



City of Enid
401 W. Owen K. Garriott Road
Enid, Oklahoma 73701
580-234-0400

BOARD OF ADJUSTMENT

NOTICE OF MEETING

Notice is hereby given that the Enid Board of Adjustment will meet in regular session at 4:00 p.m. on the 8th day of January, 2019, in the Lower Level Conference Room in the basement of the City Administration Building, located at 401 W. Owen K. Garriott Road, Enid, Oklahoma, and the agenda for said meeting is as follows:

- AGENDA -

BOARD OF ADJUSTMENT

1. CALL TO ORDER/ROLL CALL.
2. ADMINISTRATION.
 1. CONSIDER APPROVAL OF MINUTES OF THE REGULAR BOARD OF ADJUSTMENT MEETING OF NOVEMBER 13, 2018.
 2. NONE.
3. VARIANCES.
 1. HEAR THE APPEAL OF TY KNOTT WITH BRANCH COMMUNICATIONS REQUESTING A HEIGHT VARIANCE TO ALLOW A 125' COMMUNICATION TOWER LOCATED AT 1016 SOUTH GARLAND.
 2. HEAR THE APPEAL OF NEAL BROWN WITH PIONEER REQUESTING A HEIGHT VARIANCE TO ALLOW A 45' COMMUNICATION TOWER LOCATED AT WOODRING AIRPORT.
 3. CONSIDER CONVENING INTO EXECUTIVE SESSION TO DISCUSS AND DELIBERATE ON THE APPLICATION OF TY KNOTT REQUESTING A HEIGHT VARIANCE TO ALLOW A 125' COMMUNICATION TOWER TO BE LOCATED AT 1016 SOUTH GARLAND AND DELIBERATE ON THE APPLICATION OF NEAL BROWN WITH PIONEER REQUESTING A HEIGHT VARIANCE TO ALLOW A 45' COMMUNICATION TOWER TO BE LOCATED AT WOODRING AIRPORT AND TO RECONVENE INTO REGULAR SESSION TO TAKE ANY

NECESSARY ACTION.

4. SPECIAL EXCEPTIONS.

1. NONE.

5. ADJOURN.

Board of Adjustment

2.1.

Meeting Date: 01/08/2019

Submitted By: Karla Ruther, Assistant City Planner

SUBJECT:

CONSIDER APPROVAL OF MINUTES OF THE REGULAR BOARD OF ADJUSTMENT MEETING OF NOVEMBER 13, 2018.

BACKGROUND:

RECOMMENDATION:

PRESENTER:

Attachments

11-13-2018 minutes

DRAFT

MINUTES OF REGULAR MEETING OF THE BOARD OF ADJUSTMENT OF THE CITY OF ENID, OKLAHOMA, HELD ON THE 13TH DAY OF NOVEMBER 2018

The Board of Adjustment of the City of Enid, County of Garfield, State of Oklahoma, met in regular meeting in the Lower Level Conference Room of the Administration Building of the City of Enid, located at 401 West Owen K. Garriott Road in said city, at 4:00 P.M. on the 13th day of November 2018, pursuant to notice given by November 9, 2018 to the Clerk of the City of Enid, and pursuant to notice thereof displayed at the entrance to the Administration Building of said city, in prominent view and which notice was posted prior to 4:00 P.M. on the 9th day of November 2018.

Present: John Arend; Jessica Edwards; Michael Shuck; Taylor Venus

Absent: Mike Stuber

Also Present: Chris Bauer, Planning Administrator
Karla Ruther, Assistant City Planner

CALL TO ORDER/ROLL CALL.

CONSIDER APPROVAL OF MINUTES OF THE REGULAR BOARD OF ADJUSTMENT MEETING OF OCTOBER 9, 2018.

Motion was made by Jessica Edwards, seconded by John Arend to approve the minutes.

AYE: John Arend, Jessica Edwards, Michael Shuck, Taylor Venus

Passed

ADMINISTRATION.

NONE.

VARIANCES.

HEAR THE APPEAL OF CHARLES E HEDGES III REQUESTING A VARIANCE TO ALLOWABLE ACCESSORY SQUARE FOOTAGE LOCATED AT 621 WEST SPRUCE.

Motion was made by John Arend, seconded by Jessica Edwards to approve the variance on the basis the accessory building is in proportionate size to the residence, the lot size is peculiar with enough land area for a second residence, the variance would not impair the purpose and intent of the neighborhood since there were no protests and the 1500 square foot size is the minimum necessary to alleviate the hardship.

AYE: John Arend, Jessica Edwards, Michael Shuck, Taylor Venus

Passed

HEAR THE APPEAL OF KEN MCGEE REQUESTING A VARIANCE TO THE SIDE YARD SETBACK LOCATED AT 5522 WEST OWEN K GARRIOTT ROAD.

The applicant withdrew this item prior to the meeting.

HEAR THE APPEAL OF TY KNOTT REQUESTING A HEIGHT VARIANCE TO ALLOW A 125' COMMUNICATION TOWER LOCATED AT 1016 SOUTH GARLAND.

Motion was made by Taylor Venus, seconded by John Arend to approve the variance. The hardship is created by applying a building height to a cell tower, the property is peculiar in that it is zoned C-3 General Commercial, located in the middle of the section and setback from Garland Road to provide the maximum cell coverage, the proposed height will not impair the purpose and intent of the ordinance that applies to buildings, the applicant explained his client (AT&T) originally wanted 225' tall tower at this location and after AT&T performed the engineering study determined the minimum necessary was 125'.

AYE: John Arend, Taylor Venus
NAY: Jessica Edwards, Michael Shuck
Failed

NONE.

SPECIAL EXCEPTIONS.

NONE.

ADJOURN.

Motion was made by Michael Shuck, seconded by Jessica Edwards to adjourn.

The meeting adjourned at 4:48 PM.

AYE: John Arend, Jessica Edwards, Michael Shuck, Taylor Venus
Passed

Board of Adjustment

3.1.

Meeting Date: 01/08/2019

Submitted By: Karla Ruther, Assistant City Planner

SUBJECT:

HEAR THE APPEAL OF TY KNOTT WITH BRANCH COMMUNICATIONS REQUESTING A HEIGHT VARIANCE TO ALLOW A 125' COMMUNICATION TOWER LOCATED AT 1016 SOUTH GARLAND.

BACKGROUND:

This application concerns 1016 South Garland. The property is zoned C-3 General Commercial District. The applicant is seeking a variance that would allow a 125' tall communication tower. This request for a variance at the November 13, 2018 Board of Adjustment meeting and the rehearing of the application is appropriate because no formal action occurred at that meeting. After hearing presentations, no motion either for or against the granting of the variance request received a majority vote of the Board. Enid Municipal Code, §11-3-11 provides that after an application for a variance has been denied, no rehearing of the application shall be considered for a period of six months. No decision was rendered, so the application of §11-3-11 is not applicable. Therefore, this matter may be reheard by the Board of Adjustment.

Reviews involving cell towers require compliance with federal law as well as state law and city ordinance. The Federal Telecommunications Act of 1996 gave telecommunication providers upon the denial of a cell tower application the right to challenge the denial in federal court. To survive federal judicial scrutiny, additional federal procedural requirements impact the manner in which decisions on cell towers are to be made. The Act requires that the reviewing board's decision must be in writing and the reasons to support a denial must be supported by substantial evidence. The United States Supreme Court has determined that it is insufficient for the reviewing board to communicate its decision in writing to the applicant and have the minutes of the meeting once approved be used as the written record, effectively abrogating various Circuit Court decisions that found that a letter and minutes were sufficient under the Act. T-Mobile South, LLC v. City of Roswell, Georgia, 135 S. Ct. 808 (2015).

To accommodate the preparation of findings in the manner mandated by the United States Supreme Court, cell tower review should proceed in a bifurcated process. First, the hearing of the presentations should occur in open session. Then, the Board should go into executive session to deliberate and draft findings and return into regular open session to rule on the application and deliver written findings.

Section 11-7-D 4: of the zoning ordinance states "**A. Height: No building shall exceed thirty five feet (35') in height, measured from the mean elevation of the lot.**"

A variance may be granted upon the Board of Adjustment finding that:

1. **The application of the ordinance to the particular piece of property would create an unnecessary hardship.**
2. **The conditions are peculiar to the particular piece of property involved.**
3. **Relief, if granted, would not cause substantial detriment to the public good, or impair the purpose and intent of the ordinance.**
4. **The variance, if granted, would be the minimum necessary to alleviate the unnecessary hardship.**

Vance Air Force Base reviewed the location and height of the communication tower and the Base does not anticipate that the tower will affect its mission. Woodring Municipal Airport approves the communication tower location and height. Any person or persons applying to the Board of Adjustment for

a variance shall have the burden of showing that all of the criteria above have been met. Please see the attached application for the applicant's response to the criteria.

Bobsfarm, Inc. owner of property within 300 feet of the proposed site opposes the height in excess of City ordinance. Please see attached letter.

RECOMMENDATION:

Hear the presentations on the application for height variance to allow a cell tower on the property of the applicant.

PRESENTER:

Carol Lahman, City Attorney.

Attachments

Location map and site plan

Variance petition

Vance letter

Applicants Justification

Variance Petition Memo

Bobsfarm Inc opposition

W Owen K Garrio

Drive

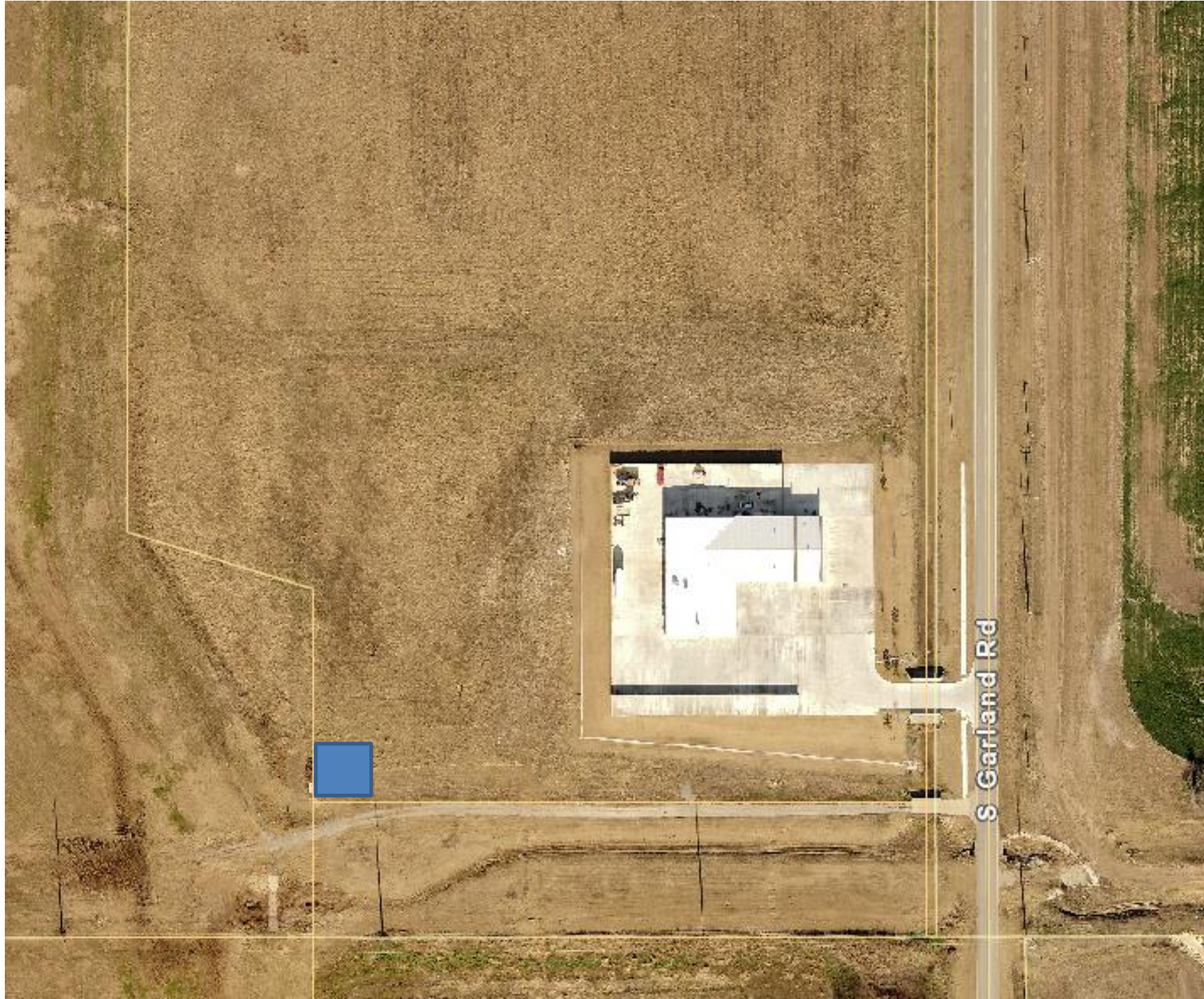
Frontage Rd

Lowes Drive

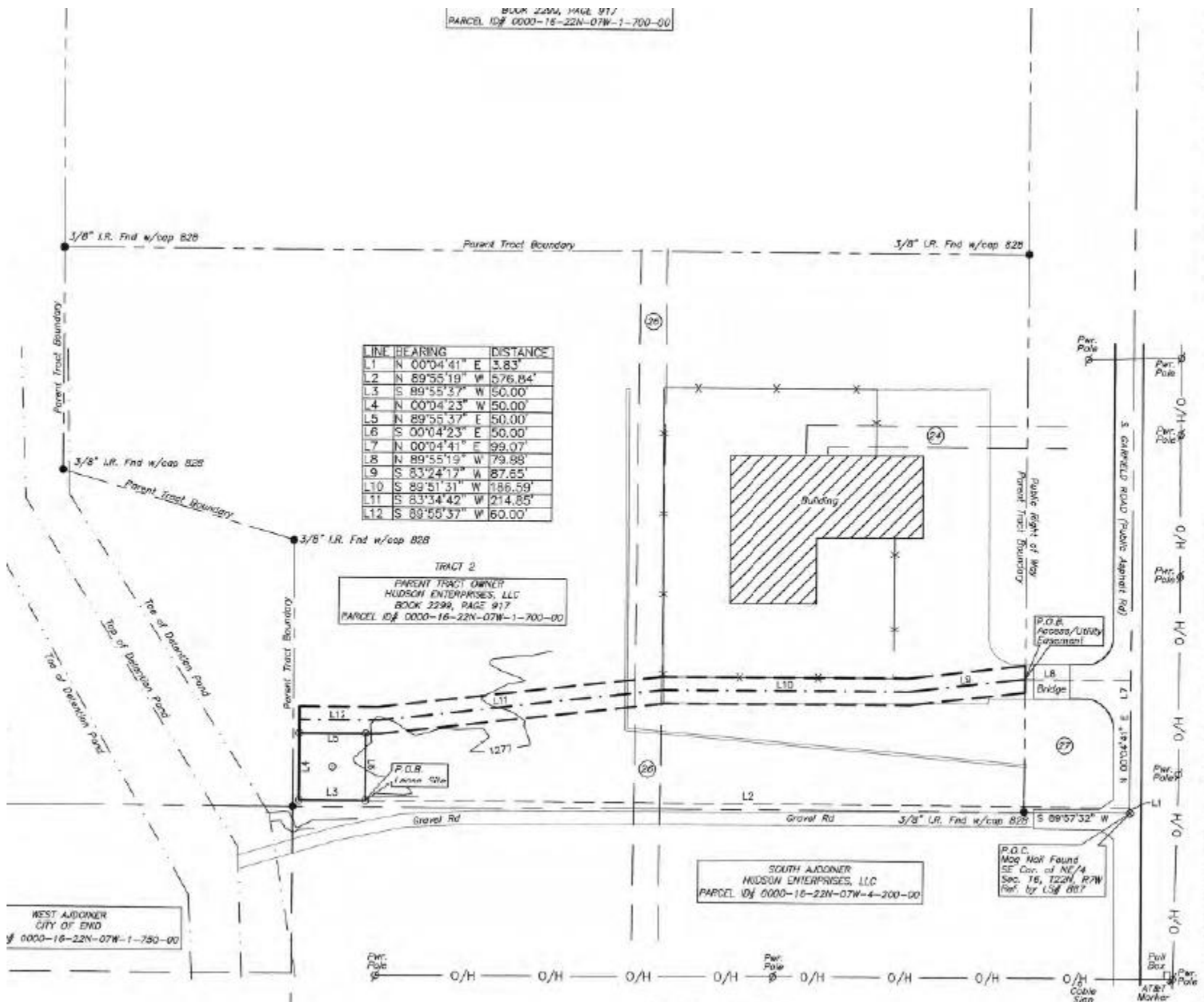
Mill Run

Garland Rd





S Garland Rd



LINE	BEARING	DISTANCE
L1	N 00°04'41" E	3.83'
L2	N 89°55'19" W	576.84'
L3	S 89°55'37" W	50.00'
L4	N 00°04'23" W	50.00'
L5	N 89°55'37" E	50.00'
L6	S 00°04'23" E	50.00'
L7	N 00°04'41" E	99.07'
L8	N 89°55'19" W	79.88'
L9	S 83°24'17" W	87.65'
L10	S 89°51'31" W	186.59'
L11	S 83°34'42" W	214.85'
L12	S 89°55'37" W	60.00'

TRACT 2
 PARENT TRACT OWNER
 HUDSON ENTERPRISES, LLC
 BOOK 2294, PAGE 917
 PARCEL ID# 0000-16-22N-07W-1-700-00

SOUTH ADJONER
 HUDSON ENTERPRISES, LLC
 PARCEL ID# 0000-16-22N-07W-4-200-00

P.O.C.
 Map Not Found
 SE Cor. of N1/4
 Sec. 16, T22N, R7W
 Ref. by L5# 887

WEST ADJONER
 CITY OF ENO
 # 0000-16-22N-07W-1-750-00

GRAPHIC SCALE



Planning & Zoning Department
Chris Bauer, Planning Administrator
cbauer@enid.org
580-616-7217
PO Box 1768, 401 West Garriott
Enid OK 73702

Zoning Variance Petition

(Due to Community Development 15 days prior to Zoning Board of Adjustment meeting date)

For Board of Adjustment meeting dates visit <http://www.enid.org/index.aspx?page=383>.

1. I, or We, hereby petition the ZONING BOARD OF ADJUSTMENT for a variance to the following provision(s) of the City of Enid Ordinance, Section(s) 11-7D-4:A

2. The Burden of Proof: Any persons applying for a variance shall have the burden of showing that all of the following factors described below have been met. The applicant must respond to each. Additional pages may be added.
 - A. The application of the ordinance to the particular piece of property would create an unnecessary hardship; AT&T has identified a need for a new tower on the West side of the city of Enid
AT&T has recognized the growth of the city and has identified a need for expanded coverage to adequately serve the city
 - B. Such conditions are peculiar to the particular piece of property involved; _____
The location proposed has long been farming and commercial property. The proposed location will not impose on any residential structures.
 - C. Relief, if granted, would not cause substantial detriment to the public good, or impair the purposes and intent of the ordinance or the comprehensive plan; and _____
The proposed tower will not interfere with the public or the comprehensive plan of the community.
 - D. The variance, if granted, would be the minimum necessary to alleviate the unnecessary hardship.
The tower height of 125' has been determined to be the minimum height possible to obtain coverage that will allow AT&T to provide the customer service that has been set forth for industry standards.

3. Reasons for desiring the variance: Tower height of 125'
4. I, or we have attached a site plan of the proposed construction.
5. Address and/or general location of property: 1016 S Garland Rd. Enid, OK 73703
6. Legal description of site: S16, T22N, R7W
7. Zoning classification of property: C-3
8. Please provide zoning variance petition application and a list containing the names and mailing addresses of all owners of property lying within 300 feet of the exterior boundary of the subject property, as certified by a licensed and bonded abstracting company, or title insurance to kruther@enid.org.

RECEIVED
DEC 11 2018
BY: KK

9. Send \$100.00 fee to Karla Ruther at the address above or if you prefer to pay electronically, contact the City Clerk at (580) 616-1815.

10. Applicant's signature: 

Printed Name: Ty Knott

Date: 10/16/18

Address: 1561 S Boston Ave. Tulsa, OK 74119

Email: ty.knott@branchcomm.net

Telephone: _____

Cell phone: 918-698-2940

Section 11-3-10

Appeal Process:

Appeal to the Garfield County District Court by filing a Notice of Appeal with the City Clerk and the Secretary of the Board of Adjustment within ten (10) days of the decision or order of the Board of Adjustment.

If you have any questions, please contact Community Development at (580) 616-7218

THANK YOU!



DEPARTMENT OF THE AIR FORCE

71ST FLYING TRAINING WING
VANCE AIR FORCE BASE OKLAHOMA

Colonel Corey A. Simmons
Commander
71st Flying Training Wing
246 Brown Parkway, Suite 224
Vance AFB, OK 73705-5015

Mr. Chris Bauer
City of Enid Planning Administrator
P.O. Box 1768
Enid, OK 73702-1768

Dear Mr. Bauer

In response to the City of Enid's request, members of the Vance Installation Encroachment Management Team (IEMT) have evaluated the proposed 125 foot monopole tower to be constructed by Hudson Enterprises just south of Wal-Mart on West Owen K Garriot in Enid. Vance received information about the project from Mr. Ty Knott in November 2017. Based on the information provided, we do not anticipate that the development or its construction process will affect our mission.

If you have any additional questions or concerns, you may contact the Vance Airspace Office at (580) 213-6276 or via e-mail at VanceAirspace@us.af.mil.

Sincerely

A handwritten signature in black ink, appearing to read "C.A. Simmons", with a long horizontal line extending to the right.

COREY A. SIMMONS
Colonel, USAF
Commander

Develop, Deliver, Deploy...To Fly, Fight, and Win!

JUSTIFICATION

Applicant seeks a variance at 1016 South Garland Road, Enid, OK 73703 from the restrictions imposed by the City of Enid's Municipal Code (the "Code") § 11-7D-4:A relating to the maximum building height requirements in a Commercial District. The Materials attached hereto (the "Materials") indicate the area at issue in this Application (the "Subject Site").

AT&T has recognized the growth of Enid and has identified a need for expanded coverage to adequately serve the needs of the city's residents. Accordingly, AT&T has identified a need for a new telecommunications tower on the Western side of Enid. The proposed tower will be built to a height of one hundred and twenty-five feet (125'), the minimum height necessary to achieve adequate coverage AT&T must provide pursuant industry standards.

The building standards in § 11-7D-4:A of the Code requires that no building shall exceed thirty-five feet (35') in height, measured from the mean elevation of the lot shown in the Materials. This number is largely based on the broad building standards for personal and business services and general retail use under the Code.

The Code does not contain any provisions specifically regulating the placement, construction, modification, or use of telecommunications towers. As such, the proposed tower set forth in Applicant's Materials is subject to the Code's building height limit for commercial districts.

Applicant has obtained approval for the proposed tower from Vance United States Air Force Base as required by Enid prior to filing this variance request pursuant to 11-7D-4:A. The written approval is a confirmation that the proposed tower will not interfere with the base's operation.

The broad standard of § 11-7D-4:A are excessive and unnecessary to serve the proposed telecommunications tower as contemplated in the Materials. Due to the unique nature of the telecommunications industry and its technological requirements, Applicant's proposed tower must maintain a height of 125'.

Applicant therefore requests a height variance from this Board to allow for the building of the proposed telecommunications tower to a height of 125'. This height is comparable to several similar telecommunications towers within Enid and surrounding municipalities.

(Continued on next page)

1. The application of the Ordinance to the particular piece of property would create an unnecessary hardship.

AT&T has identified a need for a new tower on the West side of the City of Enid. Recognizing the growth of the City, AT&T has identified the need for expanded coverage to adequately service the residents of Enid. If strictly applied, the Code effectively prohibits the installation of cell towers in commercially zoned districts within the City of Enid. As a result, AT&T would be unable to provide adequate coverage to the subject service area.

2. Such conditions are peculiar to the particular piece of property involved.

Enid's Municipal Code § 11-7D-4:A seeks to regulate the maximum height of retail buildings and buildings constructed for similar uses. However, in the present case, the proposed structure is a monopole, telecommunications tower, not a building of the nature which the Code sought to regulate. The Subject Site has long been farming and commercial property. The proposed tower will not impose on any residential structures, as no residential structures are located within one thousand feet (1000') of the proposed tower location.

3. Relief, if granted, would no cause substantial detriment to the public good or impair the purposes and intent of the Ordinance or Comprehensive Plan.

Applicant has received written approval for the proposed tower has been obtained from Vance United States Air Force Base and the Subject Site does not have any current residential structures within one thousand feet (1000') of the proposed tower location. There are no provisions within the City's Code specifically restricting the placement, construction, modification, or use of telecommunications towers. As such, the proposed tower will in no manner impair the purpose or intent behind the broad standards of § 11-7D-4:A, which generally contemplates retail uses much different from the cell tower being proposed. To the contrary, the proposed tower will be for the enhancement of services for the sizeable AT&T customer base within the growing City of Enid, AT&T customers visiting the City of Enid, as well as customers of other communications companies utilizing the AT&T communications network. As such, the purpose of the proposed tower is to adequately supply the communication needs of the City of Enid.

4. The Variance, if granted, would be the minimum necessary to alleviate the unnecessary hardship.

Applicant requests the minimum relief necessary as all other code requirements will be met. Written approval required from the Vance United States Air Force Base has been obtained and compliance with all applicable governmental agencies will be met. The proposed 125' monopole tower is the minimum height, pursuant to industry standards, to adequately accommodate capacity concerns for the telecommunication customers in the surrounding area.

WILLIAMS, BOX, FORSHEE & BULLARD, P.C.

ATTORNEYS AND COUNSELLORS

JOHN MICHAEL WILLIAMS
DENNIS R. BOX
RICHARD D. FORSHEE
KEITH R. GIBSON
CARLA J. SHARPE
PAUL LEFEBVRE
MICHAEL D. O'NEAL
DAVID M. BOX
MASON J. SCHWARTZ

522 COLCORD DRIVE
OKLAHOMA CITY, OKLAHOMA 73102-2202

TELEPHONE
(405) 232-0080
TELECOPIER
(405) 236-5814

Of Counsel
WILLIAM J. BULLARD

December 19, 2018

TO: Zoning Board of Adjustment of the City of Enid
C/O Chris Bauer, Planning Administrator
PO Box 1768, 401 West Garriott, Enid, OK 73702
FR: Williams, Box, Forshee & Bullard, P.C.
RE: TCA Regulations Governing CRB Companies, LLC/AT&T Zoning Variance Petition in
the City of Enid

OVERVIEW OF THE FEDERAL TELECOMMUNICATIONS ACT OF 1996

The Federal Telecommunications Act of 1996 (“TCA”), 47 U.S.C. § 332, limits the decision-making authority of local governmental bodies regarding the placement of wireless communications facilities. While Congress expressly preserved local zoning authority over the construction of personal wireless service facilities when it enacted the TCA, Congress adopted the TCA in order to promote competition and higher quality in telecommunications services and to encourage the rapid deployment of new telecommunications technologies. The TCA furthered these goals by reducing the impediments that local governmental bodies could impose to defeat or delay the installation of wireless communications facilities such as cell phone towers (“Cell Towers”), and by protecting against “irrational or substance-less decisions by local authorities.”

The TCA directly preempts local governmental bodies from regulating Cell Towers in any manner except for three (3) types of enumerated regulations that are reserved to local governmental bodies under the Act. *Cellular Phone Taskforce v. F.C.C.*, 205 F.3d 82, 96 (2nd Cir. 2000). The three (3) types of enumerated regulations reserved to local governmental bodies under the Act are regulations pertaining to the (1) placement, (2) construction, and (3) modification of Cell Towers.

STATUTORY LIMITATIONS ON THE ABILITY OF LOCAL GOVERNING BODIES TO REGULATE THE “PLACEMENT, CONSTRUCTION OR MODIFICATION” OF CELL TOWERS

However, even within these 3 areas of regulation reserved to local governmental bodies, the Act places specific limitations on the authority of local governmental bodies to regulate Cell Towers. The limitations are set forth in 47 U.S.C. § 332(c)(7)(B):

"(B) Limitations:

- i. The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof—

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

- ii. A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.
- iii. Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.
- iv. No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.
- v. Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.”

47 U.S.C. § 332(c)(7)(B)(i)-(v) (emphasis added).

The three (3) limitations most commonly violated by local governmental bodies are (1) the anti-discrimination limitation in Section B(i)(I); (2) the anti-prohibition limitation in Section B(i)(II); and (3) the substantial evidence requirement in Section B(iii). However, the limitations in Section B are cumulative, and a violation of any of the limitations within Section B constitutes improper regulation by the local governing body.

This is highlighted by the 10th Circuit in *T-Mobile Central, LLC v. Unified Gov't of Wyandotte Cty.*, 546 F.3d 1299 (10th Cir. 2006) (“*Wyandotte*”). The Plaintiff in *Wyandotte* challenged a Cell Tower denial by the City of Kansas City. Under the anti-prohibition limitation in Section B(i)(II), local regulations cannot have the “effect of prohibiting the provision of personal wireless services.” For an aggrieved party to demonstrate “effective prohibition” on appeal to district court, it must show that (1) a significant gap exists in service coverage or capacity, and (2) its application is the least intrusive means to close the gap. In *Wyandotte*, Kansas City anticipated an “effective prohibition” challenge in district court under Section B(i)(II). As such, Kansas City specifically denied the application on the basis that (1) it “failed to show that the denial of the [application would] prohibit the provision of personal wireless services,” and (2) “this particular tower is not

the least intrusive means of fulfilling a gap, if any exists, in the particular service provided by T-Mobile.”

Nonetheless, the *Wyandotte* Court held that Kansas City’s denial violated the TCA. As *Wyandotte* articulates, the limitations in Section B are cumulative, and a denial without a “substantial basis” violates Section B(iii) regardless of whether the denial constitutes an “effective prohibition” under Section (B)(i)(II).

Wyandotte explained this as follows:

If a zoning board's decision, reached under its own rules, is not supported by substantial evidence, then we need not consider the application of the anti-prohibition or antidiscrimination prongs of the statute. [...]

B. The Board's Decision Is Not Supported by Substantial Evidence

Under 47 U.S.C. § 332(c)(7)(B)(iii), “[a]ny decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.” [...]

Substantial evidence review does not create a substantive federal limitation on local land use regulatory power. As the Ninth Circuit has stated, “the substantial evidence inquiry does not require incorporation of the substantive federal standards imposed by the TCA, but instead requires a determination whether the zoning decision at issue is supported by substantial evidence in the context of applicable state and local law.” Our substantial evidence review is “directed to those rulings that the Board is expected to make under state law and local ordinance in deciding on variances, special exceptions and the like.” Accordingly, this Court must look to the requirements set forth in the local zoning code to determine the substantive criteria to be applied in determining whether substantial evidence existed to support the Board's decision....

Here, the Board's written decision offered three reasons for denying T-Mobile's application. The central issue is whether each of these reasons is supported by substantial evidence in the record.

1. Reason One: Failure to Show Prohibition of Personal Wireless Services

a. Absence of Support in Local Law for the “Failure to Show Prohibition of Personal Wireless Services” Criterion

The first reason, set forth in Paragraph 1 of the written denial, that the Board asserted to support its decision was that T-Mobile had “failed to show that the denial of the Special Use Permit [would] prohibit the provision of personal wireless services.” However, the Board erred in requiring T-Mobile to demonstrate that denying the application would have the effect of prohibiting the provision of wireless services. No such criterion appeared in the Code at the time of T-Mobile's application. While the Code provided that approval or denial of Special Use Permits should be based upon consideration of certain factors

enumerated in [the code] and set forth specific minimum criteria for telecommunication facilities in [the code], it did not require telecommunication providers to demonstrate prohibition of personal wireless services.

By inventing a criterion for which the applicable local ordinances did not provide, the Board failed to act on the basis of substantial evidence. “In order [to] be supported by substantial evidence, the proffered reasons must comport with the objective criteria in existence (i.e. zoning regulations, permit application policies, etc.). Governing bodies cannot simply arbitrarily invent new criteria in order to reject an application.” *Virginia Metronet, Inc. v. Bd. of Supervisors of James City County*, Va., 984 F.Supp. 966, 974 n. 14 (E.D.Va.1998); *see New Par v. City of Saginaw*, 301 F.3d 390, 398 (6th Cir.2002) (concluding that the zoning board's decision was not supported by substantial evidence because, among other reasons, the applicant's failure to show lack of alternatives did not “go to any of the criteria set out in the Zoning Code”); *Town of Amherst, N.H. v. Omnipoint Commc'ns Enters., Inc.*, 173 F.3d 9, 14 (1st Cir.1999) (stating that the substantial evidence standard “surely refers to the need for substantial evidence under the criteria laid down by the zoning law itself”) (emphasis omitted); *AT&T Wireless Servs. of Cal., LLC v. City of Carlsbad*, 308 F.Supp.2d 1148, 1163–64 (S.D.Cal.2003). Indeed, we have clearly stated that we must “look to the requirements set forth in the local zoning ordinance to ascertain the substantive criteria to be applied.” *Broken Arrow*, 340 F.3d at 1133. Although the TCA “does not divest local officials of any authority they may have to consider the quality of existing services, neither does it create such authority. Efforts to assess existing quality ... must be authorized by and performed within the parameters of governing state and local law.” *Ho–Ho–Kus*, 197 F.3d at 70. Because the Board had no basis in the local code for this criterion, the Board erred in its decision to require T–Mobile to demonstrate that the denial of the application would have the effect of prohibiting the provision of wireless services.

T-Mobile Central, LLC v. Unified Gov't of Wyandotte Cty., 546 F.3d 1299 (10th Cir. 2006) (emphasis added) (citations partially omitted).

THE APPLICATION OF WYANDOTTE AND THE “SUBSTANTIAL EVIDENCE” LIMITATION IN SECTION B(III) TO ENID’S ORDINANCES IN THE INSTANT APPLICATION

Wyandotte holds that a decision by local governmental bodies on an application is supported by “substantial evidence” only if it is based on objective zoning regulations applying to Cell Towers. As the Court states, local governing bodies “cannot simply arbitrarily invent new criteria in order to reject an application.”

The City of Enid does not enumerate specific criteria or factors to consider for Cell Tower applications. Thus, pursuant to *Wyandotte*, Enid lacks the requisite code criteria to regulate the “placement, construction or modification” of Cell Towers. If the code does not provide specific criteria upon which Enid can justify its denial, there can be no “substantial evidence” supporting a denial.

CONCLUSION

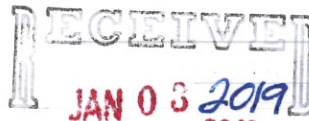
The City of Enid does not enumerate specific criteria or factors to consider in deciding Cell Tower applications. Thus, the City of Enid lacks the requisite code criteria to formulate a “substantial basis” justifying a denial of CRB Companies, LLC/AT&T’s Application.

BOBSFARM INC.

DIVERSIFIED DEVELOPERS
PO Box 1069 Enid, OK 73702
580/234-6381 Phone 580/234-6382 Fax

December 31, 2018

To: Enid Board of Adjustment
% Chris Bauer, City Planner
City of Enid
P.O. Box 1768
Enid, OK 73702



cbauer@enid.org

From: Bob Berry

BY: 

robert@bassconstruction.net

Cc: Jerald Gilbert, City Manager
Rob Collins, Editor Enid News & Eagle

jgilbert@enid.org
editor@enidnews.com

Re: Board of Adjustment Appeal by Ty Knott of Branch Communication – Tuesday 1/9/19 at 4 P.M.

Subj: Excessive Height Variance on Garland Road ½ Mile South of US 412 NW of VAFB

Board of Adjustment Members,

Bobsfarm Inc. owns adjacent property to the East; while aware of VAFB's apparent approval, we oppose the height in excess of City Ordinance. I may not be able to attend the hearing so I'm responding in writing. I hope Chris Bauer will send all of you a copy of our opposition.

Most of the ordinances that affect VAFB were done in reaction to the initial BRAC'S from '88 to mid-90's. A large number of Military Facilities were closed, or worse, "mothballed". I was Enid's BRAC Chairman for first two (2) BRAC's in late 80's and early 90's; I was relieved by Mike Cooper who did and does still do a fabulously better job.

I was charged by Mike along with Tom Sailors (former City Manager), Gary Martin and City Attorney Bryce Kennedy to find out why bases were selected to close and what to do with the closed bases. We formed a small group called "Plan Z" and were sent to the National Base Closure and Re-Development Conference attended by Base Communities already closed, and those just announced to be closed. We learned what the "Non-Political" causes of base closures and how to harden VAFB from that catastrophe, by developing a "Plan Z".

The first rule of not letting your base be closed was

- #1 Don't do anything to constrict base operations, based on "commercial convenience"; but always remember the military constantly presses the envelope of new systems. Those plans are not advertised to the public, so it is up to the community to be vigilant and study trends that our Military Consultant may pick up.

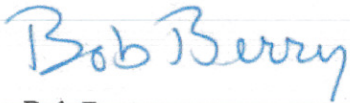
An example are wind turbines, never conceived in the 90's and besides height, no one could conceive of "radar shadows" they now cause. Thus, it pays to be ultra conservative.

This location is the end of the downwind leg's easterly turn to align with final approach to the primary West runway. This turn is not in APZ I or II, but considering our base focuses on student pilots, this key low altitude, low speed turn does not need the obstruction of a Tower so close.

There are many commercial towers on West side of Enid on which equipment can be mounted to serve this location with a Tower height within the current regulations.

Why would Enid want to take such a chance? What would Enid gain by the approval?

Respectfully,



Bob Berry

Attach: Notice of Hearing

Board of Adjustment

3.2.

Meeting Date: 01/08/2019

Submitted By: Karla Ruther, Assistant City Planner

SUBJECT:

HEAR THE APPEAL OF NEAL BROWN WITH PIONEER REQUESTING A HEIGHT VARIANCE TO ALLOW A 45' COMMUNICATION TOWER LOCATED AT WOODRING AIRPORT.

BACKGROUND:

This appeal concerns Woodring Airport. The property is zoned Agriculture District. The applicant is seeking a variance that would allow a 45' tall communication tower.

As discussed in the previous items, reviews involving cell towers require compliance with the Federal Telecommunications Act of 1996, as well as state law and city ordinance. To accommodate the preparation of written findings and have them available at the same time as the ruling, cell tower review should proceed in a bifurcated process. First, the hearing of the presentations should occur in open session. Then, the Board should go into executive session to deliberate and draft findings and return into regular open session to rule on the application and deliver written findings.

Section 11-5-5 B: of the zoning ordinance states "**B. Accessory building - thirty five feet (35').**"

A variance may be granted upon the Board of Adjustment finding that:

1. **The application of the ordinance to the particular piece of property would create an unnecessary hardship.**
2. **The conditions are peculiar to the particular piece of property involved.**
3. **Relief, if granted, would not cause substantial detriment to the public good, or impair the purpose and intent of the ordinance.**
4. **The variance, if granted, would be the minimum necessary to alleviate the unnecessary hardship.**

Vance Air Force Base reviewed the location and height of the communication tower and the Base does not anticipate that the tower will affect its mission. Woodring Municipal Airport approves the communication tower location and height. Any person or persons applying to the Board of Adjustment for a variance shall have the burden of showing that all of the criteria above have been met. Please see the attached application for the applicant's response to the criteria.

RECOMMENDATION:

Hear the presentations on the application for a 45' height variance to allow a cell tower on the property of the applicant.

PRESENTER:

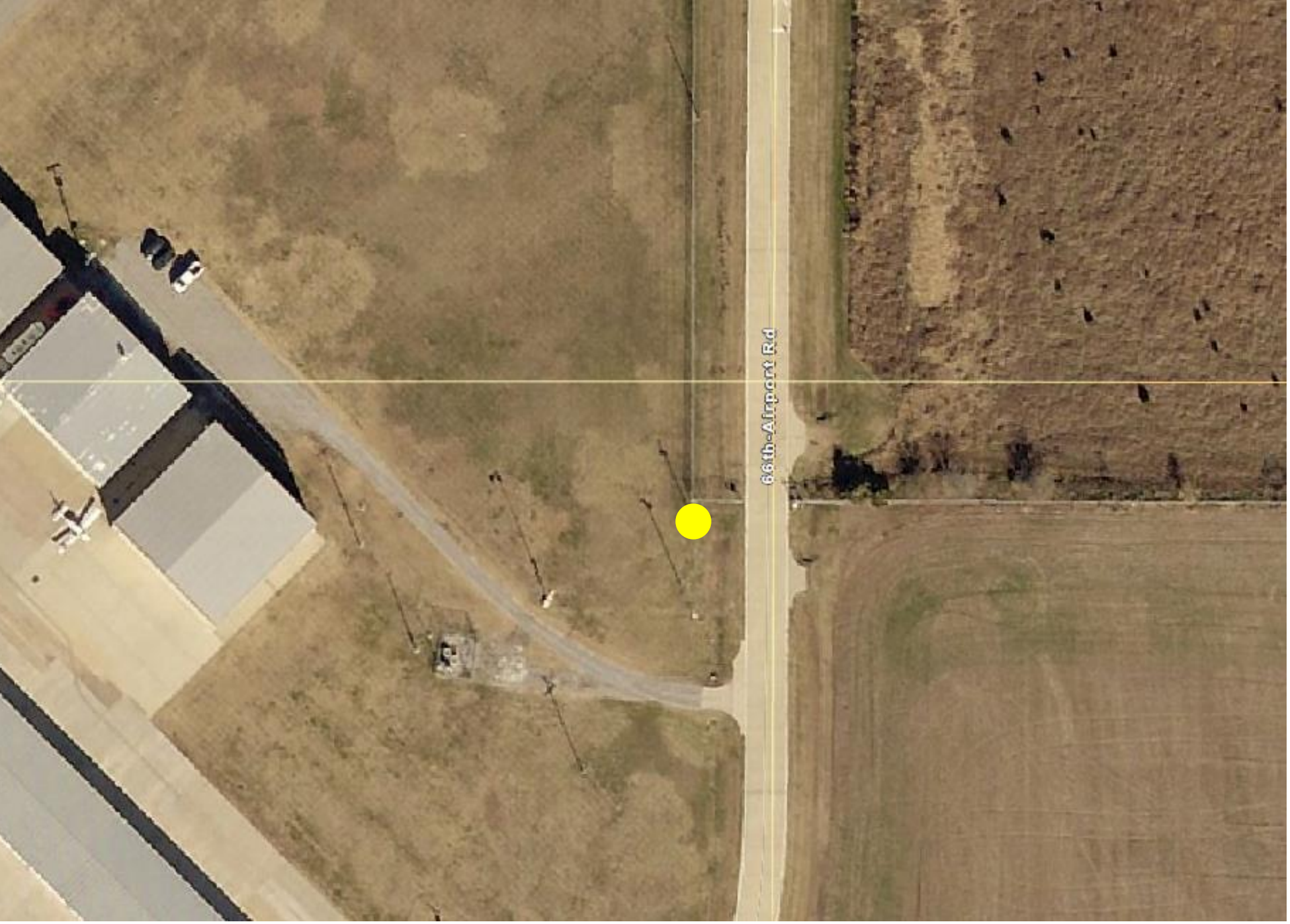
Carol Lahman, City Attorney.

Attachments

Location map
Variance petition
Vance letter







66th-Airport Rd



Planning & Zoning Department
Chris Bauer, Planning Administrator
cbauer@enid.org
580-616-7217
PO Box 1768, 401 West Garriott
Enid OK 73702

Zoning Variance Petition

(Due to Community Development 15 days prior to Zoning Board of Adjustment meeting date)

For Board of Adjustment meeting dates visit http://www.enid.org/index.aspx?page=383.

1. I, or We, hereby petition the ZONING BOARD OF ADJUSTMENT for a variance to the following provision(s) of the City of Enid Ordinance, Section(s) Rezone a portion of property at the Enid Woodring Airport from A to I-2 to accommodate the installation of a 45' tall light pole that will double as a cellular site.

2. The Burden of Proof: Any persons applying for a variance shall have the burden of showing that all of the following factors described below have been met. The applicant must respond to each. Additional pages may be added.

A. The application of the ordinance to the particular piece of property would create an unnecessary hardship; The change from A to I-2 would not cause a hardship because both properties are on airport grounds and across the street is already zoned I-2.

B. Such conditions are peculiar to the particular piece of property involved; As stated above, the neighboring property is already zoned I-2.

C. Relief, if granted, would not cause substantial detriment to the public good, or impair the purposes and intent of the ordinance or the comprehensive plan; and The majority of the airport grounds are currently zoned A and the I-2 zoning would be more appropriate.

D. The variance, if granted, would be the minimum necessary to alleviate the unnecessary hardship. A very small parcel (approx. 40' x 15") would need to be rezoned to accommodate the project.

3. I, or we have attached a site plan of the proposed construction.

4. Address and/or general location of property: Just inside the airport gate at S. 66th street.

5. Legal description of site: NE/4 SE/4, Sec 13, T22N, R6W IM

6. Zoning classification of property: Currently A, Proposing I-2

7. Please provide zoning variance petition application and a list containing the names and mailing addresses of all owners of property lying within 300 feet of the exterior boundary of the subject property, as certified by a licensed and bonded abstracting company, or title insurance to kruther@enid.org.

RECEIVED
OCT 25

BY: Kb

8. Send \$100.00 fee to Karla Ruther at the address above or if you prefer to pay electronically, contact the City Clerk at (580) 616-1815.

9. Applicant's signature: Neal Brown

Printed Name: Neal Brown

Date: 10/10/18 Address: PO Box 539

Email: dnbrown@ptci.com Telephone: 405-375-0671

Cell phone: 405-368-8199

Section 11-3-10

Appeal Process:

Appeal to the Garfield County District Court by filing a Notice of Appeal with the City Clerk and the Secretary of the Board of Adjustment within ten (10) days of the decision or order of the Board of Adjustment.

If you have any questions, please contact Community Development at (580) 616-7218

THANK YOU!



314 NORTH 5TH STREET
KINGFISHER, OKLAHOMA 73750
(405) 373-0871

GENERAL NOTES:

1. TOWER: MAJORITY LIGHT POLE - 40'

SUBMITTALS

DATE	DESCRIPTION	REV
08/15/18	INITIAL DRAWING	0

DRAWN BY: RAR

APPROVED BY: DNB

SITE NAME: ENID WOODRING MM

SITE NUMBER: #1076

GRID EASY: 56-227-59.16"N

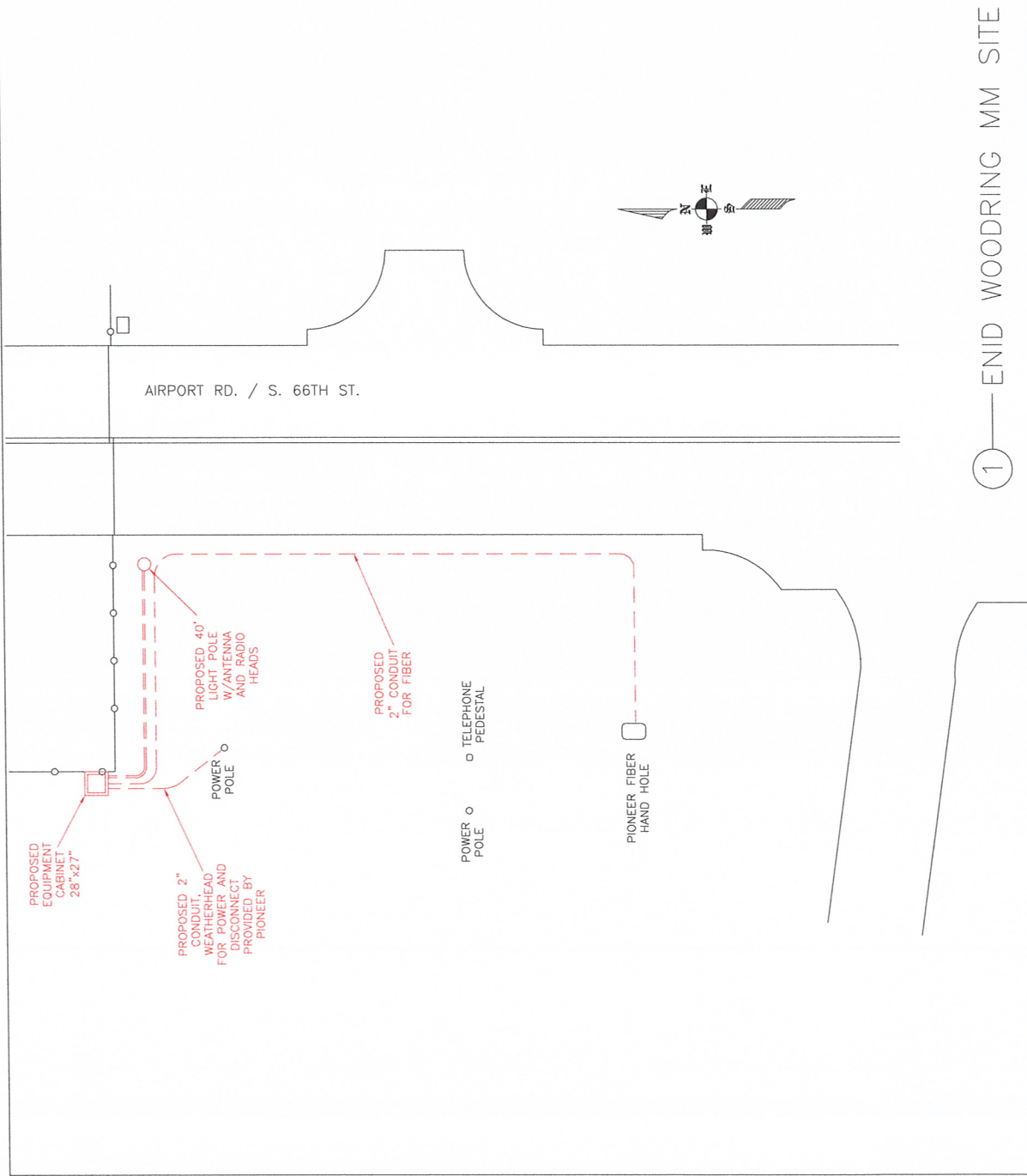
SITE OWNER: CNP

97-46-58.82"W

SHEET TITLE: SITE COMPOUND

SHEET NUMBER: S1

REVISIONS: 0



AIRPORT RD. / S. 66TH ST.

① — ENID WOODRING MM SITE



DEPARTMENT OF THE AIR FORCE

71ST FLYING TRAINING WING
VANCE AIR FORCE BASE OKLAHOMA

14 Dec 18

Colonel Corey A. Simmons
Commander
71st Flying Training Wing
246 Brown Parkway, Suite 224
Vance AFB, OK 73705-5015

Mr. Chris Bauer
City of Enid Planning Administrator
P.O. Box 1768
Enid, OK 73702-1768

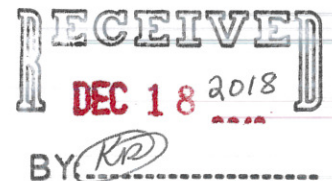
Dear Mr. Bauer

In response to the City of Enid's request, members of the Vance Installation Encroachment Management Team (IEMT) have evaluated the proposed 45 foot tall steel light pole/cell site at Enid Woodring Airport to improve cellular service in the area. Based on the information provided, we do not anticipate that the development or its construction process will affect our mission.

If you have any additional questions or concerns, you may contact the Vance Airspace Office at (580) 213-6276 or via e-mail at VanceAirspace@us.af.mil.

Sincerely

COREY A. SIMMONS
Colonel, USAF
Commander



Develop, Deliver, Deploy and Demonstrate...To Fly, Fight and Win!

Board of Adjustment

3.3.

Meeting Date: 01/08/2019

Submitted By: Karla Ruther, Assistant City Planner

SUBJECT:

CONSIDER CONVENING INTO EXECUTIVE SESSION TO DISCUSS AND DELIBERATE ON THE APPLICATION OF TY KNOTT REQUESTING A HEIGHT VARIANCE TO ALLOW A 125' COMMUNICATION TOWER TO BE LOCATED AT 1016 SOUTH GARLAND AND DELIBERATE ON THE APPLICATION OF NEAL BROWN WITH PIONEER REQUESTING A HEIGHT VARIANCE TO ALLOW A 45' COMMUNICATION TOWER TO BE LOCATED AT WOODRING AIRPORT AND TO RECONVENE INTO REGULAR SESSION TO TAKE ANY NECESSARY ACTION.

BACKGROUND:

The City Attorney recommends that the Board of Adjustment go into Executive Session pursuant to 25 O.S. §307(B)(4), pending action, and the attorney/client privilege to engage in confidential communications concerning this pending application for a cell tower variance and to prepare written findings because disclosure would impair the ability of the public body to proceed appropriately. Upon reconvening into regular public session the Board of Adjustment will make a motion to render its decision and approve written findings.

RECOMMENDATION:

Convene into Executive Session.

PRESENTER:

Carol Lahman, City Attorney.
