

**DRAFT MINUTES**

**DELAWARE COUNTY BOARD OF ADJUSTMENT**

1:00 p.m.

Tuesday, April 18, 2023

Conference Room (basement), Delaware County Courthouse

301 E Main Street, Manchester, Iowa

**Board Members Present:** Chairperson Tammy Eibey, Vice Chairperson Therese Beswick, Board Members Lamont Davidson, Marv Heims, and Randy Rattenborg.

**Board Members Excused:** None.

**Board Members Absent:** None.

**Staff Member Present:** Zoning Administrator Alex Linderwell and ECIA Senior Planner Laura Carstens.

**CALL TO ORDER AND ROLL CALL:** The meeting was called to order by Chairperson Eibey at 1:00 p.m. and roll call taken. A sign-in sheet was distributed to members of the public in attendance (copy attached).

**MINUTES:** Motion by Beswick, seconded by Heims, to approve the minutes of the March 21, 2023 Board of Adjustment meeting as submitted. Motion carried by the following vote: Aye – Davidson, Heims, Rattenborg, Beswick, and Eibey; Nay – None.

**TABLED DOCKET: 1-23 Special Exception – 1329 140th St Dundee, IA in Richland Township, 22-90-6, PIN 100220001500**

Chairperson Eibey explained all interested persons may attend the public meeting, but that oral and written questions and comments will not be considered by the Board since the public hearing was closed on March 21, 2023. The applicant, Albert Aguirre, GSS Inc, was present.

Board Member Rattenborg indicated he would abstain from discussion of this item due to a potential professional conflict of interest as a land surveyor.

Since discussion was tabled by the Board of Adjustment at their March 21, 2023 meeting, a motion is required to remove this item from the table. Motion by Beswick, seconded by Heims, to remove from the table the special exception application to discuss the proposal. Motion carried by the following vote: Aye – Davidson, Heims, Beswick, and Eibey; Nay – None; Abstain: Rattenborg

The Board discussed Iowa Code Chapter 8C *Iowa Cell Siting Act, - Uniform rules and limitations – applications*, noting that this code is a list of 14 things that Board members cannot do with respect to this special exception application for a cell tower. Discussion followed. Board members noted that Iowa cell tower statute Iowa Code Section 8C.3, subsection 7. *Reject an application, in whole or in part, based on perceived or alleged environmental effects of radio frequency emissions* means they cannot consider RF emissions.

Board members discussed that RF emissions were mentioned in a few letters of opposition, but more letters of opposition were objections based on aesthetics.

Vice Chairperson Beswick noted that she had ex parte communication about this application. She noted in her conversation with her farm radio supplier about the opposition issues, the supplier agreed with her observation that the site was a “dead zone,” noted the differences between data and voice lines, indicated a tower would help with dispatch of emergency responders in this area if not at this specific site, and explained how a cell tower as a lightning rod for the area due to its height and grounding.

Discussion followed on if there are other spots on the map where the cell tower could be located. The Board read Iowa Code Section 8C.3, subsection 1. *Require an applicant to submit information about, or evaluate an applicant's business decisions with respect to, the applicant's designed service, customer demand for service, or quality of the applicant's service to or from a particular area or site, but may require propagation maps solely for the purpose of identifying the location of the coverage or capacity gap or need for applications for new towers in an area zoned residential.* The Board asked for clarification if the site's Agricultural zoning is a residential zone. ECIA Senior Planner Laura Carstens clarified that A-1 Agricultural is not a residential zone. She also noted that Iowa Code Section 8C.3, subsection 2. a. *Evaluate an application based on the availability of other potential locations for the placement or construction of a tower or transmission equipment.* prevents the Board from evaluating the request using this information in any zoning district.

Board members discounted the extent of the impact on property values, noting that Lake Delhi has a cell tower near high value property that has not impacted the value. Board members discussed how a cell tower provides improved public safety through better communication. Board members discussed the health concerns of cell towers versus people holding cell phones next to their ears.

Beswick noted that she had ex parte communication about the application with the owner of Finish Tower, familiar with cell towers who explained that these towers can be camouflaged, noting examples in Iowa of cell towers camouflaged as water towers and flagpoles. The Board noted that this is a free-standing lattice cell tower without guy wires.

Discussion resumed that the Board members must follow Iowa Code Section 8C.3. The Board discussed that a landowner has the right to request to build a cell tower on their property. Board member Heims explained that he is concerned with the level of opposition, and will not support the request.

Board members called for the question. Motion by Davidson, seconded by Beswick, to approve the special exception application. Motion carried by the following vote: Aye – Davidson, Beswick, and Eibey; Nay – Heims; Abstain: Rattenborg. Motion carried.

Attorney Jeremy Hahn, Roberts & Eddy, P.C. stated he represented many of the people in opposition, and asked the Board to reconsider, stating the application was incomplete and additional information was submitted that could have been provided by the applicant at the first meeting. Zoning Administrator Linderwell reviewed that the applicant had submitted all information requested by Delaware County, and read aloud the Communication Tower application checklist.

Chairperson Eibey read aloud Article IX. Reconsideration from the Board's adopted By-Laws. The Board discussed the 150-day timeframe for cell tower siting approval is in Iowa Code, and begins on the date an application is filed. Mr. Linderwell noted the application was filed on February 6, 2023. Board members discussed there is significant opposition and no hurry to meet a deadline, so a reconsideration is a reasonable step for the Board to initiate.

Motion by Beswick, seconded by Eibey, to reconsider the special exception application. Motion carried by the following vote: Aye – Heims, Beswick, and Eibey; Nay – Davidson; Abstain: Rattenborg. Motion carried. Ms. Carstens noted this Docket will be placed on the agenda for the next regular meeting of the Board in accordance with the By-Laws.

**ITEMS FROM PUBLIC:** None.

**ITEMS FROM BOARD:** Other Business - None.

**ITEMS FROM STAFF:** Next Meeting – May 16, 2023.

**ADJOURNMENT:** Motion by Davidson, seconded by Beswick to adjourn the Board of Adjustment meeting. Motion carried by the following vote: Aye – Davidson, Heims, Beswick, Rattenborg, and Eibey; Nay – None. The meeting adjourned at 1:49 p.m.

Respectfully submitted,  
Alex Linderwell, Zoning Administrator

Adopted: \_\_\_\_\_

Attachment: 4-18-23 BOA Sign in Sheet