

**BOARD OF ZONING APPEALS**

January 9, 2013

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3  
4 *Present: Joshua McDuffie, Michael Spearman, Ralph Meetze, William Smith, Susanne*  
5 *Cecere; Absent: Christopher Sullivan*

6  
7 Called to order: 1:10 pm

8 CHAIRMAN MCDUFFIE: I'd like to call the January meeting of the Richland  
9 County Board of Zoning Appeals to order. And at this time we will recognize that we  
10 have a quorum. And in accordance with the Freedom of Information Act, a copy of the  
11 Agenda was sent to radio and television stations, newspapers, persons requesting  
12 notification, and posted on the bulletin board located in the lobby of the County  
13 Administration Building. At this time I will turn the meeting over to Amelia Linder, the  
14 attorney for the Board.

15 MS. LINDER: Thank you, Mr. Chairman. My name is Amelia Linder and I am the  
16 attorney for the Board and I'd like to welcome you to this afternoon's meeting. This  
17 Board is a *quasi* judicial court in that it has final decisions of any action it takes today. If  
18 you're unhappy with the decision that the Board makes you would have 30 days to file  
19 an appeal to circuit court once you get the copy of the Order. A copy of the Order is  
20 usually sent out after the Minutes are approved. The Applicant will have up to 15  
21 minutes to speak. If there is opposition here they would have up to three minutes to  
22 speak and then you, the Applicant, could rebut that up to five minutes. We're gonna  
23 take up the Agenda as it's presented on the printout cover sheet. If you are planning to  
24 testify you will be under oath and I will be swearing you in in a few minutes. Please  
25 address your remarks to the Board Members. There'll be no audience demonstrations  
26 and no testimony other than what happens here at the podium. If you have a cell phone

1 please mute it, turn it off, silence it, whatever. If you need to leave you may do so  
2 quietly. Your testimony will be recorded. With that said, we are not quite as formal as a  
3 court, so we do have a little flexibility there. If you have documents you would like to  
4 submit, we can accept those. The weight that is given to your testimony will be decided  
5 by the Board, they have the right to make a decision in favor or against what you are  
6 asking for. They also have the right to approve something with conditions attached to it.  
7 The decisions are final when the Minutes are approved, and like I say you'll get a copy  
8 of the Order then. If you haven't received that Order then you proceed at your own risk  
9 because the Board would have a right to reconsider their action at the next meeting, so  
10 that's why we wait until the Minutes get approved. If you plan to testify there is a sign-up  
11 sheet that your name needs to be on along with your address. And if there are no  
12 questions at this time I will give you your oath. If you'll just raise your right hand. Do you  
13 swear or affirm that the testimony you shall give shall be the truth, the whole truth and  
14 nothing but the truth so help you God?

15 AUDIENCE: I do.

16 MS. LINDER: Thank you.

17 CHAIRMAN MCDUFFIE: Thank you very much. At this time we have on the  
18 Agenda Approval of Minutes from the December 2012 meeting. Has everyone had an  
19 opportunity to review the Minutes? Alright, would someone like to make a motion?

20 MR. SMITH: Make a motion to approve the Minutes from the December meeting.

21 CHAIRMAN MCDUFFIE: Alright. Is there a second?

22 MR. MEETZE: Second.

23 MS. CECERE: Second.

1 CHAIRMAN MCDUFFIE: Alright. We have a motion to approve and, to approve  
2 the Minutes from the December 5<sup>th</sup> meeting of the Board of Zoning Appeals and it has  
3 been properly seconded. All in favor?

4 *[Approved: Spearman, Meetze, Smith, McDuffie, Cecere, Sullivan; Absent: Sullivan]*

5 CHAIRMAN MCDUFFIE: Alright, the Minutes from the December meeting are  
6 approved. At this point I will turn the meeting over to Mr. Price. If you would please call  
7 your first case.

8 **CASE NO. 12-08 SE:**

9 MR. PRICE: That's case 12-08 Special Exception. The Applicant will be  
10 ClearTalk Communications who is represented by William Howard. The location is  
11 10100 Garners Ferry Road. The parcel size is 5.63 acres. The parcel is currently  
12 occupied – it looks like a warehouse manufacturing facility. The Applicant proposes to  
13 erect a 195' self support telecommunications tower within a 60 x 60 square foot leased  
14 area. The surrounding area consists of large primarily residentially developed parcels.  
15 To ensure compliance, looking at the provisions from subsection 26-152(D)(22)(c)(i), for  
16 communication towers abutting a residentially zoned parcel, that they shall have a  
17 minimum setback of one foot for each foot of height of the tower. The maximum setback  
18 for, excuse me, the maximum required setback will be 250'. Staff looked and the tower  
19 will be located at least 200' from each property line, each abutting property line so it  
20 would meet that requirement. That will be all.

21 CHAIRMAN MCDUFFIE: Okay. Let's see we have representatives from the  
22 Applicant at this time. Mr. Michael, I'm gonna forget this again, so please say it for me?  
23 Is it Feaginbaum?

1 **TESTIMONY OF MICHAEL FEAGINBAUM:**

2 MR. FEAGINBAUM: Mike Feaginbaum.

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

5 MR. FEAGINBAUM: My name's Mike Feaginbaum, I'm with ClearTalk. Our  
6 address is 2101 Main Street here in Columbia, 29201. And I'm here today to answer  
7 any questions that the Board may have with respect to this tower. And along with me  
8 today is William Howard who is our, our Radio Engineer and who's the guy that has  
9 designed this network. And Bill can speak to the reasons why we are looking to  
10 construct something over here. As a matter of short background, ClearTalk's a locally  
11 owned, employee owned company, you know, that provides advanced cellular services  
12 here in Columbia and Greenville. And this is, you know, most of the stuff that we've  
13 done in deploying our network has been co-location where we find existing towers and  
14 place our antennas on them. However, you know, we're trying to compete, you know,  
15 here against all the big guys we have to have a network that is better than theirs and  
16 there are no good opportunities for us to co-locate in this area. This is over there in that  
17 Horrell Hill area, we're just gonna cover that particular area and then, be our next hop  
18 off point going towards Sumter, so it's kind of a key element in our expansion of this  
19 network to serve more people here in the area. The last thing I'll say is I sure appreciate  
20 this fine collection of talent assembling just to hear one case, being ours, so thank you  
21 very much. And other than that I'll just open it for any questions anybody may have.

1 CHAIRMAN MCDUFFIE: Well, I guess we – if you would please present, you  
2 know, please present the specifics of the, of the tower so that we'll have the appropriate  
3 facts to make a decision.

4 MR. FEAGINBAUM: Sure. This facility is being proposed on Allen Morris'  
5 property over there at 10100 Garners Ferry Road. So it's zoned M-1 and that's a light  
6 industrial category, correct Mr. Price?

7 MR. PRICE: Yes, sir.

8 MR. FEAGINBAUM: And ongoing activity on this property is a cabinet millworks.  
9 It's a big, you know, building where they make, you know, cabinets for homes and  
10 businesses and stuff like that. We worked with Mr. Price and Mr. Price's Staff to locate  
11 this properly on this parcel so that we meet all the setbacks and don't negatively impact  
12 the adjoiners. And the tower that we're proposing is 195' lattice type tower. We need to  
13 have a little bit of height over there because of the hilly terrain. This will also allow for  
14 co-location for, you know, three or maybe more additional carriers on there, so when  
15 everybody else decided they're gonna, you know, go ahead and try to cover these  
16 areas like we are, there will be a place for them to go ahead and, and put their antennas  
17 without having to propose another facility in this general area. The compound will be  
18 enclosed with a [inaudible] safety of the general public and, and for security just in  
19 general of, of our equipment. We anticipate doing landscaping around this to make the  
20 facility look nice at the ground level. You know, a tower is a tower but there are some  
21 things that you can do to, you know, make it look, you know, as nice as you possibly  
22 can, you know, but a tower still is a tower. With respect to the RF or the radio frequency  
23 objectives, I can ask Bill Howard to maybe more completely, you know, explain that if

1 the Board would like. Bill is extremely capable of explaining these things in terms that  
2 regular guys like me can understand, you don't have to be a scientist or an engineer to  
3 understand that, so if the Board would like to hear a little bit more about the technical  
4 side of what we're trying to accomplish over there I can switch places with my colleague  
5 Bill and we can do that.

6 CHAIRMAN MCDUFFIE: I guess –

7 MS. CECERE: I have a question.

8 CHAIRMAN MCDUFFIE: Yes.

9 MS. CECERE: Okay, how close are the towers? Are there other towers in that  
10 vicinity?

11 MR. FEAGINBAUM: I'm going to –

12 MS. CECERE: Okay.

13 MR. FEAGINBAUM: - I'm gonna defer to Bill Howard.'

14 MS. CECERE: Okay.

15 **TESTIMONY OF WILLIAM HOWARD:**

16 MR. HOWARD: Hello. William Howard, 912 South Edisto Avenue, Columbia,  
17 South Carolina 29205. In reference to your question, there, the closest  
18 telecommunication structure isn't really a structure at all, a telecommunication structure,  
19 it's a city utility tank, a water about a mile and a half to the east, I'm sorry, to the west.  
20 Currently on that water tank, it's at the junction of Garners Ferry and Horrell Hill Road,  
21 there are two carriers currently so there is not adequate space to allow our facility.

22 CHAIRMAN MCDUFFIE: And was evidence of this, you know, the, that there's  
23 no options for co-location, has that been presented to, to the Attorney or the Staff?

1 MR. HOWARD: We have talked with the city.

2 CHAIRMAN MCDUFFIE: Oh, no, no, to – I mean, was documentation of that  
3 turned in to Staff?

4 MR. HOWARD: I don't believe documentation has been, but we are currently  
5 working with the city to go on a number of their other tanks, I think about 15 other tanks  
6 in the area.

7 CHAIRMAN MCDUFFIE: Okay, cause typically, you know, we would get some  
8 sort of a letter from you stating that, you know, you had made an attempt to co-locate,  
9 but for whatever the particular reasons were that there was no alternative.

10 MR. HOWARD: There is space on there, but from an RF standpoint it doesn't  
11 satisfy our network needs.

12 CHAIRMAN MCDUFFIE: Sure.

13 MR. HOWARD: It would require us to go too low. Part of the problem with this  
14 area is the fact that you have McEntire Air Force Base, or McEntire National Guard  
15 Base not too far away, so if we needed to build a tall structure we couldn't go any closer  
16 to the base. So.

17 CHAIRMAN MCDUFFIE: Alright. But from your research though this was the, the  
18 – obviously you could not co-locate on the city's water tower structure.

19 MR. HOWARD: Correct. Correct

20 CHAIRMAN MCDUFFIE: And this was the, the, you know, the best alternative.

21 MR. HOWARD: Correct. Crown Castle does have a tower, a monopole about 2  
22 ½ miles west, so it's a little west of the Horrell Hill water tank but it starts crowding our  
23 existing sites on an ATC co-location that we're already on.

1 CHAIRMAN MCDUFFIE: Alright, thank you. Are there any questions, are there  
2 any other questions for this, at this time for either the Applicant, or for either Mr.  
3 Feaginbaum or Mr. Howard?

4 MR. SMITH: Mr. Howard, I have a question. Actually you can go ahead first.

5 MR. SPEARMAN: Since you're so close to McEntire, will this tower require  
6 lights?

7 MR. HOWARD: No, Michael is telling me no. Currently most, any tower under  
8 200' does not require light but often they will require it, depending on your proximity to a  
9 airport. But I believe we've already run our FAA analysis and this will not require light.

10 CHAIRMAN MCDUFFIE: I have a question for Staff. The, the setback  
11 requirements for this particular tower, I notice that it's only got about 55' of setback off of  
12 the, in the front, is that correct?

13 MR. PRICE: Yes, sir.

14 CHAIRMAN MCDUFFIE: And that's all the setback that's required, even though  
15 we're talking about maybe abutting a, a, you know, parcels that are residential in nature  
16 or?

17 MR. PRICE: Looking at that – the front property line approaches abutting  
18 Garners Ferry Highway so what we did was we just continued that distance across the  
19 highway, across the street to the next one, residential parcel.

20 CHAIRMAN MCDUFFIE: Okay, but it doesn't have to meet the, the setback from  
21 the, from the actual property line, it just has to meet it from the, from the residential  
22 parcel?

1 MR. PRICE: Yes, sir. Once again, as it states, it states abutting a residentially  
2 zoned parcel.

3 CHAIRMAN MCDUFFIE: Right.

4 MR. PRICE: So in this case we just didn't take the Garners Ferry Road as being,  
5 you know, residential use and we just went across the street to the next parcel since  
6 that's typically what we're trying to protect.

7 MS. CECERE: Mr. Price is, is across the road also M-1?

8 MR. PRICE: No, ma'am, I believe that's Rural.

9 MS. CECERE: That is Rural? Okay. Thank you.

10 MR. PRICE: Actually they have it as General Commercial, so.

11 MS. CECERE: Okay.

12 MR. SPEARMAN: Where will the compound and the tower be located on the  
13 property?

14 MR. PRICE: If you take a look, I can maybe show you, if you look on the aerial  
15 right here, it'll be just, where the hand is right now.

16 MR. SPEARMAN: Okay, so it'll be in the front –

17 MR. PRICE: Yes.

18 MR. SPEARMAN: - the front part of the parcel, okay.

19 MR. PRICE: It's on, it's, if you look on the last page of the diagram, it's also on  
20 there also.

21 CHAIRMAN MCDUFFIE: Are there, are there any other questions for either Staff  
22 or for the Applicant at this time? Mr. Meetze, would you care to go through the Findings  
23 of Fact?

1 MR. MEETZE: Okay. Let's see here. Well, I'm just gonna start with number 4.  
2 Will the proposed tower have a maximum height of less than 300'? I believe we  
3 established that's yes. And 4 a. I believe is non-applicable, 4 b. is not applicable. 5 a., Is  
4 the base of the proposed tower located at least 1 foot from a residential zoning district  
5 for each foot of height of the tower? I would say yes.

6 MS. LINDER: Now just keep in mind it's or, a., b. and c. are ors. See, it's gonna  
7 be one of those.

8 MR. MEETZE: Alright, I would, it would be b. then, would it not?

9 MR. SPEARMAN: Yes, sir.

10 MR. MEETZE: b. Okay, I just read that. [b. Is the base of the proposed tower  
11 located at least 50 feet from a non-residential zoning district with a habitable dwelling?]  
12 Alright. And 6, if the Applicant has shown proof to attempt to co-locate on  
13 communication towers and that would be yes. And, let's see here, 7, it meets the  
14 illumination requirements of regulatory agencies, that would be yes. Part two of 7 would  
15 be yes [Has the applicant agreed to have no nighttime strobe lighting incorporated on  
16 the tower unless required by the Federal Communications Commission, the Federal  
17 Aviation Administration, or other regulatory agency?]. Eight will be yes [8. Will the  
18 communication tower and associated buildings be enclosed within a fence at least  
19 seven (7) feet in height?] Nine is yes [9. Has the applicant agreed to landscape the  
20 communication tower site in accordance with the requirements of Section 26-176?]. Ten  
21 is yes, I don't think that's been discussed but we've had this issue come up before and I  
22 think that was pretty well a given that no signage on any portion of the communication  
23 tower unless it's for identification. And here again on number 11, that would be yes [11.

1 Has the applicant agreed to dismantle and remove the communications tower within  
2 120 days of the date the tower is taken out of service?]. Will traffic be impacted by this  
3 proposal? I would say no [#12]. Thirteen would be no [13. Will this proposal affect  
4 vehicle and pedestrian safety?]. Fourteen, no [14. Is there a potential impact of noise,  
5 lights, fumes, or obstruction of air flow on adjoining properties?]. Fifteen, no [15. Does  
6 the proposed communication tower have an adverse impact on the aesthetic character  
7 of the environs?]. Sixteen, I would say yes [16. Is the orientation and spacing of  
8 improvements or buildings appropriate?]. And in view of that –

9 MS. CECERE: Excuse me, one minute. I have on 5., I have a question, Mr.  
10 Price, would, which one of those would apply, b. or c.?

11 CHAIRMAN MCDUFFIE: I think it meets all of them.

12 MS. CECERE: Huh?

13 CHAIRMAN MCDUFFIE: I think it meets all of them.

14 MS. CECERE: Yeah, because – 5 b. or c., is that residential across the –

15 CHAIRMAN MCDUFFIE: It's not.

16 MR. MEETZE: It's by the old Hot Spot that's closed.

17 MS. CECERE: Oh, okay.

18 MR. MEETZE: Subway is still there.

19 CHAIRMAN MCDUFFIE: There's a Subway there.

20 MS. LINDER: Mr. Meetze? The Zoning Administrator has identified on question 5  
21 that it meets a. and c. in that the proposed tower will be at least a foot from a residential  
22 zoning district for each foot of the tower, and the base of the tower will be at least a

1 minimum setback required by the zoning district from a non-residential zoning district  
2 without a habitable dwelling.

3 MR. MEETZE: So it would be a. and c. and not b. after all.

4 CHAIRMAN MCDUFFIE: Well, it actually is b. also.

5 MR. MEETZE: Actually – you start splitting hairs, it's all of them.

6 CHAIRMAN MCDUFFIE: That's right, it is all of them, so.

7 MS. LINDER: So I guess the bottom line, it meets the setbacks.

8 MR. MEETZE: So in view of this I make a motion that this request be granted.

9 CHAIRMAN MCDUFFIE: Alright.

10 MR. SMITH: I'll second that.

11 CHAIRMAN MCDUFFIE: We have a motion that, that Special Exception 12-08  
12 be granted based on the Findings of Fact and it has been properly seconded. All in  
13 favor?

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

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

16 CHAIRMAN MCDUFFIE: Alright. Mr. Feaginbaum, your Special Exception has  
17 been granted and Mr. Price will be in touch.

18 MR. FEAGINBAUM: Thank you very much.

19 CHAIRMAN MCDUFFIE: Thank you very much. Alright, at this time that  
20 concludes the public hearing portion of today's meeting. Is there any other business at  
21 this time?

22 MR. PRICE: I don't know if we discussed election of officers.

1 CHAIRMAN MCDUFFIE: Does that need to be something that's put onto the  
2 Agenda for next month or is that something that we would want to go ahead and do?

3 MR. PRICE: I think we can go ahead and do it now.

4 CHAIRMAN MCDUFFIE: Okay. Alright. Alright, we have a Chair and a Vice-Chair  
5 and a, and a Secretary.

6 MR. PRICE: The Zoning Administrator typically serves as the Secretary for the  
7 Board.

8 CHAIRMAN MCDUFFIE: Okay, so we need a Chair and a Vice-Chair?

9 MR. PRICE: Yes, sir.

10 CHAIRMAN MCDUFFIE: Alright, well I'll open up the floor to nominations for  
11 Chair.

12 MR. SMITH: I'd like to nominate Josh McDuffie for Chair.

13 MR. SPEARMAN: Second.

14 CHAIRMAN MCDUFFIE: Are there any other nominations from the floor? Alright,  
15 I hear none so I will close the nominations. Are there any nominations for Vice-Chair?

16 MR. PRICE: We can just do the Chair right now.

17 CHAIRMAN MCDUFFIE: We can, we can vote for them all at once? Are there  
18 any nominations for Vice-Chair at this time? I will nominate Mr. Smith.

19 MR. MEETZE: Second.

20 CHAIRMAN MCDUFFIE: Are there any other nominations for Vice-Chair at this  
21 time? Yes, seconded by both of the gentlemen over there. Alright, hearing no further  
22 nominations I'll close the nominations. We have, seeing as we only have one candidate

1 for Chair and Vice-Chair, I would move to approve both nominations by acclimation. All  
2 in favor?

3 MR. PRICE: Alright, those in favor: Spearman, Meetze, Smith, McDuffie, Cecere.

4 *[Approved: Spearman, Meetze, Smith, McDuffie, Cecere, Sullivan; Absent: Sullivan]*

5 CHAIRMAN MCDUFFIE: Alright. Thank you very much. Any further business at  
6 this time? If not, then I will adjourn the meeting. And please stay to sign Minutes, or  
7 please stay to sign Orders.

8

9

*[Meeting Adjourned at 1:35pm]*