



**CITY OF OKEECHOBEE, FLORIDA  
BOARD OF ADJUSTMENT MEETING  
DECEMBER 15, 2022  
SUMMARY OF BOARD ACTION**

**I. CALL TO ORDER**

Chairperson Hoover called the regular meeting of the Board of Adjustment for the City of Okeechobee to order on Thursday, December 15, 2022, at 6:00 P.M. in the City Council Chambers, located at 55 Southeast (SE) 3<sup>rd</sup> Avenue, Room 200, Okeechobee, Florida (FL), followed by the Pledge of Allegiance.

**II. ATTENDANCE**

Roll was taken by Board Secretary Patty Burnette. Chairperson Dawn Hoover, Vice Chairperson Doug McCoy, Board Members Phil Baughman, Karyne Brass, Rick Chartier, Mac Jonassaint, and Alternate Board Members Jim Shaw and Carl Berlin, Jr. were present. Chairperson Hoover moved Alternate Board member Shaw to voting position.

**III. AGENDA**

- A. There were no items added, deferred, or withdrawn from the agenda.
- B. Motion by Board Member Chartier, seconded by Board Member Jonassaint, to approve the agenda as presented. **Motion Carried Unanimously.**
- C. There were no comment cards submitted for public participation for issues not on the agenda.

**IV. MINUTES**

- A. Motion by Board Member Jonassaint, seconded by Vice Chairperson McCoy to dispense with the reading and approve the November 17, 2022, Board of Adjustment Regular Meeting minutes. **Motion Carried Unanimously.**

**V. CHAIRPERSON HOOVER OPENED THE QUASI-JUDICIAL PUBLIC HEARING AT 6:02 P.M.**

- A. Special Exception Petition No. 22-003-SE requesting to waive the minimum separation from off-site uses and waive the separation distances between communication towers for a wireless telecommunication facility, in an Industrial Zoning District (IND), (per the City's Land Development Regulations (LDR) Section 90-603(c)(d)(e)), located at 1117 Northwest (NW) 9<sup>th</sup> Street.
  - 1. Notary Public Patty Burnette administered an oath to Mr. Ben Smith, Morris-Depew Associates Inc., 2914 Cleveland Avenue, Fort Myers, FL, Ms. Gloria M. Velazquez, Nason, Yeager, Gerson, Harris and Fumero, P.A., 750 Park of Commerce Boulevard, Suite 210, Boca Raton, FL, Mr. Gary Ritter, City Administrator, 55 SE 3<sup>rd</sup> Avenue, Okeechobee, FL, Ms. Melissa Murrin, Associate with Jimerson Birr, One Independent Drive, Suite 1400, Jacksonville, FL, Mr. Sanjay Dhawan (via zoom), Vice President, New Business Technology and Operations for SBA Communications Corporation, 8051 Congress Avenue, Boca Raton, FL, Mr. Jason Laskey, SBA Communications Corporation, 1621 Northeast 17<sup>th</sup> Terrace, Fort Lauderdale, FL, Mr. W. Patton Hahn, Baker, Donelson, Bearman, Caldwell and Berkowitz, P.C., Shipt Tower, 420 20<sup>th</sup> Street North, Suite 1400, Birmingham, Alabama, who responded affirmatively.
  - 2. City Planning Consultant Smith briefly reviewed the Planning Staff Report explaining the Applicant is requesting to permit a structure exceeding 45-feet in height in the IND Zoning District, (per LDR Section 90-345(4)). In addition, proposing development [on 0.14 acres of the 5.19-acre parcel] of a 50-foot by 50-foot fenced compound that includes a communications tower, storage, landscaping, two electric service H-frames as well as a 30-foot by 120-foot access corridor between the compound and the Northern property line fronting NW 9<sup>th</sup> Street. Color of tower will be flat black, blue, or grey. The total tower height including lightning rods is 160-feet. The City's Technical Review Committee (TRC) reviewed the site plan submitted for this request and recommended approval with several conditions. The latest site plan and additional documents submitted by the Applicant have satisfied some of those requirements.



**V. QUASI-JUDICIAL PUBLIC HEARING ITEM A CONTINUED**

2. Continued. Staff's remaining recommended conditions for approval being: landscape plan shall be revised to provide state native very drought tolerant shrub species as listed in the South Florida Water Management District (SFWMD) Xeriscape Plant Guide per the City's LDR Section 90-540; plans shall be revised to provide total perimeter fence height of exactly eight feet; submittal of Federal Aviation Administration (FAA) approval for proposed tower design/height; use of any portion of a tower for sign or advertising purposes including, without limitation, company name, banner, or streamer is prohibited; per LDR Section 90-603(p), if the use of any communication tower has been discontinued for a period of 180 consecutive days, the tower shall be deemed to have been abandoned. Upon such abandonment, the owner/operator of the tower shall have an additional 180 days within which to: reactivate the use of the tower or transfer the tower to another owner/operator who makes actual use of the tower, or dismantle and remove the tower; and per LDR Section 90-603(r), certification of compliance with all current Federal Communication Commission (FCC) standards, including FCC nonionizing electromagnetic radiation (NIER), shall be submitted prior to receiving final inspection by the building department. The City Council shall provide final determination of approval, denial, or approval with conditions for proposed freestanding communication tower per LDR Section 90-602(c)(2). In addition, approval of the site plan will also be contingent upon approval of, and any conditions placed on, this request by the City Council. Planner Smith noted an updated fencing plan and landscaping plan were received right before the meeting from the Applicant's representative. The fencing plan meets code requirements, although he cannot verify that the species type listed on the landscaping plan meets code requirements. One additional point he mentioned was in accordance with LDR Section 90-602(c)(2)(b) regarding demonstrating need or demand for the communications facility. It is not clear that the Applicant has demonstrated need for the communication facility, as there is opportunity for AT&T to retain their current lease and maintain their equipment on the SBA tower. However, statements are provided by CitySwitch II-A, LLC and AT&T demonstrating demand for this facility. Based on these statements, it is clear that AT&T desires to locate communications equipment on this tower. According to statements provided by the Applicant to the City's TRC, CSX is also likely to place communications equipment on this tower. This is demonstration of demand.
3. Mr. Hahn was present on behalf of the Applicant, CitySwitch II-A, LLC. He stated they have worked diligently to meet all requirements. They will plant drought resistance shrubs and they have demonstrated demand. He commented that SBA submitted a 41-page document the evening before this meeting [has been made a part of the official minute packet]. Member Jonassaint inquired as to whether AT &T had any issues with SBA other than the Okeechobee site. Mr. Hahn responded they are in dispute nationwide with SBA.
4. Ms. Murrin, on behalf of SBA, discussed her client's opposition to this Application due to another tower being located 0.7 miles away and that the Applicant has not demonstrated a need or demand. AT&T's argument that the proposed tower is needed due to the cost of rent on SBA's tower is not applicable as SBA sent a letter on December 14, 2022, offering to match the monthly rent rate currently offered to AT&T by CitySwitch II-A, LLC, less \$10.00. In addition, she stated the proposed tower would not provide any appreciable increase in signal coverage or strength. Mr. Dhawan, expert witness for SBA, explained he studies and analyzes 5G to try to enhance coverage. He spoke about no need or demand being provided for and that there will be an adverse effect on the public. He mentioned these towers are unsightly and that there already a few towers in the area. Overall broadband coverage is maximized for the customers. By the proposed tower being located so close to the SBA tower, a gain in coverage would increase on the East side but decrease on the West side.  
Member McCoy mentioned this is a City Planning Board and they could not make decisions on things that would be affecting the County. If this tower is going to increase coverage to the City, then that would be a benefit to the City residents. Mr. Laskey, Zoning Manager for SBA, discussed AT&T being a customer since 2008 under a master agreement with Nextel.



## QUASI-JUDICIAL PUBLIC HEARING ITEM A CONTINUED

4. Continued. They continue to do agreements as AT&T has many tower sites with SBA. An offer was sent, SBA is willing to negotiate, and AT&T knows how to contact them.

Member Brass asked what the terms are for the existing agreements. He responded five-year terms. So is AT&T within their right to terminate. Mr. Laskey responded yes. Although SBA is concerned about proliferation. They wish to build good sites with good carriers collocating on one tower.

Member Shaw inquired as to the future of the SBA tower should AT&T leave. Verizon and T-Mobile would still be customers. Member Baughman inquired as to what part of the agreement AT&T was upset with that they are wishing to leave. Mr. Hahn responded AT&T needs to provide coverage in this area and they are at a point where they have a choice to not exercise another five-year term. Member Brass commented we are all customers, and one should not force a company to remain. Technology has costs and demands upgrades. Are there concessions being made for these costs as well as just lease costs. Mr. Hahn believes they have met all required codes.

Member Brass inquired as to whether four towers were excessive for a city. Mr. Hahn commented more demand for services will increase as population increases. Planner Smith inquired to Mr. Hahn, regardless of SBA's latest offer to amend the current lease agreement with AT&T, to the best of his knowledge, does AT&T still desire to enter into an agreement to lease space for their equipment on the new tower that CitySwitch II-A, LLC, plans to construct. Mr. Hahn responded yes. Member Baughman inquired as to whether the Property Owner, CSX Transportation Inc., has given any responsibility to take over should AT&T abandon the tower. Planner Smith responded the property owner has authorized the Applicant to submit this application request. Mr. Hahn responded that CSX could use this tower as well and if the tower is abandoned then it would need to come down. CitySwitch II-A, LLC, has an agreement, and they are responsible for the equipment not CSX.

5. No Ex-Parte disclosures were offered.

6. Motion by Board Member Brass, seconded by Board Member Chartier, to recommend approval to the City Council for Special Exception Petition No. 22-003-SE as presented in [Exhibit 1, which includes the standards and findings for granting Petitions per Code Section 70-373; and the Planning Consultant's analysis of the findings and recommendation for approval] with the following conditions: landscape plan shall be revised to provide state native very drought tolerant shrub species as listed in the SFWMD Xeriscape Plant Guide per the City's LDR Section 90-540; plans shall be revised to provide total perimeter fence height of exactly eight feet; submittal of FAA approval for proposed tower design/height; use of any portion of a tower for sign or advertising purposes including, without limitation, company name, banner, or streamer is prohibited; per LDR Section 90-603(p), if the use of any communication tower has been discontinued for a period of 180 consecutive days, the tower shall be deemed to have been abandoned. Upon such abandonment, the owner/operator of the tower shall have an additional 180 days within which to: reactivate the use of the tower or transfer the tower to another owner/operator who makes actual use of the tower or dismantle and remove the tower; and per LDR Section 90-603(r), certification of compliance with all current FCC standards, including FCC NIER, shall be submitted prior to receiving final inspection by the building department. The City Council shall provide final determination of approval, denial, or approval with conditions for proposed freestanding communication tower per LDR Section 90-602(c)(2). In addition, approval of the site plan will also be contingent upon approval of, and any conditions placed on, this request by the City Council. [This includes approval to permit a structure exceeding 45-feet in height in the IND Zoning District per LDR Section 90-345(4)]. **Motion Carried Six to One, Board Member Baughman voted No.**

**CHAIRPERSON HOOVER CLOSED THE QUASI-JUDICIAL PUBLIC HEARING AT 7:08 P.M.**

**VI. CITY ADMINISTRATOR UPDATE**

- Reviewed the memorandum provided by staff addressing the importance of checking their City emails, providing links to the website for assistance with agendas and documentation for meetings and providing the wi-fi password for use in the Council Chambers.
- The upcoming year's schedule for tentative meeting dates was also distributed for posting to their calendars to ensure the least amount of conflicts causing members to be absent.
- Board Member Brass commented that receiving additional information from an Applicant within an hour of a meeting did not provide adequate time to review. Administrator Ritter concurred. However, with complex Petitions this can happen from time to time, but it is not the normal procedure. Staff is always cognizant when it does happen.

**VII. Chairperson Hoover adjourned the meeting at 7:11 P.M.**

Submitted by:

Patty M. Burnette

Patty M. Burnette, Secretary

Please take notice and be advised that when a person decides to appeal any decision made by the Board of Adjustment with respect to any matter considered at this proceeding, he/she may need to ensure that a verbatim record of the proceeding is made, which record includes the testimony and evidence upon which the appeal is to be based. General Services' media are for the sole purpose of backup for official records.