



# BOARD OF ADJUSTMENT

## AGENDAS & MINUTES

### MINUTES OF MARCH 21, 2011

The regular meeting of the Sussex County Board of Adjustment was held on Monday March 21, 2011, at 7:00 p.m. in the County Council Chambers, County Administration Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. Ronald McCabe, Mr. John Mills, Mr. Brent Workman and Mr. Jeff Hudson, with Mr. Richard Berl – Assistant County Attorney, and staff members, Mrs. Susan Isaacs – Chief Zoning Inspector and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously to approve the Revised Agenda as circulated. Vote carried 5 – 0.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously to approve the Minutes of March 7, 2011 meeting as circulated. Vote carried 5 – 0.

Mr. Berl read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the cases.

### PUBLIC HEARINGS

**Case No. 10777 – Clean Energy USA, LLC** – east of Route 30, 360 feet north of Road 297.

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Dave Preston was sworn in and testified requesting a 25.6-foot variance from the required 40-foot front yard setback requirement for frame mounted solar panels; that his company installed the panels in error; that the existing tree line and septic system limit the available space for the solar panels; that there is only 1-dwelling on the property; that the other structure is used for storage only; and that he submitted a survey.

The Board found that 1 party appeared in support of the application.

The Board found that no parties appeared in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted since it meets the standards for granting a variance**.  
Vote carried 5 – 0.

**Case No. 10778 – AT&T** – east of Route One, 100 feet north of Jefferson Bridge Road.

A special use exception for a telecommunication tower.

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Mrs. Isaacs presented the case. Brock Riffel, Tom Zolna, William McCain, Leland Trice, Jill Jeffery, Mario Calabretta, and Kenneth Foster were sworn in on behalf of the Applicant, with Pamela Scott, Attorney, and testified requesting a special use exception for a telecommunication tower; that the proposed tower will be 100-foot in height; that the Board approved the application in 2009; that the decision was overturned in Superior Court; that the property is zoned C-1; that the structure will meet all required setback and lighting requirements; that the tower is needed to cover a gap in coverage in this area; that the tower will accommodate 2 other carriers to collocate; that at the base of the tower will be a fenced in compound for the equipment shelter; that there will be lighting at 50-foot intervals; that 33 different sites were looked into by the Applicant for placement of the tower; that the Town of Bethany and Sea Colony were not interested in allowing the Applicant to locate the tower or antennas on their existing buildings or water tower; that the proposed site was approved by a Radio Frequency Engineer and the Applicant entered into a contract with the property owner; that the Applicant is mandated to provide reliable coverage to this area; that the proposed height is necessary to provide adequate coverage; that existing towers in the area are too close to existing sites the Applicant already uses and would provide redundant coverage; that a prediction tool was used to determine the best location for the tower; that it is crucial to find the best location the first time to prevent the need for additional sites in the area; that the tower will not cause health risks; that the site is improved by an existing gas station and restaurant; that the tower site will be at the rear of the property; that the fenced in area will measure 11' x 20'; that the existing driveway will be used to access the tower site; that the equipment shelter will be set on piers to meet the flood zone requirements; that the tower is designed to withstand 120-mph winds; that the tower is made of galvanized steel to protect it from corrosion; and that two different real estate appraisers submitted reports to show there will be no negative impact on property values due to the tower site.

Brian Pepper was sworn in and testified in support of the application and stated that he is the owner of Pep-Up, Inc.; that when his drivers are on the road it is important that calls can be made with cellular phones in case of emergency; and that it can be a hazard if calls cannot be made in this area.

The Board took a 10-minute recess.

Rob Witsil, Attorney, testified on behalf of the opposition to the application and stated, that he represents the Homeowner's Association for Sea Pines Village; that he would like to ask the leaseholder about contract; that he would like confirmation from the real estate appraisers about what periods of time were used for their appraisals; that if they were done before or after towers were in place and why the property that was in foreclosure was not used in the analysis; that he would like confirmation from Mr. Calabretta on the following his calculations for the wind speed and that his testimony did not include snow load or other forces of nature that could damage the tower; whether he

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observed the site and is aware of the Stormwater Management Pond near the site; and whether he has knowledge of tower fires and tower falling within the past 5-years; that he would like confirmation from Mr. Riffel on the following: the range of a 100-foot tower would be 1 to 1 ½ miles and that there are 3-towers within 1/3 of a mile from the proposed site and why can't they be used to collocate; and has the Applicant considered other options such as utility poles to cover the gap in coverage; that the Applicant has recently purchased T-Mobile and may have adequate service in this area already; that he questions what a prediction tool is and how it is used; that the Town of Bethany was last contacted in 2005 by the Applicant; that in January 2011 the Town of Bethany sent a letter of objection to this application; and that questioning if the Applicant ever received any fines or warnings in reference to lack of coverage.

Jeremy Raines, Randall Handy, David Gerk, Glenn Piper, and Vicki York, were sworn in with Rob Witsil, Attorney and testified in opposition to the application and stated that this application is not a continuation of the previous case; that the original decision was overturned due to the fact that numerous property owners were not provided any opportunity to speak at the previous hearing; that the Applicant then proceeded at their own risk and erected a temporary 80-foot tower on the site; that the Sussex County Planning & Zoning Department issued a violation for the temporary tower; that the Superior Court has allowed the temporary tower to stay until after this hearing; that this Board has approved 7 of the last 9 tower cases; that the two cases the Board denied had significant opposition to the towers in their proposed areas; that there was minimal to no opposition to the towers that were approved; that no towers have ever been placed in such close proximity to residential homes; that the lighting created quite a disturbance to the residents; that numerous letters of opposition and petitions have been submitted to the Board; that there is no federal requirement to improve coverage; that existing infrastructure can be used to cover gaps in coverage; that directional antennas can be used to steer signals and intensify the signals to cover gaps; that there is no doubt existing sites can be used to cover the gap in coverage; that there are also femtocells which can be placed in homes which redirect signals to outside towers; that signal boosters can be used in vehicles to improve coverage; that there is a law that requires utility companies to allow antennas to be placed on their poles; that all phone companies are required to pick up any 911 calls made whether it is their customers or another providers customer; that tower sites do create disturbances such as loud generators when electricity is lost,

numerous visits made by workers to and from the site, increased danger such as fires, people falling from towers, birds nesting on the towers and increased lightning strikes; that the Match Pairs Analysis performed by the Applicant's appraisers could not be accurate due to the fact there is not enough data to perform this type of analysis; that there have not been enough sales since 2007 to do a proper analysis; that there is an obvious impact to property values on the units in Sea Pines Village that currently face the existing gas station compared to the units that cannot see the existing gas station; that the

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addition of a tower which can be seen from most units in the development will have a negative impact on property values; that the flashing lights from the tower will have a negative impact on the surrounding properties; and that this tower will substantially adversely affect the surrounding property.

The Board recessed for 10-minutes.

Tony McClenney, Margaret Young, Lew Kilmer, Jerry Dorfman, Joe Healy, and Jack Gordan were sworn in and testified in opposition to the application and stated that they represent the Town of Bethany Beach; that they are opposed to the location of the tower; and that AT&T told the Town Manager that they had no desire to collocate on the existing water tower.

Gary Bogossian and Gregory Cox were sworn in with Rob Witsil, Attorney, and testified in opposition to the application and stated that the exhibits used by the Applicant should not be allowed due to the disclaimer that the information is not accurate; that there is no drop zone indicated by the Applicant; that the tower will be built near a Stormwater Management Pond which creates a hazard; that over 50% of the property owners in Sea Pines Village are effected by the tower; that over 2/3 of the residents will be able to see the tower; that pictures were submitted to indicate the impact the tower will have on the development; that if the tower were to fall it could crush an end unit in the development; that the tower could also crash into the existing gas station or the pond creating a potential hazard; that the temporary tower has already created issues with property values and potential rental agreements; that videos were shown of tower fires and tower collapses; and that the tower will substantially affect adversely the uses of adjacent and neighboring property.

John Himmelburg was sworn in and testified in opposition to the application and stated that he is the President of Bethany Beach Landowners Association; that there have been a number of letters submitted in opposition to this application; and that people issues are important when the Board makes this decision.

Don Betts was sworn in and testified in opposition to the application and stated that he owns Unit 15 in Sea Pines Village; that his family has owned property in the area

for over 56-years; that he plans to retire to the area; and that he feels the Applicant is not being fair to the residents.

Alexander Smith was sworn in and testified in opposition to the application and stated that he understands the need for everyone to make a living; that the proposed site will deeply affect the surrounding property owners; that other carriers have good service in the area; that he feels the Applicant can collocate elsewhere, but would rather build a

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tower site for their own financial benefit; that he purchased his home in 1997; and that Zoning laws are made to protect surrounding property owners.

Dana Gerk was sworn in and testified in opposition to the application and stated that the temporary tower is already adversely affecting the use of her property; that the tower can be seen from all roadways; that the site poses too many dangers to surrounding properties; that ice falls from these towers and the danger that that will create; and that she submitted articles and a scroll of signatures in opposition.

Nancy Elke was sworn in and testified in opposition to the application and stated that the tower impacts the quiet atmosphere of the community; that renters are not interested in a property so close to a tower; and the Homeowner's Insurance rates will increase due to hazardous conditions posed by the tower.

Barb Derk was sworn in and testified in opposition to the application and stated that she owns Unit 14 in Sea Pines Village; that she is currently an AT&T customer and has never had any trouble with her service in this area; that bird's nest on these towers which create a nuisance; that she plans to retire here and the tower effects the safety and solace the property currently provides; and that the Board should protect the rights of the taxpayers.

Roger Derk was sworn in and testified in opposition to the application and stated that the property owner of the tower site is only interested in the profit to be made from leasing the property to the Applicant; and that the potential losses to surrounding property values are far greater than the property owners financial gain.

Karen Sa was sworn in and testified in opposition to the application and stated that she owns Unit 30 in Sea Pines Village; that she is on the Beautification Committee for the development; and that the gardens and grass and trees would create a tranquil setting, if not for the tower.

Jerry Dorfman was sworn in and testified in opposition to the application and stated that he owns property in Bethany Beach; that the tower doubles the height of any

trees in the area; that the tower is aesthetically out of character with the neighborhood; and that a tower that close to a residential area is the last place it should go.

The Board found that 2 parties appeared in support of the application.

Mrs. Isaacs stated that the office received 9 letters in support of the application.

The Board found that 42 parties appeared in opposition to the application.

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Mrs. Isaacs stated that the office received 640 letters and or signatures in opposition to the application and that there are a few duplications.

In rebuttal, Pam Scott, stated that there is no proof the tower will affect property values; that a violation has been issued by the Sussex County Planning & Zoning Department; that the violation has not been enforced pending this hearing; that the lighting on the tower will not have a flashing light at the top to create any disturbance to surrounding properties; that collocating on utility poles is done in Delaware but DelDot will not allow any radio equipment in their right of ways; that all equipment must be attached to the pole; that the Town of Bethany did contact the Applicant about using the water tower, however before they could reply the Town took a vote against it; that the tower meets the required setback requirements and requires no drop zone radius; that T-Mobile has recently contacted AT&T to collocate on the proposed tower; that this indicates that they do not already have reliable coverage in this area; that directional antennas are currently being used in this area; that the femtocells mentioned are also used by AT&T, however all phone numbers that will use the femtocells must be entered; that antennas on utility poles are good for coverage along the roads but would still need multiple tower sites to cover the gap in coverage; that the prediction tool is used world-wide to determine sites to cover gaps in coverage; that towers are built to collapse upon themselves; that they are engineered to withstand wind and ice loads; that this tower will have ports installed to accommodate the need for additional carriers and will not require any welding that may create fires as shown in the videos; that the towers are built to specific standards to withstand worst case scenarios; that Match Pair Analysis used a variable of sales before and after a tower is constructed; that the foreclosure sale is a conditioned sale which creates another variable, and therefore cannot be used in the study; and that the study showed no effect in sales or rental agreements before or after the temporary tower was erected.

In rebuttal, Jeremy Raines and Rob Witsil, stated that the coverage maps provided are not accurate; that the complaint chart does not show enough details to back up a real lack of coverage in this area; that there is currently an antenna on a utility pole with what appears to be a metal box attached that would house the radio equipment needed for the antenna; that accidents do happen and that they feel that the setback requirements do not

ensure the safety of surrounding property owners; and that there is a real danger that a vehicle could easily crash into the tower site.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be **tabled until April 18, 2011**. Vote carried 5 – 0.

**Case No. 10742 – Clean Energy USA, LLC** – east of Route 30, 360 feet north of Road 297.

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A variance from the front yard setback requirement.

The Board discussed the case which has been tabled since December 20, 2010.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **denied since it was not needed**. Vote carried 5 – 0.

**Case No. 10760 – Daleann Al-Hamad** – east of Route One (aka Coastal Highway) South of Willet Road, being Lot S-7 within Ocean Village Development.

A variance from the front yard setback requirement.

The Board discussed the case which has been tabled since February 28, 2011.

Motion by Mr. Hudson, seconded by Mr. McCabe, and carried unanimously that the case be **tabled until April 4, 2011**. Vote carried 5 – 0.

**Meeting Adjourned 1:10 a.m.**