modifications, and even with the modifications again, we're stuck down at the  
10 140' level just above the trees.

11 CHAIRMAN MCDUFFIE: Any other questions? Mr. Rush, would you care to go  
12 through the Findings of Fact?

13 MR. RUSH: Yes, sir. The property is zoned Rural. Was notice of public hearing  
14 posted on the property of which the special exception is sought? Yes. Was it published  
15 in the newspaper? Yes. Will the proposed tower have a maximum height of less than  
16 300'? Yes. Is the base of the proposed tower located at least one foot from a residential  
17 zoning district for each foot of height of the tower? Yes.

18 CHAIRMAN MCDUFFIE: It's in the middle of several rural parcels.

19 [Inaudible discussion]

20 CHAIRMAN MCDUFFIE: For practical purposes Geo said it was being treated  
21 as a commercial district.

22 MR. PRICE: Yeah, I'm treating it, yeah for setbacks it's treated as commercial,  
23 non-residential cause that will allow, that just changes up the setbacks.

1 MR. RUSH: Oh, I'm sorry yeah, it's not – but it is zoned rural though, right?

2 MR. PRICE: Rural, but as far as for setback purposes based on the fact that  
3 some of the surrounding properties just being more commercial use, you would apply  
4 the setback standards of (C)(3).

5 CHAIRMAN MCDUFFIE: Where?

6 MR. PRICE: Under the special exceptions.

7 [Inaudible discussion]

8 MS. LINDER: Mr. Price, this has to meet the setbacks of the rural district, is that  
9 correct?

10 MR. PRICE: The tower does.

11 MS. LINDER: The tower has to meet the requirements through RU district.

12 MR. PRICE: Yes, within that parcel, yes.

13 MR. RUSH: So it is one foot for every, for the residential or?

14 [Inaudible discussion]

15 MR. RUSH: Is the base of the proposed tower located at least the minimum  
16 setback required by the zoning district from a non-residential zoning district without a  
17 habitable dwelling? Yes. Has the applicant shown proof of an attempt to co-locate on  
18 existing communication towers? Did the applicant show alternative tower buildings or  
19 other structures were not available for use within the applicant's tower site search area  
20 that was structurally capable of supporting the intended antenna or meeting the  
21 applicant's necessary height criteria or provide a location free of interference from other  
22 communication towers? Yes. Is the applicant willing to allow others to co-locate? Yes.  
23 Will the proposed tower meet the illumination requirements as it relates to FCC and

1 FAA? Yes. Has the applicant agreed to have no nighttime strobe lighting incorporated in  
2 the tower unless required by FCC or FAA? Yes. Will the communication tower and  
3 associated buildings be enclosed within a fence of at least seven feet in height? And I  
4 think they agreed to all the landscaping requirements, yes. Has the applicant agreed to  
5 landscape the communication tower? Yes. Has the applicant agreed to place no  
6 signage to any portion of the communication tower unless the sign is for the purposes of  
7 identification, warning, emergency, function or contact or other as required by the  
8 applicable state or federal laws or regulations? Yes. Has the applicant agreed to  
9 dismantle and remove the communication tower within 120 days of the date that the  
10 tower is taken out of service? Yes. Will traffic be impacted by this proposal? No. Will  
11 this proposal affect vehicle or pedestrian safety? No. Is there a potential impact of  
12 noise, lights, fumes or obstruction of air flow on adjoining properties? No. Does the  
13 proposed communication tower have an adverse impact on the aesthetic character of  
14 the environs? No. Is the orientation and spacing of improvements of buildings  
15 appropriate? Yes. I would like to make a motion to approve special exception 12-05  
16 based on the Findings of Fact.

17 MR. SMITH: I'd like to second.

18 CHAIRMAN MCDUFFIE: We have a motion and it's been seconded. All in  
19 favor?

20 MR. PRICE: Those in favor: Spearman, Meetze, Rush, McDuffie, Cecere, Smith.

21 *[Approved: Spearman, Meetze, Rush, McDuffie, Cecere, Smith; Absent: Cooke]*

1 CHAIRMAN MCDUFFIE: And that would be non opposed. Alright, Mr.  
2 Feigenbaum you have your special exception and Staff will be in touch. Thank you very  
3 much. And at this time we have some other business.

4 MR. SPEARMAN: Can we take a, just a brief recess [inaudible]

5 CHAIRMAN MCDUFFIE: Absolutely, let's do a five minute recess.

6 [Recess]

7 CHAIRMAN MCDUFFIE: Alright, at this point our next item of business is we  
8 have a request for reconsideration on a variance that was denied for 1236 Richard  
9 Franklin Road. And we have a request as to whether or not the Board will reconsider it  
10 and I'll remind the Board that today we are just deciding whether or not we would, we  
11 will entertain a reconsideration at a future meeting, I would assume at the next time this  
12 Board convenes. So this is not, this is not the reconsideration today, this is simply a  
13 request for reconsideration. Is, is there a motion one way or the other, either to  
14 reconsider or not to reconsider based on the appeal?

15 MR. SPEARMAN: Before the motion, I checked our by-laws and correct me if  
16 I'm wrong, the folks who heard the case last month are the only ones that can vote on  
17 the reconsideration, is that correct?

18 CHAIRMAN MCDUFFIE: I believe that's absolutely correct. So that would mean  
19 who out of today –

20 MS. CECERE: I can't.

21 MR. SPEARMAN: So there would only be four of us that could vote today. Mr.  
22 McDuffie, Mr. Rush and myself.

1 CHAIRMAN MCDUFFIE: Yes, that's correct. That's correct. You were here, I  
2 was here –

3 MR. SPEARMAN: Mr. Cooke was here but – he was the fifth person here last  
4 month.

5 CHAIRMAN MCDUFFIE: So, so at this point out the folks that were here, is  
6 there a motion?

7 MR. SPEARMAN: I would like to move that we deny the reconsideration request  
8 for case 12-01V, if I'm not mistaken, is that correct?

9 MR. PRICE: Yes.

10 CHAIRMAN MCDUFFIE: Okay, and I will second that. All in favor? All opposed?

11 MR. PRICE: All those in favor: Spearman, Rush, McDuffie.

12 CHAIRMAN MCDUFFIE: And those opposed:

13 MR. PRICE: Opposed: Smith.

14 *[Approved: Spearman, Rush, McDuffie; Opposed: Smith; Abstained: Meetze, Cecere;*  
15 *Absent: Cooke]*

16 CHAIRMAN MCDUFFIE: Alright, the request for reconsideration has been  
17 denied. And we will now move on to our next item of business. The next item of  
18 business will be the approval of Minutes from the January meeting.

19 MR. SPEARMAN: I have a couple corrections.

20 CHAIRMAN MCDUFFIE: Okay. If you would please state the corrections.

21 MR. SPEARMAN: Page 22, line 6, where it says Mr. Spearman that should be  
22 Mr. Reynolds. Page 30, on line 20, where it says, I do, and there's nothing there, line 20  
23 and 21 should be combined where it says, Mrs. after my question where it says, Ms.

1 Nichols and she said, I do, and then she went on to, to make the statement, wish I  
2 wasn't but yes I am, that should be her, her first statement before the sentence there in  
3 line 21 where, her first statement should be where it says, I do.

4 CHAIRMAN MCDUFFIE: Or we do?

5 MR. SPEARMAN: Or do I, I'm sorry. Please forgive me. She said, do I after my  
6 question and line 20 and 21 should be combined, basically.

7 MS. LINDER: So Mr. Spearman, you're saying your sentence, line 19 should  
8 end in a question mark? So you were in opposition [inaudible] them being granted the  
9 variance, question mark?

10 MR. SPEARMAN: Yes, ma'am.

11 MS. LINDER: That should be a question mark?

12 MR. SPEARMAN: Right.

13 CHAIRMAN MCDUFFIE: Okay, so strike line 20.

14 MR. SPEARMAN: Right. And then I do should be incorporated with line 21, her  
15 first words out of her mouth were, Mrs. Nichols says, I do, and then she says, wish I  
16 weren't, but yes I am.

17 MS. LINDER: She said I do or do I?

18 MR. SPEARMAN: Do I, I'm sorry, do I, forgive me.

19 CHAIRMAN MCDUFFIE: Okay.

20 MR. SPEARMAN: Thanks counselor.

21 CHAIRMAN MCDUFFIE: Any other corrections?

22 MR. SMITH: I have somewhat of a question. I don't remember saying on page  
23 37, line 7, I'd like to have a period after community. No, I'm just kidding, go ahead, go

1 ahead, finish up. [laughter] I don't like getting cut off on my notes. But you got what it  
2 was supposed to be. I have nothing else.

3 CHAIRMAN MCDUFFIE: Alright, I'll move to adopt the Minutes as amended.

4 MR. RUSH: Second.

5 MR. SPEARMAN: With the corrections.

6 CHAIRMAN MCDUFFIE: Yeah, as amended. And we have been seconded.

7 [Inaudible discussion]

8 CHAIRMAN MCDUFFIE: All in favor of the folks that were here?

9 MR. PRICE: Those in favor: Spearman, Rush, McDuffie, Smith.

10 *[Approved: Spearman, Rush, McDuffie, Smith; Abstained: Meetze, Cecere; Absent:*  
11 *Cooke]*

12 CHAIRMAN MCDUFFIE: And that was all of the individuals that were here for  
13 that, so the Minutes have been adopted. Next item up for business is it's time again for  
14 elections. I believe we need a Chair, a Vice-Chair and I have to look in our rules here.

15 MR. RUSH: I would like to nominate Ms. Cecere to be the Chair.

16 CHAIRMAN MCDUFFIE: Alright, we have one nomination. She's shaking her  
17 head. Do you accept?

18 MS. CECERE: No. [laughter]

19 MR. SPEARMAN: I would like to nominate Mr. McDuffie again. I think you've  
20 done a great job and if you would accept I, I think that we, you've steered us on the right  
21 course and I appreciate your willingness to do so and you're very knowledgeable.

22 CHAIRMAN MCDUFFIE: I'm a little conflicted in accepting, but I would accept.

23 MR. SMITH: Why are you conflicted?

1 CHAIRMAN MCDUFFIE: Cause I feel like I've done it for quite a while, basically  
2 but if it's the Board's pleasure I would accept.

3 MR. SPEARMAN: I move the nominations be closed.

4 MR. MEETZE: I second.

5 CHAIRMAN MCDUFFIE: Alright, all in favor of closing nominations for Chair?

6 *[Approved: Spearman, Meetze, Rush, McDuffie, Cecere, Smith; Absent: Cooke]*

7 CHAIRMAN MCDUFFIE: Nominations are closed and I guess I'm the only one  
8 that's accepted a nomination, is that correct? Alright.

9 MR. PRICE: Take a vote.

10 MR. MEETZE: Elected by acclamation.

11 MR. PRICE: I think y'all voted on the motion?

12 CHAIRMAN MCDUFFIE: Right. I'm the only [inaudible]. All in favor of me  
13 continuing on as Chair for another year?

14 MR. PRICE: Those in favor: Spearman, Meetze, Rush, McDuffie, Cecere, Smith.

15 *[Approved: Spearman, Meetze, Rush, McDuffie, Cecere, Smith; Absent: Cooke]*

16 CHAIRMAN MCDUFFIE: So I will continue on as Chair for another year.  
17 Nominations for Vice-Chair.

18 MR. RUSH: Will Smith.

19 CHAIRMAN MCDUFFIE: We have a nomination for Mr. Smith.

20 MR. SPEARMAN: I'll second that.

21 CHAIRMAN MCDUFFIE: It has been seconded. Do you accept?

22 MR. SMITH: I do.

23 CHAIRMAN MCDUFFIE: Are there any additional nominations for Vice-Chair?

1 MR. SPEARMAN: I move that the nominations be closed.

2 CHAIRMAN MCDUFFIE: Alright, is there a second?

3 MR. MEETZE: Second.

4 CHAIRMAN MCDUFFIE: Okay. Alright, all in favor of closing nominations?

5 *[Approved: Spearman, Meetze, Rush, McDuffie, Cecere, Smith; Absent: Cooke]*

6 CHAIRMAN MCDUFFIE: Alright, nominations are closed. All in favor of Mr.  
7 Smith becoming Vice-Chair?

8 MR. PRICE: Those in favor: Spearman, Meetze, Rush, McDuffie, Cecere, Smith.

9 *[Approved: Spearman, Meetze, Rush, McDuffie, Cecere, Smith; Absent: Cooke]*

10 CHAIRMAN MCDUFFIE: Alright, congratulations.

11 MR. SPEARMAN: Congratulations, Mr. Smith.

12 MR. SMITH: Thank you guys. Thank you, Mr. Rush.

13 CHAIRMAN MCDUFFIE: Or I should say Vice-Chairman Smith?

14 MR. SMITH: Thank you, Mr. Rush.

15 CHAIRMAN MCDUFFIE: And do we, do we still elect – anything else?

16 MR. PRICE: No, the secretary is –

17 MR. RUSH: Yeah, that's Geo.

18 CHAIRMAN MCDUFFIE: Alright, is there any other business we need to attend  
19 to at this time?

20 MR. SPEARMAN: I've got a question for Mr. Price.

21 CHAIRMAN MCDUFFIE: Sure.

22 MR. SPEARMAN: Do we have any continuing education coming up in the near  
23 future?

1 CHAIRMAN MCDUFFIE: We do. We do.

2 MS. HAYNES: I just don't have a schedule in front of me right now, but –

3 CHAIRMAN MCDUFFIE: There was an email went out very recently.

4 MS. HAYNES: But you're gonna have to, Mike, do orientation. So you'll –

5 MR. SPEARMAN: I've already been through orientation for the Board, I just  
6 need to do my continuing ed. All the things that I've done at the COG, I've been to the  
7 orientation for the PC and for the Zoning Board.

8 CHAIRMAN MCDUFFIE: You're gonna need to go again. [laughter]

9 MR. SPEARMAN: But it was last year.

10 [Inaudible discussion]

11 MS. HAYNES: Yeah, on the 22<sup>nd</sup> of this month there's – it's South Carolina  
12 Association of Counties from 9:00 to 12:00, three hours and that'll take care of all your  
13 education. But I'll send you that information.

14 CHAIRMAN MCDUFFIE: Will you as well send us a list of what our dates are for  
15 when we would need to have them done by?

16 MS. HAYNES: I will.

17 CHAIRMAN MCDUFFIE: That would be helpful I think to all of us.

18 MS. HAYNES: Okay.

19 [Inaudible discussion]

20 CHAIRMAN MCDUFFIE: If there is no further business –

21 MR. SPEARMAN: Also, if Suzie would get us a list of all of us and our phone  
22 numbers and so forth.

1 CHAIRMAN MCDUFFIE: We have had that list in the past, I'm sure it just needs  
2 to be updated and redistributed.

3 MR. SPEARMAN: Yeah, and email addresses and stuff?

4 MS. HAYNES: And I think I sent y'all something to update and I know I got  
5 something from you, I got something from Mr. Cooke.

6 CHAIRMAN MCDUFFIE: So return those forms to Suzie.

7 MS. HAYNES: But I sent something to y'all to fill out and nobody listened to me,  
8 no one [inaudible].

9 MR. SPEARMAN: I gave it to you last time.

10 MS. HAYNES: I got yours cause you're brand new.

11 MR. SPEARMAN: Yeah.

12 MS. HAYNES: Yeah, I got Joshua's and I got Mr. Cooke's. Just an updated  
13 information sheet. I'll send it out to y'all again.

14 CHAIRMAN MCDUFFIE: Alright, and the meeting is adjourned.

15

16

*[Meeting Adjourned at \_\_\_\_\_]*