

**JUNE 15, 2010 ZONING HEARING
“OTHER BUSINESS”
COMMISSION DISTRICT 1**

ITEM #2

PURPOSE

To consider adopting the written decision as required by the Federal Telecommunications Act regarding SLUP-3 (RB Towers, LLC) of February 16, 2010, heard May 18, 2010.

BACKGROUND

This case was considered on May 18, 2010 and denied by the Board of Commissioners, with direction to the County Attorney to prepare in writing the denial of the application as required by the Federal Telecommunications Act. The written decision is attached.

FUNDING

N/A

RECOMMENDATION

The Board of Commissioners consider the written decision and if found to be adequate, adopt the written decision.

ATTACHMENTS

Written Decision for SLUP-3 of 2010.

**BEFORE THE BOARD OF COMMISSIONERS
COBB COUNTY, GEORGIA**

In the Matter of	:	SLUP-3
	:	
APPLICATION FOR SPECIAL LAND USE PERMIT BY	:	(2010)
RB TOWERS, LLC,	:	
Applicant,	:	
	:	
LIVING HOPE LUTHERAN CHURCH, Inc.	:	
	:	
Titleholder.	:	

DECISION

This matter came before the Board of Commissioners on May 18, 2010, upon application by RB Towers, LLC (“RB”) for a special land use permit (“SLUP”) which would allow RB to construct a telecommunications tower on property owned by the Living Hope Lutheran Church and located in Cobb County.

FINDINGS OF FACT

RB filed an application with Cobb County seeking a SLUP (which county staff designated “SLUP-3”) for the purpose of constructing a 160 foot tall telecommunications tower to be located on the north side of Stilesboro Road, east of Paul Samuel Road. This location is parcel one of land lots 200 and 201 in the 20th district of Cobb County. In its application, RB referred to the proposed structure as a “monopine” and proposed to locate it near rear of the property occupied by the Living Hope Lutheran Church. The church, including the

proposed tower, is located in an area which is zoned "R-30" which generally restricts development to single family homes on lots of at least 30,000 square feet and does not allow industrial or commercial uses. This zoning category also generally restricts structures to no more than thirty-five feet in height. RB plans to place the tower near the back edge of the church's property away from the church building. Thus, although it would be located on property owned by the church, the tower would actually be much closer to neighboring residences than to the church building.

The Planning Commission previously heard this case. Considerable information was presented by both sides at the Planning Commission hearing, and much of the same information was presented again at the subsequent hearing before the Board of Commissioners. Nevertheless all of the information presented before the Planning Commission is contained in the record and was considered by the Board of Commissioners. After hearing evidence from both the applicant and those opposed, the Planning Commission voted to recommend rejection of the application.

Thereafter, on May 18, 2010, the Board of Commissioners conducted a public hearing on this matter. At that hearing, William Rand appeared on behalf of RB. Mr. Rand presented a photosimulation of the proposed tower which depicted a monopine tower during the spring or summer months when the surrounding deciduous trees had full leaf cover. The monopine is claimed to mimic a natural tree. However, it is much taller than indigenous trees and displays

a symmetry unlike any trees which grow in the southeastern United States. In short, it is easily distinguished from a real tree. The tower would be 160 feet tall, over fifteen stories high, or over four times taller than what is normally allowed in this residential district. At the base of the tower would be a fenced compound of approximately 3000 square feet which would also include equipment shelters which service the tower.

Mr. Rand explained that his company was in the business of locating wireless tower sites, building towers on those sites, and leasing space to wireless carriers who then placed their antennae on the towers. He also explained that the owner, in this case the church, of the parcels upon which the towers were located received financial compensation from his company for allowing the tower to be located upon their property.

Mr. Rand presented a report from his engineers claiming a need for better wireless service in or near the area of the proposed tower. He did not address the issue of whether there were a significant number of dropped calls in the area. Mr. Rand also noted petitions and post cards from individuals claiming to need better wireless service in this area. However, from the information in the record, one could not determine if these individuals were members of the church which stood to gain financially if the tower were built. Mr. Rand also stated that there were no alternative sites in this area upon which his company could locate a tower.

This proposed tower has had a variable history of possible tenants. Mr. Rand testified that his company, rather than any wireless carrier always initiates

applications for its towers. He stated that the first proposed tenant was MetroPCS. However, according to Mr. Rand, it later became apparent that MetroPCS did not have within its budget the funding necessary to place its antenna on this tower. Therefore, RB then pursued AT&T as a tenant, and it now appears RB was able to persuade AT&T to issue a memorandum indicating an interest in locating on the tower, should it be built.

George Brown spoke against the proposed tower. He lives in the Beckford Oaks subdivision very close to the site of the proposed tower. He is an AT&T wireless customer and he had very good service in the area. He conducted a drive test of twenty-seven locations in the general area of the proposed tower and each had at least adequate service using the AT&T network.

He also noted that there are currently six other wireless towers within a two mile radius of this proposed tower. Four of the six towers owned by SBA and American Tower have additional space on them which is available for collocation by other carriers, including AT&T. Further, the Cobb County School District is currently considering approving a cell tower on its property only one third of a mile from the site of this proposed tower. The Chairman of the School Board has indicated that its site will likely be approved within the next month. That site is farther away from single family residences, is heavily buffered by trees, not residentially zoned, and will allow at least some collocation from other carriers. Mr. Brown also presented a letter from an experienced real estate agent who gave

her professional opinion the proposed tower would diminish property values in the area.

Charlie Williams also lives in the area and spoke against the proposed tower. He noted that when the tower on the school district site is constructed, he will see it from his back door. Then if RB's tower were built he will see it from his front door. He stated there was no need for two new towers so close together.

Commissioner Goreham, the District Commissioner, noted that RB planned to place the tower as close as possible to the nearby residential area, rather than away from that area and closer to the church. She also discussed the fact that there was conflicting evidence as to the current state of wireless coverage in the area. In the end, however, she felt that the evidence presented by the opposition was more compelling and more substantial than what was presented by the applicant.

Commissioner Goreham then moved to deny SLUP-3. Her motion carried by a vote of 4-0. After the vote, the County Attorney was directed to prepare a written decision memorializing the denial of SLUP-3 for adoption by the Board of Commissioners.

RATIONALE FOR DENIAL

The Board of Commissioners is aware of the sometimes competing interests of a national telecommunications policy and its own local land use laws and decisions. It is also aware of the ability it has to govern the siting of wireless facilities, understanding the method by which its decisions are made shall be subject to judicial oversight. Upon due and proper consideration having been

given to the matter as presented by all interested parties, including recommendations of professional zoning staff and the Planning Commission, and Applicant's application and presentation, and applying general and non-discriminatory standards derived from Cobb County's Zoning Ordinance, it is the decision of this Board that:

- It is important to protect the quality of life and aesthetics of residential neighborhoods. The County Zoning Ordinance specifically discourages towers being located in residential areas. The proposed tower will have a significant adverse effect on the neighborhood and area surrounding it. Evidence showed the tower would be an incompatible commercial use in a residential area. The proposed tower is not compatible with the neighborhood, as the neighborhood is comprised primarily of residential uses designated low density and very low density residential uses by the Future Land Use Map. Allowing this commercial use on this property would be inappropriate. There are no unique or special conditions that overcome the Board's general presumption that residential neighborhoods should not allow incompatible business uses.
- The Board of Commissioners has sometimes permitted cell towers at churches in residential areas when it was shown that there was a need for a tower and there were no alternative sites or towers upon which the carrier could collocate. However, this site is different.

The Cobb County School District owns a school nearby. The evidence showed that the School District is preparing to enter into an agreement with a wireless carrier to allow the construction of a tower at that site, which is only one-third of a mile away from the tower which is the subject of this application. The School District is separate and distinct governmental entity over which the Board of Commissioners has no zoning authority. Even if it did, the school site is far preferable to this site because it is much less detrimental to the neighborhood. It is not residentially zoned, it is on a larger tract of land, it is farther from residential development, and it is well buffered by natural vegetation. While there was some evidence that not all wireless carriers preferred the school district site or that it did not provide optimal coverage improvement for all carriers, there was evidence that the site could accommodate at least one additional carrier, and there is no requirement that coverage be perfect.

- The evidence as to the quality of wireless coverage in the area was in conflict. The applicant, citing the opinion of a radio frequency engineer, claimed that the proposed tower which is the subject of this application would resolve existing coverage gaps. Yet the opponents performed their own study using an actual wireless telephone on the AT&T network to show that coverage in the area was at least adequate if not excellent. The applicant has a financial

interest in presenting evidence favorable to its application. If it cannot show a need for the applied for tower, the applicant does not make money by having it built and charging rent to the various carriers.. The opponents do not have a financial incentive to skew the results of their data or evidence. Further, this board, having a first-hand opportunity to gauge the demeanor, countenance, and responsiveness, of the witnesses is in the best position to weigh the evidence and resolve any disputes as to what the evidence showed. In doing so, the board finds that the opponent's evidence is superior to that presented by the applicant. Thus, the board finds that there is already adequate wireless service available in the area. The board further finds that even if this were not true, any coverage gaps would be remedied by the tower which will be constructed on the School District property.

- Any concerns related to health hazards from radio waves or electromagnetic fields cannot and were not considered by the Board, as mandated by federal law. Further, intimations to the contrary notwithstanding, applicant's status as an out-of-state entity played no role in this decision. The Board of Commissioners routinely approves wireless towers which are owned by out-of-state enterprises.

- It is the opinion of the Board that the testimony from the witnesses combined with the evidence submitted and the individual commissioners' experiences and interpretation of the evidence and testimony, constitute substantial evidence that is competent, relevant, and adequate to support denial of the SLUP Application.

Wherefore, the Board denies application SLUP- 3.

This written denial is entered upon the record of the County Clerk this _____ day of _____, 2010.

G. Woody Thompson, Vice Chairman
Cobb County Board of Commissioners