

**Minutes - Woodbury County Board of Adjustment Meeting  
May 1, 2006**

The meeting convened on the 1<sup>st</sup> of May, 2006 at 7:03 PM in the Board of Supervisors Meeting Room in the Court House, Sioux City, Iowa. Present were the following Board members – Chairperson Willard “Brian” McNaughton, Kenneth Gard, Bob Brouillette, Corey Meister, and Russell Walker: zoning staff John Pylelo and Peggy Napier. From the public Chuck Becker, Steve Flewelling, Stan and Gloria Flewelling, Blake Flewelling, Josh Blomberg, Elaine and Bob Creasey, Dennis Benson, Jason Kamracht, Tracy Denney, Reed Maxwell, Gary and Bev Danke, Steve Wilks, Ben Tooney, and Gil Holmes were also in attendance. The Chairman informed those present the meeting was being audio taped.

**1. The first agenda item was the approval of the minutes of March 6, 2006.**

**Mr. Walker made a motion the minutes be approved on the condition the spelling of his name be changed from *Wagner* to *Walker*. Mr. Meister pointed out the spelling of Ms. Meyer’s name was inconsistent and needed correction also. Ms. Napier will make the changes.**

**Mr. Meister seconded the motion; motion carried.**

**2. The next agenda item is a public hearing for the consideration of a Conditional Use Permit for construction of a telecommunication tower, accessory structures and equipment owned by Cingular Wireless PCS.**

The conditional use permit applicants are property owner Flewelling Farms, LTD represented by Mr. Steve Flewelling and tower owner, Cingular Wireless PCS, represented by Mr. Steve Wilks of Site Acquisition Consultants, Inc. Houston, TX.

Flewelling Farms, LTD has owned the proposed tower location site since 1986 and, subject to permitting, intends to lease to tower owner Cingular Wireless of Bloomington MN. a 100’ by 100’ land area along with a 12’ wide graveled access and an 8’ wide utility easements to Correctionville Rd.

The towers proposed construction site lies within GIS 8946 34 300 001; parcel # 882345 and within the NW ¼, SW ¼ of Section 34, Concord Township which is approximately 3 miles East of Sioux City, south of Correctionville Rd. between Carroll and Charles Avenues. The closest residence is owned by Steve Flewelling at 7462 Correctionville Rd. Mr. Flewelling resides at 7530 Correctionville Rd. The tower’s precise proposed location is Latitude 42 degrees, 29 minutes, 0 seconds; Longitude 96 degrees, 16 minutes, 7 seconds. The proposed location is zoned ML (Light Industrial) and is not within any floodplain. This hearing is warranted as telecommunication towers are not a permitted use within the ML zoning district.

Cingular Wireless proposes to construct a 240' self supporting telecommunications tower. The tower will be within a 60' by 60' enclosed area, gated with chain link fencing 6' in height and capped with 3 strands of barb wire. Proposed structures include a 11'5" by 20'0" Cingular Wireless prefabricated equipment shelter upon concrete foundation approximately 13' from the towers base. The site plan indicates the capability of installing up to two (2) additional equipment shelters for future telecommunication carriers.

The Cingular Wireless' tower will include panel antennas at the 240' level and the capacity for multiple additional antennas at the 220' and 230' levels. An 8' lightning rod and aviation beacon will cap the tower. Proposed lighting is to FAA requirements.

The tower is intended to provide enhanced telecommunications signals along the Hwy 20 corridor between Sioux City and Lawton. The proposed location was selected as it will achieve Cingular Wireless' coverage and capacity objectives. The tower would transmit at 1930-1990 MHz and receive at 1850-1910MHz.

Cingular Wireless representatives state there are no viable collocation opportunities within a one mile distance of the proposed site. The closest existing tower within one mile is owned by Western Iowa Tech. Community College (WIT) and is located at 7559 Correctionville Rd. The WIT tower's antennae carrying capacity is currently 100%.

In addition to the standard documentation provided by the office of Planning and Zoning you will find included in your reference materials copies of the following:

- Cingular Wireless CUP Application including:
  - Application
  - Co-location Affidavit
  - Relevant Issues Narrative
  - Location Mapping
  - Aerial Mapping
  - Construction Blueprints; and
  
- Cingular Wireless PCS Coverage Plan including:
  - Company Introduction
  - Project Summary
  - Location Mapping Photo Examples
  - Requirements & Concerns; and
  
- Tower Photo Simulation; and
  
- FAA Determination Letter

The eighty-one (81) property owners within 5,280 feet of the parcel have been notified along with impacted County agencies including the County Engineer's office, the Communications Center and Office of Disaster and Emergency Services.

Responses to date include:

- April 24: nearby property owner Mike Kuhlman called voicing no objections to the project but wanted to know the exact location.
- May 1: asked to read into the record comments made by Mr. Grady Marx, who is not one of the property owners notified, but is a member of the Woodbury County Zoning Commission:
  - Re: My comments on the Cingular Tower:  
*“I think the tower should be put on hold. They need to prove 100% that there are no other available sites that they could rent space on. The Pinnacle Tower on Buchanan doesn’t appear to be full and there appear to be other towers that could hold more within close proximity. If this does go up we need to make sure they are aware they need to have a dual light system on the tower.”*
- The County Engineers office: No comments
- The Communications Center: No comments
- Office of Disaster and Emergency Services: No comments
- IDOT: No comments or concerns

Mr. Pylelo asked to add an additional piece of information regarding how the commission has treated in the past, due to nullification of certain ordinances, Conditional Use Permit (CUP) requests for towers:

*Your Board is reminded that Woodbury County Ordinances, specifically tower development permits, were nullified February of '04. This Conditional Use Hearing is warranted as telecommunication towers are not a permitted use in the ML Zoning District and not as a part of the former tower development permit process.*

*There is a Subsection 26 of our ordinances which empowers your Board to permit erection and the use of a building or the use of the premises for public utility purposes or for purposes of public communication which the Board determines is reasonably necessary for public convenience and welfare.*

*That same subsection also allows you to issue special permits and decide such matters as may be required by the rescission of the ordinance.*

Mr. Wilks, from Site Acquisition which is headquartered in Chicago, IL, and they are licensed agents with Cingular Wireless. Cingular is licensed and currently providing service in Sioux City and the outlying areas. Their objective is to improve service in the outlying areas outside the city; the rural routes along U.S. 20. Wilks stated it was in their best interest to co-locate on any other available towers in the area their charts show still lack adequate service. Economically, it is in their best interests to not have to build another tower if there is an alternative. After investigating the towers already in place, it was discovered all available towers were at their maximum allowance with co-location. Cingular is already co-locating on an existing Verizon tower by Merville. East at Lawton antennae are already being installed on leased space on the water tower. Cingular had already inquired about the WIT tower and were told it was full. It was designed to hold only so many and that number has been met. Newer towers are designed for increased capacity.

Mr. Wilks showed the Commission a propagation map showing the Hwy 20 corridor, which areas had service and which did not. One area not far from Sioux City had no coverage at all. This was the intended location for Cingular's new tower.

Mr. Gard wanted to know if they could co-locate on the Verizon tower just east of the intended new tower. Mr. Wilks said that area would be accommodated by the water tower antennae but wouldn't cover the area he had previously pointed out. Wilks also pointed out the proposed tower would be capable of handling two additional carriers.

Chairman McNaughton asked for additional comments from the public. Gil Holmes has lived next to the Flewelling farm for 44 years. He asked for clarification of the dual lights system mentioned at the top of the tower. Holmes was concerned they might be similar to the large lighthouse light that circles from the Argosy. Holmes was also concerned signals from the towers might interfere with his telephone lines in his home. Mr. Wilkes assured Mr. Holmes the lights would not be anything like those at the Argosy. The dual lights refer to the blinking red lights that would burn at night and strobe lights that burn during the day. If the slow-blink red light burns out at night it does not revert to a strobe light. A signal goes directly to the switch, the switch is set up to automatically notify the FAA, they send out a message to all flights that a tower X number of feet high is not lit, and within 24 hours, someone is sent out to fix it. All aircraft will know about it. Furthermore, the tower will in no way interfere with Mr. Holme's telephone service or performance.

The Board discussed the issue of too many towers being constructed in rural Woodbury County with Mr. Wilks. Mr. Gard was dissatisfied. No satisfactory conclusion was reached.

**Mr. Walker made a motion to approve the construction of the Cingular tower with dual lighting required. Mr. Brouillette seconded the motion. Board Chair McNaughton repeated the Board's concern with towers becoming an eyesore in the county, but also made it clear he was pleased the opportunities to co-locate were being taken advantage of and the Cingular tower would also have built-in opportunities for co-location. Motion carried.**

Mr. Pylelo promised to mail out the resolution to Chairman Mc Naughton for signature and to provide copies to Mr. Flewelling and Mr. Wilks.

**3. The next agenda item is a public hearing for the consideration of a Conditional Use Permit for extraction of minerals and raw materials for property owner Creasey Farms Ltd. Partnership and applicant Becker Gravel Company.**

Becker Gravel Company intends to enter into agreement with landowner Creasey Farms for the extraction of sand and gravel (operation of gravel pit) within Woodbury County. Their proposed extraction location is zoned AG (Agricultural). Under

Woodbury County Zoning ordinance 10(B) the mining and the extraction of raw materials, including sand and gravel pits, are permitted within the AG zoning district providing a conditional (special) use permit application is filed and approval is granted by the Board of Adjustment by resolution after legal notice and public hearing.

The sand and gravel extraction will occur from portions of parcels GIS 8944 09 400 003 and 8944 09 400 004 located in the SE ¼ of Section 9 of Arlington Township approximately 2 miles northeast of Merville west of State Hwy 140 and east of the West Fork of the Little Sioux River. Access/egress to the extraction operation will occur by a private drive from the west side of State Hwy 140. The applicant has stated no structures requiring zoning permit approvals are anticipated to be located upon the property. Of note is the fact a Zone A flood hazard area lies as close as 100 feet on the west and 250 feet to the north of the proposed gravel pit but not within the excavation area.

Enclosed for Board review is a case statement from the applicant consisting of:

- Project feasibility
- Site and operational analysis
- Extraction and rehabilitation plan; and
- Conclusion.

Also attached is the following documentation:

- TAM Mapping
- Aerials
- Photos
- Board of Adjustment *Gravel Pit Policy Guidelines dated Feb. 3, 1986*

Notices of the public hearing were sent to the eleven (11) property owners within a 500' radius of the parcels. To date there have been no responses. In addition the Woodbury County Engineer's Office, the city of Merville and the Spencer Regional Office of the Iowa Department of Natural Resources have been provided information on the proposed project. They have been asked to provide comments on the conditional use applied for. To date there have been no responses.

Mr. Chuck Becker and Mr. Josh Blomberg came before the Board to represent Becker Gravel Company. The Creasey family was also introduced. Mr. Becker explained his business and his intents with the Creasey property. Becker said they are looking for a property in the Merville area for sand and gravel. After talking to the Creasey family, it was discovered they had a sizable deposit of the materials Becker was interested in. The Becker Gravel Company has entered into an agreement with the Creaseys and has appeared before the Board seeking approval to operate a gravel pit on that property. The gravel would be sold to local interests.

Becker obtains a separate license for each site mined and goes through a state-approved reclaiming process when they are finished mining that area. The pit has not been worked since possibly the late 60s.

Mr. Pylelo asked what the worst case scenario would be regarding truck traffic on the gravel road to and from the pit. Mr. Becker estimated approximately 100-150 trucks a day. Pylelo asked if this might present a safety hazard to other motorists and necessitate the placement of a sign to alert motorists to the driveway.

Mr. Maxwell approached the Board and asked if there was any way Becker could keep the activity as far west and close to the trees as possible. His sister-in-law lives in a house that is just off of Hwy 140 a little south and east. Maxwell asked that Becker move the gravel pit further away from his sister's property so the dust and traffic would be less disruptive.

Mr. Pylelo asked how far the gravel pit would be from the highway. Mr. Becker replied it would be approximately 1500 feet from Hwy 140. After studying a map to see exactly where the pit would be in relation to Mr. Maxwell's sister's house, the Board decided the distance and placement of the pit behind some trees would be sufficient to prevent unnecessary disturbance to her home.

Mr. Blake Flewelling approached the Board on behalf of his family's business, Flewelling Sand and Gravel. Mr. Flewelling's question was for Becker Gravel because they appeared to be possible competitors in the sand and gravel business. Flewelling asked how much gravel Becker Gravel intended to mine and whether they intended to make the gravel available to the public or would they be using the gravel to bid to DOT or other larger projects. Mr. Flewelling stated this was the first time he had heard of anyone intending to reopen the gravel pit off of Hwy 140.

Mr. Becker replied their plans were to contract materials and deal with larger sales. At the present time they have no intentions of seeking out the smaller market materials. Flewelling asked Becker if their intentions were to stockpile material and get it as needed. Mr. Becker said that was correct.

Mrs. Gloria Flewelling approached the Board with concerns about safety features. She noted there were three (3) intersections within a very small area near the gravel pit. This could cause accidents if traffic increased. Mr. Pylelo replied typically the Zoning office has received a recommendation or comments from departments such as the County Engineer before the Board of Adjustment meets. Unfortunately, the County Engineer didn't get back to the Zoning office with his comments in time for this meeting. The Board does not know if he approves or not.

Mrs. Flewelling thanked the Board for their consideration on the safety issue.

Chairman McNaughton made the Board aware of the *General Guideline for Gravel Pits*, established by the County Board of Adjustment in 1986. Mr. Pylelo made it clear to the Board and the others present that in every area mentioned in the guideline, the Department of Natural Resource's (DNR) requirements, the issues they presented allowing the gravel pits to operate will be as stringent if not more stringent than they were twenty years ago.

### General Guideline for Gravel Pits

1. Excavation shall remain 50' from road right-of-ways and adjacent property lines.
2. Excavation shall remain 300' from dwellings. This may be waived at the request of the property owner of such structure.
3. Locked gates, or cables, or other such barriers shall be placed to prevent (or at least make access difficult) unauthorized vehicles.
4. Signs shall be placed on the property in a conspicuous location indicating the potential hazards within the mining area.

*(Note: MSHA – Mining Safety & Health Administration requirements state that the name of the contractor and of the property owner must be posted. MSHA regulations are federal.)*

5. Berms, when specified, shall be 5 to 1.
6. Replacing topsoil, or shaping and leveling the pit, will be considered on an individual basis.

Mr. Pylelo commented when the process is evaluated and approved, the Board may wish to condition it on:

1. Subject to any concerns or comments the County Engineer may have regarding the safety factor.
2. Our Gravel Pit Policy.
3. DNR permitting.

**Mr. Gard made a motion to grant the conditional use permit subject to the DNR regulations being followed; subject to recommendation by the (inaudible) County Commission concerning (inaudible) ingress and egress being met; and the Board of Adjustment requests being met.**

**Chairman recognized the motion and asked for a second. Mr. Brouillette seconded the motion. There were additional comments.**

Mr. Maxwell asked if they would be using existing lanes or making a new lane for access to Hwy 140. Mr. Becker said they intended to use the existing driveway. Mr. Pylelo suggested they have the land surveyed or use any other legal means to ascertain exactly what land the Creasey's would be leasing to Mr. Becker including which parts of it contain the driveway.

Mr. Pylelo confirmed there has not been a 911 address assigned to the entrance of the existing gravel pit. He informed Mr. Becker this would need to be done through the Zoning office. He reminded them only the County Engineer would be able to give them approval for the type of access point desired and visibility sitelines for the current road. The County Engineer may make them move it. The department will need to know where the property lines are.

**Motion carried.**

**The next agenda item is a public hearing for the consideration of a Conditional Use Permit (CUP) application submitted by DeWayne E. and Clarissa B. Benson.**

Mr. and Mrs. Benson are requesting your approval to place a single family dwelling upon a 10.96 acre parcel known as parcel #705315; GIS 8647 23 00 007. The parcel lies within the W1/2 SE1/4 of the SW1/4, Section 12, Lakeport Township. The parcel is located at 3007 Cass Avenue approximately 2 miles SE of Salix on the west side of Cass Avenue.

In September, 2005, the 26' by 47' single family dwelling on the parcel was destroyed by fire. The Benson family has purchased a 28' by 45.5' single family dwelling at another location. The family's intention is to legally remove the burnt out dwelling, install a new foundation and move the purchased dwelling onto the parcel's existing building site. The former dwelling had a basement but the Benson's are willing to construct the new building site with no basement should your Board place that condition upon approval.

In 1981 the Woodbury County Board of Supervisors by resolution No. 6617; Amendment #M-71 approved a rezoning application by Mr. and Mrs. Albert Hubert to rezone a portion of the parcel from AG (Agricultural) to R-10 (Suburban Residential). The remainder of the parcel remained within the AG zoning district.

The building site lies within a Zone A flood hazard area, new construction must meet the regulations as specified in the FP (General Floodplain) and FF (Floodway Fringe) sections of the Floodplain Management Ordinance.

Surveyor David L. Wilberding has certified and staked elevations at the proposed building site at the elevations of 1073.52' near the northwest corner of the existing dwelling and 1073.76' near the northeast corner. The elevation at the water's east edge in January 2006 was 1063.22'.

Mr. Wayne Wiscal of the Floodplain Permit Section of the Iowa Department of Natural Resources (IDNR) has confirmed that the 100 year floodplain elevation at the building site to be 1068' NGBD, 1929 data. You referred to the determination of the Corp of Engineer's reserve (can't decipher) Floodplain Study done in 1978.

Due to timing of the proposed construction, the applicants wish to proceed at this time for issuance of a Conditional Use Permit. The applicants may concurrently, for a later date,



use the information gathered to apply for a letter of map amendment (LOMA) with the Federal Emergency Management Agency (FEMA). Woodbury County flood management ordinances require the lowest floor of the structure within the 100 year floodplain and any electrical/mechanical work, insulation or storage of flammable materials and equipment be elevated to a minimum of one foot above the 100-year flood plain; in this applicant's case, to an elevation of 1069'. An engineer or surveyor must provide certification of the elevations of the lowest floors or flood proofing upon completion of construction.

The applicants wish to place a single family dwelling over a full basement. The feasibility of basement construction will be determined by your Board's review and conditions placed upon any conditional use permit issued.

Notices were sent to six (6) property owners within 500' of the parcel. To date there have been no responses except the one we got late today. I will address that in a moment. In addition the Woodbury County Engineer and the Woodbury County Conservation Service have been advised of this hearing and asked to make comment. They have not responded.

Today we got a call from a concerned citizen. They have no problem with the project, but would like to see the junk items and salvage on the parcel removed or taken care of.

Mr. and Mrs. Benson will be represented at this hearing by their daughter Tracy Denny and her brother Dennis. Attached for your review find the following:

- Woodbury County Floodplain map 16 for the area
- Wilberding Elevation surveys dated January 2006
- Aerial of Parcel GIS 8647 12 300 007
- Photographs of the existing structure and building site.
- Evaluation checklist criteria for the Conditional Permit issuance.

Mr. Dennis Benson approached the Board to comment on the conditions that had allowed the basement originally stating also if it had been allowed then, there should be no reason why they shouldn't be able to replace it now without going any deeper. The basement would exist in the exact spot as previously.

Mr. Pylelo commented the LOMA application is now free and there should be nothing preventing them from applying.

Mr. Gard commented the situation was very similar to a situation your Board had approved recently. Mr. Pylelo agreed. Pylelo asked how much dirt would be required to raise the basement 1 or 2 feet. Mr. Benson said it would amount to several loads.

Chairman McNaughton explained the Grandfather Clause no longer exists once they make changes in the original condition of the house. The pertinent issue is future owners being burdened with ramifications of decisions previous owners made. It would be in the present owner's best interest to allow for conditions that would improve salability of the house.

Mr. Benson agreed the most practical action would be to raise the basement adequate to moving it out of the floodplain. The Board supported this decision.

Mr. Pylelo made a suggestion to table this item and review it again in a month. During that time Bensons and Dennys would be able to further consider their options including pursuing LOMA.

**Mr. Gard made a motion to table the consideration of a Conditional Use Permit (CUP) application for Mr. and Mrs. Benson for one month. Mr. Meister seconded the motion; motion carried.**

**Motion was made by Mr. Gard to adjourn; seconded by Mr. Meister. Motion carried.**

Meeting adjourned 9 PM.