

**MINUTES**  
**Bixby Board of Adjustments**  
**7:00 PM**  
**116 WEST NEEDLES**  
**BIXBY, OKLAHOMA**  
**MONDAY**  
**March 6, 2006**

**Members Present:**

**Jeff Wilson**  
**Dave Hill**  
**Murray King**  
**Lonnie Jeffries**  
**Darrell Mullins**

**Staff Present:**

**Jim Coffey**  
**Janae Beebe**

**Members Absent:**

**none**

**1. Call to Order**

Chairman Wilson called meeting to order at 6:02 pm.

**2. Approval of Minutes for August 1, 2005**

Correction: Page one, change Chairman Sherrill to Chairman Wilson. Item 6, change “motioned for approval of variance” to “motioned for approval of minutes”

Hill motioned for approval with corrections, Mullins seconded.

**VOTING FOR: Mullins, Hill, Wilson**

**VOTING AGAINST: none**

**ABSTAINING: Jeffries, King**

**MOTION PASSED: 3-0-2**

**3. BBOA 441: Discussion and action on Board of Adjustment Case 441 for a special exception to the height and set back requirements for a communications tower, Cingular Wireless, applicant.**

**STAFF REPORT**

Cingular Wireless is seeking a Special Exception to Tower Ordinance No 753.

The Exception would be to the following items:

1. Aggregate height of sixty feet be extended to 100 feet.
2. Residential set back less than the minimum of 400 ft radius.

There are four radio tires adjacent to the site but Cingular contends that there are no telecommunication towers within a half mile. There is no supporting evidence that addresses the issue of co-location on one of these towers except the statement the existing towers will not work due to the amount of power radiated from these types of towers. It is true the existing towers do not meet the height and/or the radius set backs. However the existing towers do predate the ordinance and would have been in place before the development of the subdivision to the North.

Also includes are two letters from property owners directly affected by the minimum 400 ft radius set back. James Level called and stated he did sign the document but was unaware of its meaning and would now be opposed to the tower placement.

Also included is a letter to indicate a hardship and reasons for approving this application. The limitations boil down to:

1. Location to meet design objectives for radio frequency
2. Floodplains, residential areas, parks that will not work due to leasing zoning or construction.
3. Time Cingular has been searching for a site and the usability of the subject property.
4. Would not be a detriment to public good or impair the intent of the code or comprehensive plan.

There is question if the hardships described meet the hardship definition which is:

1. By reason of extraordinary or exceptional conditions or circumstance which are peculiar to the land, structure or building involved, the literal enforcement of the terms of this title would result in unnecessary hardship.
2. Such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same district.
3. The variance to be granted will not cause substantial detriment to the public good or impair the purpose, spirit and intent of this title or the comprehensive plan

Staff Comment: This is not an extraordinary or exceptional contention and the literal enforcement of the ordinance is for the protection of the public good. The ordinance does apply to all districts. Public good would be impaired if the towers were to fail and damage surrounding property. It is true there are four other towers in the area that exceed the height and set back limitation. However, the towers predate the ordinance, and the towers also predate the development of the housing district. The ordinance was formed for the protection of the public good. If the ordinance is not applicable to that cause, it should be modified, however this board is not responsibility and prohibited from legislating by the granting of a variance or special exception.

Staff recommends denial.

## **PUBLIC HEARING**

**Peggy Owen, P.O. Box 721415 Norman, OK 73070; applicant:** First choice for cellular companies is to co-locate on existing towers. The signal is too strong on the existing AM towers in this area to co-locate. Cingular will have to install an AM de-tuner (filter) as requested by radio. A height of 60' will not meet the required service area coverage objectives. Property owner to the North of site signed a letter saying they have no objections to the tower, but have changed their minds. Cingular will do any additional landscape necessary to improve the appearance of the tower.

**Mr. Mullins:** Would the AM people have to put a filter on their towers too?

**Ms. Owen:** the AM de-tuner added to the Cingular tower should protect both.

**Sharon Level, 11595 S. 109<sup>th</sup> East Ave Bixby:** Worried that the tower will lower her property value and stated that towers are "ugly". The road this site is located on is a narrow, dead end road. She stated that there will not be enough room for construction vehicles to get to the tower site for building and maintenance; and the trucks will cause damage to the road. The tower signal will interfere with home satellite and Ms. Level does not want to live that close to radio waves. She also expressed her concern for her grandchild that visits often and the possibility of the tower falling on their outbuilding with antique cars.

**Mr. Wilson:** So the letter the Levels signed is not valid now?

**Ms. Level:** Stated that her husband signed the letter, but he is not the legal owner of the home, she is. He was also medicated at the time from surgery. Ms. Level expressed her concern that other neighbors did not receive notification of this case.

**Mr. Coffey:** There is a 300' notification procedure and all homes and property owners within this radius received notification.

**James Level, 11595 S. 109<sup>th</sup> East Ave, Bixby:** The site plan shows trees along the north side of the chain link fence between us and the tower site, there are no trees there. "If this is not legal, I don't know why we're here."

**Mr. Hill:** The Board of Adjustment listens to argument and decides if the ordinance is equitable to all parties involved.

**Jerry Beck, 11610 S. 109<sup>th</sup> East Ave., Bixby:** Owns property where proposed tower would be located. Mr. Beck previously owned the property where the AM towers are currently located and also previously owned the Haikey Creek Park property. Denise Cardinal with Cingular Wireless contacted Mr. Beck approximately one year ago with interest in placing a tower in this area. He submitted an exhibit with pictures of the tower site to the board. Mr. Beck stated he is retired and could use the extra income a cell tower would bring in. He also stated that Mr. Level's "excuse" about being medicated was not valid because he discussed the tower with Mr. Level and showed him an example on a mutual friend's property. Mr. Beck stated that there was no opposition until the application was filed.

**Mr. Mullins:** One regulation of the ordinance says it is possible to deviate, if an extreme hardship can be proven.

**Mr. Beck:** Medical expenses are increasing and the extra income would benefit him greatly.

**Mr. Hill:** The pictures submitted are of other poles in Broken Arrow. There is no reason to consider these as Broken Arrow has their own ordinance. He then asked if there is a better location for this tower.

**Roger Klein, 1227 W. 127<sup>th</sup> Jenks:** General Manager of BA Hitch (Level's Company in Bixby). According to Mr. Klein, this tower will make Mr. Beck money, while decreasing the Level's property value. It is really about the beauty of the property, "this is not in the betterment of the housing addition, it only benefits Mr. Beck and Cingular."

**Ms. Owen:** Towers have become common place recently. They are a necessary part of our infrastructure. Other states have done property appraisals before and after cell towers were constructed and no drop in value was evident. Dallas, TX also has a 60' height requirement on cell towers; when you have short towers, you need more towers to get the desired coverage area. The Bixby ordinance also requires new towers to support two wireless companies. This is not realistically probably due to the short height restriction. On the construction of the pole: average construction time is approximately two to three weeks. After that, the tower is usually only visited every four to six weeks. The company can get creative with the construction efforts so that traffic is not an issue. Towers are not pretty, but the monopole is the most aesthetically pleasing tower choice. It is only four feet in diameter at the base. Satellite interference will not be an issue because the tower and the satellite are on different frequencies. Radio wave issue: radio waves on a cell tower are considered dangerous within 10 feet of the antenna. The antenna will be on top of a 100' tower and the signal is omnidirectional (dispersed, not concentrated in one direction). Collapsible towers can be used; they are built in sections and, if they fall they fall into themselves. Could also possibly use a self supporting tower which is built in sections as well.

**Mr. Hill:** If you couldn't put a 100' pole here, could Cingular place 60' here and 60' somewhere else?

**Ms. Owen:** Cingular most likely would not do that.

**Mr. Jeffries:** Is this a line of sight issue? What hinders the signal?

**Ms. Owen:** Cingular antennas in the area are 100'. Geographical layout and the ability of the signal to reach other towers hinders the signal.

**Mr. Jeffries:** Is it ideal to get them as high as you want?

**Ms. Owen:** No, for example, if there is an existing 200' pole and Cingular were to co-locate, they would only go up 100' if that's all they needed.

**Mr. Hill:** Has Cingular looked at other antenna options and other locations?

**Ms. Owen:** Yes other options have been considered.

**Mr. Hill:** To Jim Coffey: Did the County give permission for the AM towers that are currently there?

**Mr. Coffey:** yes

**Mr. Jeffries:** Where did we get the 60' height restriction from?

**Mr. Coffey:** In 1997 Oklahoma Municipal League created a general ordinance. Bixby passed our ordinance in conjunction with several other cities.

**Mr. Hill:** It sounds like the City needs to revisit the ordinance.

**Mr. Coffey:** Current ordinance does give the Board authority to change the height, using a special exception as applied for here tonight.

**Ms. Owen:** Since this area is getting ready to boom, someone else will probably come to you with the same request for this site.

**Mr. Mullins:** Why can't Cingular pay FM towers to co-locate?

**Ms. Owens:** These are AM towers and the signal is not compatible. It is not possible to co-locate with AM towers.

**Mrs. Level:** There will be a chain link fence and a brick building. It's not just a pole we have to look at. I understand the pole will most likely not fall, but right now I don't even have to worry about the chance.

**Ms. Owen:** Cingular is willing to screen the site with any material requested. Also, the tower will be constructed to withstand the elements particular to this area.

Mr. Hill and Mr. Mullins stated they are both reluctant to go against the ordinance.

**Mr. Hill:** This is the same situation we had with the building line setbacks. We stopped granting them because we were not defining “hardship” as we should have been. Cingular has enough money to go to another location.

**Mr. Wilson:** It is not for us to second guess the City Council. We cannot change the law and there is opposition by a neighboring land owner.

**Mr. King:** Is a Cingular customer and would love better service, but not if it meant putting a pole in his back yard.

**Mr. Wilson:** Even if there had been consent by all property owners in the area, we still have to obey the ordinance, the City Council set out a 400’ set back.

Mullins made a motion to **DENY** the special exception, Hill seconded.

**VOTING FOR: Mullins, Hill, King, Jeffries, Wilson**

**VOTING AGAINST: none**

**ABSTAINING: none**

**MOTION PASSED: 5-0-0**

**5 Old Business:**

**6 New Business:** New member: Murray King will serve until March of 2008.

**7 Adjournment**

Approved \_\_\_\_\_ Date \_\_\_\_\_