

**MINUTES OF THE MEETING OF THE
ALLAMAKEE COUNTY BOARD OF ADJUSTMENTS**

March 1, 2018

Board of Supervisors Office, First Floor, Courthouse, Waukon, Iowa

Meeting was called to order at 4:30 P. M. by Chairman Dr. Bernard Pratte.

Roll call of Commission Members:			Term Expires
	Dennis Keatley	Present	12/31/2018
	Steve Weymiller	Present	12/31/2019
	Gwen Brainard	Absent	12/31/2020
Chair	Bernard Pratte	Present	12/31/2021
Vice-Chair	Nancy Wallerer	Present	12/31/2022

Staff present: Tom Blake, Zoning Administrator. All Board members voting “AYE” unless noted. MCU means Motion Carried Unanimously.

Weymiller made a motion to retain Bernard Pratte as Chair person and Nancy Wallerer as Vice Chair person for calendar year 2018. Keatley seconded. MCU.

Blake requested that the meeting minutes for January 10, 2018 be considered at the next meeting. Wallerer made a motion to approve the Agenda as amended. Weymiller seconded. MCU

Public Hearings

1. NEIT Properties, LLC, Application for variance to allow a reduction in the ¼ mile setback from a bluffland protection district. Pratte opened the public hearing. Blake presented a staff report regarding the variance request. Correspondence from an attorney (Shieber) representing Phillip and Olga Hammell, neighbors, was presented to the Board members. The Hammell’s felt that the request did not pass the ‘unnecessary hardship’ standard. Blake also advised the Board that the County Attorney was of the opinion that the request did not meet the standards for a variance to be granted. Marzen and NEIT could continue to use the property for agricultural purposes, or other building purposes without a variance. The owner/leaseholder was not deprived of all beneficial uses of the property.
 - a. Board members discussed the reasons why a variance was needed. It was demonstrated that NEIT could not place a tower on the property without violating the ¼ mile setback. Pratte noted that there are two parties with an interest in this property and NEIT/leaseholder could have a hardship.
 - b. NEIT presented differing viewpoints and that AT&T will be providing a service to emergency providers under contract as national provider for FIRST NET. A service that allows Emergency Services to have priority service during periods of high use due to disasters/etc..
 - c. The Sheriff was in attendance and emphasized that they are constantly working to improve communications for emergency services.
 - d. Debra Stanwyck, a New Albin citizen, voiced concern about the impact that towers like this would have a negative impact on bluffland aesthetics, felt that additional cell service providers were not needed in the area.
 - e. NEIT responded that this would provide data coverage in addition to voice coverage for the area and Responders. The State of Iowa have departments that have opted in to this service and this is new and will be in demand in the future.
 - f. Coverage issues were discussed between all present. NEIT advised that they plan to provide First Net coverage to the entire county—something that is not provided now.

- g. The Hammell's and Stanwyck advised that the tower in New Albin was constructed without violating Bluffland Regulations and it provides cell service to the area. US Cell and Verizon have good coverage in New Albin.
- h. NEIT advised that AT&T does not have service to the area and they need to provide First Net service. They have gone through and received all the necessary Federal and State approvals for the site and tower. No other elevated sites in the area will meet the service territory needs that this one will. There are a lot of areas in the County where there is no cell coverage.
- i. Hammell's stated that this technology will be unnecessary in the near future. All communications will be provided by Space X and satellites.
- j. There being no further discussion, Pratte closed the public hearing at 5:45 PM.
- k. Weymiller stated that he is not ready to vote until a written opinion from the County Attorney is available or until she can attend a Board meeting. Keatley and Walleser concurred. Consensus to invite County Attorney to a follow up meeting to discuss these applications.

Pratte made a motion to not take action on the Variance or Conditional Use Requests and to plan a meeting with County Attorney Kistler. Walleser seconded. MCU.

Board consensus to schedule the Sexual Harassment training for a subsequent meeting.

Walleser made a motion to adjourn, Keatley seconded. MCU.

Thomas Blake, Zoning Administrator and Board Secretary

**MINUTES OF THE MEETING OF THE
ALLAMAKEE COUNTY BOARD OF ADJUSTMENTS**

March 14, 2018

Board of Supervisors Office, First Floor, Courthouse, Waukon, Iowa

Meeting was called to order at 4:30 P. M. by Chairman Dr. Bernard Pratte.

Roll call of Commission Members:			Term Expires
	Dennis Keatley	Present	12/31/2018
	Steve Weymiller	Present	12/31/2019
	Gwen Brainard	Present	12/31/2020
Chair	Bernard Pratte	Present	12/31/2021
Vice-Chair	Nancy Wallaser	Present	12/31/2022

Staff present: Tom Blake, Zoning Administrator. All Board members voting “AYE” unless noted. MCU means Motion Carried Unanimously.

Keatley made a motion to approve the meeting agenda. Wallaser seconded. MCU.

Weymiller made a motion to approve the January 10, 2018 minutes. Wallaser seconded. MCU

Brainard made a motion to approve the March 1, 2018 minutes. Weymiller seconded. MCU

Old Business

1. NEIT Properties, LLC, Application for variance to allow a reduction in the ¼ mile setback from a bluffland protection district. County Attorney Kistler was present and presented her findings after a review of the application and other materials presented in regards to the case, including Attorney Sheiber’s letter on behalf of adjoining landowner, Phillip and Olga Hammell. Kistler felt that the application and property owner/leaseholder did not meet the ‘unnecessary hardship’ standard required under Iowa Code and the Zoning Ordinance. Pratte inquired into whether there was a difference since the applicant was a leaseholder that could not utilize the property for agriculture. Kistler advised that the Iowa Supreme Court established a three part test;
 - a. The land in question cannot yield a return without the variance
 - b. The applicant’s plight must be due to unique circumstances
 - c. And the granting of a variance cannot alter the essential character of the property/area.

And she felt that the application did not meet the first test, the land is currently productive ag land and can continue to be used in that manner. The property circumstances are not unique. They might meet the essential character alteration of the area, however, this will definitely have an impact to the aesthetics of the area. She felt this would be good for the community, but it does not meet the standard for a variance. Pratte inquired about the need to provide First Net Service for First Responders and didn’t that meet the hardship test? Kistler, “No, it did not”.

Wallaser made a motion to deny the Variance request due to not meeting the standard for unnecessary hardship, unique circumstances and impacting the bluffland area, in accordance with the attorney recommendation. Weymiller seconded. MCU.

Brainard made a motion to deny the conditional use permit request filed by NEIT Properties due to applicant and use not meeting the minimum setback standard from the bluffland overlay district as required in the zoning ordinance. Walleser seconded. MCU.

Board discussed the options for NEIT Properties in regards to continuing to seek a permit for the tower. Board consensus is that it would need to be presented to the Planning and Zoning commission for a recommendation to the Supervisors. Hammell advised he would oppose any change to the Zoning Ordinance that would allow this tower.

Walleser made a motion to adjourn, Keatley seconded. MCU.

Thomas Blake, Zoning Administrator and Board Secretary

**MINUTES OF THE MEETING OF THE
ALLAMAKEE COUNTY BOARD OF ADJUSTMENTS**

April 12, 2018

Board of Supervisors Office, First Floor, Courthouse, Waukon, Iowa

Meeting was called to order at 4:30 P. M. by Chairman Dr. Bernard Pratte.

Roll call of Commission Members:			Term Expires
	Dennis Keatley	Present	12/31/2018
	Steve Weymiller	Absent	12/31/2019
	Gwen Brainard	Present	12/31/2020
Chair	Bernard Pratte	Present	12/31/2021
Vice-Chair	Nancy Walleser	Present	12/31/2022

Staff present: Tom Blake, Zoning Administrator. All Board members voting “AYE” unless noted. MCU means Motion Carried Unanimously.

Walleser made a motion to approve the meeting agenda. Brainard seconded. MCU.

Old Business – None

New Business

1. Mike Ferring, Application for conditional use to allow construction and use of a rental storage facility in an A1 zoning district.
Blake presented his report, recommending approval of a storage building, but not allowing owner to use shipping containers for storage units. Mike advised that he was looking at 12 storage units and wanted to use the containers. He would keep the area clean and the units in good repair. He presented photos of the units he would use. They were 8’ x 20’ x 8’ 6”. Pratte recommended approval of the use of the containers. Brainard made a motion to approve the application for a conditional use, using storage containers for rental storage units upon the condition that they be kept in good repair and the property be kept clean and orderly. Keatley seconded. MCU>
2. Brent and Shari Knapp, Application for a variance to allow an addition to a residence (garage) to be less than 25’ to a street side property line (10 feet requested). Blake presented staff report advising that the application likely did not meet the standards for granting a variance, but the variance would allow the garage addition to be placed such that less site work would be required and it would fit in with the residence better. Knapp’s presented expected costs and drawings of the proposed addition. The house as currently designed was not as functional as the addition would allow. Entry door in rear of house, etc.. Keatley made a motion to approve variance. Pratte seconded. Ayes; Keatley, Pratte. Nays; Walleser, Brainard. Motion not approved.
Discussed that one member was not present and that might be necessary for the full vote of the Board. Pratte made a motion to continue the hearing until April 26th, 2018 at 4:30. Brainard seconded. MCU.

Walleser made a motion to adjourn, Keatley seconded. MCU.

Thomas Blake, Zoning Administrator and Board Secretary

**MINUTES OF THE MEETING OF THE
ALLAMAKEE COUNTY BOARD OF ADJUSTMENTS**

April 26, 2018

Board of Supervisors Office, First Floor, Courthouse, Waukon, Iowa

Meeting was called to order at 4:30 P. M. by Chairman Dr. Bernard Pratte.

Roll call of Commission Members:			Term Expires
	Dennis Keatley	Present	12/31/2018
	Steve Weymiller	Absent	12/31/2019
	Gwen Brainard	Present	12/31/2020
Chair	Bernard Pratte	Present	12/31/2021
Vice-Chair	Nancy Walleser	Present	12/31/2022

Staff present: Tom Blake, Zoning Administrator. All Board members voting “AYE” unless noted. MCU means Motion Carried Unanimously.

Walleser made a motion to approve the meeting agenda. Keatley seconded. MCU.

Walleser made a motion to approve the March 14, 2018 minutes. Keatley seconded. MCU.

Brainard made a motion to approve the April 12, 2018 minutes. Keatley seconded. MCU.

Old Business

1. Brent and Shari Knapp, Application for a variance to allow an addition to a residence (garage) to be less than 25’ to a street side property line (10 feet requested). Blake presented a review of the staff report from last meeting. Knapp’s presented drawings of the proposed addition and stated again why they desired a variance. Chairperson asked for a motion but no motion was made to approve the request. Since variance did not receive a motion or votes for approval, motion denied without Board action.

New Business

1. Kevin and Renee Herman, Application for a variance from setback requirements to allow a garage addition to be built less than 10 feet from side lot line. Blake advised that the variance request did not meet the minimum requirements for a variance. The Herman’s were not present and Blake advised that they had communicated to him that they would meet the 10 foot setback per agreement of lot line location between the neighbors. Walleser made a motion to deny the request for a variance. Keatley seconded. MCU.

Walleser made a motion to adjourn, Keatley seconded. MCU.

Thomas Blake, Zoning Administrator and Board Secretary

**MINUTES OF THE MEETING OF THE
ALLAMAKEE COUNTY BOARD OF ADJUSTMENTS**

July 12, 2018

Board of Supervisors Office, First Floor, Courthouse, Waukon, Iowa

Meeting was called to order at 4:30 P. M. by Vice-Chair Nancy Walleser.

Roll call of Commission Members:			Term Expires
	Dennis Keatley	Present	12/31/2018
	Steve Weymiller	Present	12/31/2019
	Gwen Brainard	Present	12/31/2020
Chair	Bernard Pratte	Absent	12/31/2021
Vice-Chair	Nancy Walleser	Present	12/31/2022

Staff present: Tom Blake, Zoning Administrator. All Board members voting “AYE” unless noted. MCU means Motion Carried Unanimously.

Weymiller made a motion to approve the meeting agenda. Keatley seconded. MCU.

Brainard made a motion to approve the April 26, 2018 minutes. Keatley seconded. MCU.

Public Hearings

Dixon, William—Request a variance from the front yard setback to allow a structure to be located as close as 0 (zero) feet from the Public Right of Way. Blake presented a staff report, outlining that the property could not be built on except with a variance for front yard setback or by building within the Bluffland Impact Area. Due to the wide right of way at this point and due to the hazards associated with structural construction in the Impact Area, Blake recommended the variance be granted on the basis that the lot was not buildable without a variance. Keatley made a motion to approve the variance as requested. Brainard seconded. MCU.

Boise, Bryan and Dawn—Request for a conditional use permit to establish a single unit private campground (for owner only) that will be used until house is constructed. Blake advised that the owner planned to discontinue the RV use after new home was constructed. He is planning on septic on the site now that will accommodate the house and the RV (for now). There were no objections and the RV would not be visible from the access road or other properties. Weymiller made a motion to approve the request, with a limit of three years from date of issue of permit. Keatley seconded. MCU.

Old Business

New Business—Discussion was held regarding a new conditional use permit application from NEIT Properties. Consensus to establish August 2nd as the hearing date.

Brainard made a motion to adjourn, Keatley seconded. MCU.

Thomas Blake, Zoning Administrator and Board Secretary

**MINUTES OF THE MEETING OF THE
ALLAMAKEE COUNTY BOARD OF ADJUSTMENTS**

August 2, 2018

Board of Supervisors Office, First Floor, Courthouse, Waukon, Iowa

Meeting was called to order at 4:30 P. M. by Chair Bernard Pratte.

Roll call of Commission Members:			Term Expires
	Dennis Keatley	Present	12/31/2018
	Steve Weymiller	Absent	12/31/2019
	Gwen Brainard	Present	12/31/2020
Chair	Bernard Pratte	Present	12/31/2021
Vice-Chair	Nancy Wallaser	Present	12/31/2022

Staff present: Tom Blake, Zoning Administrator. Other persons in attendance; County Attorney Jill Kistler, Jack Knight, Dave and Jan Winnes, Kristi Hager, David Byers, Dexter Klosterman, Steve Hanson, Judd Genda, Chris Fee, Angela Blair, George Blair, Debra Stantic, Phillip Hammell, Olga Hammell, Greg Schrieber. All Board members voting “AYE” unless noted. MCU means Motion Carried Unanimously.

Wallaser made a motion to approve the meeting agenda. Brainard seconded. MCU.

Wallaser made a motion to approve the July 12, 2018 minutes. Brainard seconded. MCU.

Public Hearings

Allgood, Mark and Jeannie—Request for a conditional use permit to allow a private, single unit campground on their property located at 325 Hickory Creek Road, Luana, IA. Blake presented a staff report regarding the application and recommended approval. It was shown that the site was outside the proposed floodplain on the new maps and that access was adequate. Wallaser made a motion to approve the conditional use permit, finding that all required conditions set by the ordinance were met. Keatley seconded. MCU.

NEIT Properties, LLC—Request for a conditional use permit to allow the construction of a communications tower in the A1 district. Blake presented the Staff Report, advising that he recommended the tower use be approved if the Board finds that the structure is not obnoxious in appearance and does not impact the aesthetics of the site. Pratte led the discussion and stated that he felt the project was not a governmental public project (GPP) and not eligible for a conditional use permit without a variance from the ¼ miles setback. Blake advised that the decision to classify the project as a GPP was his, as Zoning Administrator. That decision was announced at a Planning and Zoning public hearing. The hearing was for the application from NEIT Properties to change the text of the ordinance, providing for an exemption from the ¼ mile setback for “First Net” projects. Blake advised that the hearing and announcement was on May 22, 2018 and more than 60 days had passed and no one had appealed that decision, therefore, the decision stood and this project was a GPP.

Judd Genda, attorney for NEIT spoke to the Board, addressing the federal procedure letting the project and establishing it as a mandate to the State of Iowa, requiring that Iowa either sign onto the existing federal ‘First Net’ project (with AT&T) or create their own ‘First Net’ compliant network. He advised that Iowa opted to join the federal project and contracted with AT&T to construct and operate the system. The project is funded by the federal government. He also addressed how the application for the conditional use permit met the standards in the zoning ordinance and also discussed that state agencies will be using the network and that it is open to local

agencies to use, if they choose to do so. He also presented an appraiser, hired by NEIT Properties, who could attest that communication towers did not have an impact on property values.

Brainard asked if this tower was limited to First Net only or would it be open to other users (commercial carriers)? Genda advised that it would be built to accommodate co-locations, possibly including other emergency response equipment and other carriers.

Pratte asked if there weren't two other towers in close proximity to the New Albin area. Genda advised that the Board could not consider if there were other towers nearby as a basis for approving or denying a use permit. Kistler and Blake confirmed that Genda was correct and the Board should not discuss the availability of other towers. David Byer, NEIT Properties Governing Board Chair addressed the Board of Adjustments, advising that the tower construction and this application was being submitted on behalf of NEIT properties and was not being submitted by AT&T. It was clarified that the tower, once constructed, would be owned by AT&T, but NEIT Properties was constructing the tower as a contractor, under agreement with AT&T.

Greg Schreiber, attorney for Phillip Hammell (an adjoining land owner), addressed the Board. He stated that the project should not be classified as a GPP. His opinion was that a GPP was a government controlled, financed and led project such as highways. This project was controlled by a private entity. He felt the Board could not rule on a project that was not a GPP. Furthermore, the project was not compatible, it changed the character of the bluff in this location. It was not compliant with the spirit and intent of the zoning ordinance nor was it compliant with the comprehensive plan and the Board should deny the application.

George Blair, New Albin, addressed the Board. He felt this was an effort by AT&T to get a foothold in the area. It was not a public project. The bluffland ordinance was adopted to protect the county bluffs from Frac Sand mining and was needed to protect the area.

Angela Blair addressed the Board, She was at the zoning meeting in May when it was declared a GPP and would have objected if she knew of the 60 day appeal time frame. The natural beauty of this area is unique and the County needed to fight to protect these bluffs from development.

Jack Knight addressed the Board (as a citizen, not as a representative of the Zoning Commission) and felt that this type of communications project is great in urban settings, but not in a rural area. Part of the beauty of this rural area is the lack of development. Allamakee has a long history of turning down developments. It needs to maintain the rural character that is it's history/heritage.

Debra Stantic asked the Board to uphold the ordinance, "even if it meant sitting here all night, if need be."

Phillip Hammell advised that the access road was not suitable for year round use and would require gravel and other maintenance. It is also in shade a lot and they won't be able to access the site during winter months.

Judd Genda advised that the AT&T contract was competitively bid and AT&T was the project bid winner. Whether Iowa opted into the contract or not, they would not construct the project with their own personnel, they would hire contractors to do the work, after letting the project, just as the federal government did. The visual impact of towers on the bluffs has been approved by the Board previously, ruling that it had no impact on the aesthetics. The Board previously approved the conditional use permit for this project. It was reversed later due to notice issues, but had been approved by the Board, under the same guidelines that they were reviewing now. Pratte commented that the conditional use was later denied because the project did not meet the requirement for a variance (unnecessary hardship) and that this project would still need a variance if it was not a GPP. Kistler advised that her legal opinion was that it was a GPP and a variance is no longer necessary for the granting of a permit for this project. Genda stated that the previous reversal was due to not

meeting the standard for a variance, not because it did not meet the standards for a conditional use. Schrieber advised that now is the time to take a in-depth look at the application and not revert to a previous decision to grant the conditional use permit. Also, this project should not be classified as a GPP, it was not a competitive bidding process.

Brainard asked about the history of the first permit being granted. Was it then reversed? Blake advised that initial conditional use permit was voided because the notice process was faulty. Action to reverse was unnecessary since it was not properly granted in the first place.

Byers (with NEIT) advised that, if it were not for the First Net project, AT&T would not be putting a tower there. Marzen property (this site) has received all approvals required through the federal and state process. Hanson advised that the Bakewell property was the company's first choice, but that site did not pass SHPO review.

Genda advised that the bluffland protection and floodplain regulations remove approximately 85% of Allamakee County from consideration for communications towers.

Hammell asked NEIT why they did not start by communicating with the neighbors.

Hanson advised that the state contract required 98.5% coverage for the state of Iowa. This tower is part of the service area needed for that coverage.

Pratte stated that there will still be dead spots in the county.

Hanson, if coverage is to be improved, the bluffs will need to be built on.

Pratte, will there need to be other tower sites then? More than this one? Hanson advised that they are considering one near Harpers Ferry and (possibly) Dorchester area.

Hammell advised that he has cell phone coverage. There are other sites that would provide better coverage. Byers objected to Hammell's statements regarding coverage. Genda advised that denying a tower because there are other providers there or because there are other towers there is prohibited. Kistler and Blake agreed, advising that dead spots, lack of coverage or existing cell coverage could not be used as a basis for approving or denying a tower application, due to federal and state regulations.

Schrieber advised that the Board did not have to go out on a limb to approve a tower application either.

Pratte stated that the Board needed to make a decision based on the standards in the zoning ordinance that is in effect now. The Board has received a lot of information today and needed time to review all of it. He recommended closing the hearing and continuing this discussion at another date. Blake recommended that the hearing not be closed, just continued to a specific date and time. Otherwise, new notifications would need to be done and that could delay the process.

Walleser made a motion to continue the hearing to August 16, 2018 at 4:30 PM, at the same location. Brainard seconded. MCU.

Keatley made a motion to adjourn, Walleser seconded. MCU.

Thomas Blake, Zoning Administrator and Board Secretary

**MINUTES OF THE MEETING OF THE
ALLAMAKEE COUNTY BOARD OF ADJUSTMENTS**

August 16, 2018

Board of Supervisors Office, First Floor, Courthouse, Waukon, Iowa

Meeting was called to order at 4:30 P. M. by Chair Bernard Pratte.

Roll call of Commission Members:			Term Expires
	Dennis Keatley	Present	12/31/2018
	Steve Weymiller	Present	12/31/2019
	Gwen Brainard	Present	12/31/2020
Chair	Bernard Pratte	Present	12/31/2021
Vice-Chair	Nancy Walleser	Present	12/31/2022

Staff present: Tom Blake, Zoning Administrator. Other persons in attendance; County Attorney Jill Kistler, David Byers, Steve Hanson, Judd Genda, George Blair, Phillip Hammell, Olga Hammell, Greg Schieber, Jim Johnson, Karen Pratte, Brian Fankhauser, Dan Byrnes. All Board members voting “AYE” unless noted. MCU means Motion Carried Unanimously.

Chairperson Pratte called the meeting to order and addressed the duties and powers of the Board of Adjustment to those present in the audience.

Walleser made a motion to approve the meeting agenda. Keatley seconded. MCU.

Brainard made a motion to approve the August 2, 2018 minutes. Weymiller seconded. MCU.

Public Hearings

Johnson, James dba Sportsmens Club, Blake presented a staff report detailing the proposed project (addition of a deck to a currently non-conforming structure that predated the zoning ordinance). Johnson addressed the Board regarding the planned use of the deck and the size of a deck needed. Blake advised that 33 neighboring property owners were contacted, 6 responded, with no one objecting to the variance request. Since the deck structure would not be as close to the street side lot line as the current structure was and since placing the addition elsewhere on the lot would compromise available parking or the septic system, Blake recommended approval of a variance, reducing the street side yard setback to 10 feet where 30 feet is required. Brainard made a motion to approve the variance, reducing the street side yard setback to 10 feet for the construction of an attached deck, per the site plan submitted. Keatley seconded. MCU.

NEIT Properties, LLC—Continuation of a hearing from August 2, 2018 regarding a request for a conditional use permit to allow the construction of a communications tower in the A1 district. Blake advised that there was no change to the Staff Report, advising that he recommended the tower use be approved if the Board finds that the structure is not obnoxious in appearance and does not impact the visual resources of the site and area. Pratte invited any that had not addressed the Board at the last meeting to address the Board now.

Brian Fankhauser, Blufflands Region Director, Iowa Natural Heritage Foundation, addressed the Board, objecting to the requested permit for the site due to the impacts to the scenic beauty and open space qualities, impacting visual resources and, possibly, the bird flyway along the Mississippi.

Val Reinke, Economic Development Director, Allamakee County Economic Development Agency, addressed the Board, mentioning that she had submitted her recommendation in writing to the Board at the last meeting.

Judd Genda, attorney for NEIT spoke to the Board, introducing David Byers, NEIT Properties, LLC Chief Operating Officer. Mr. Byers addressed the Board giving them information about NEIT Properties and the companies impact on the local economy by a locally based company.

George Blair, New Albin City Councilman had questions for NEIT regarding their relationship with AT&T, the company that will own the tower once completed. He also questioned if Genda was an attorney for AT&T. Genda advised that he was not. Blair stated that he arrived in the County 37 years ago, amazed by the natural beauty. This beauty needs to be taken into account. RAGBRAI was a test of the local communication system and the system was not overwhelmed. County Attorney Kistler advised that the subject (demand for service) could not be discussed in reference to this application. Blair commented that cell coverage is adequate—Kistler advised that this topic also could not be discussed. Blair stated that the emergency service provision is a scare tactic to try to scare County into approving permit.

Kistler addressed Board, laying out items that should not be discussed due to federal, state and local law. Availability of another cell company's coverage, Customer demand for the service to be provided, Consideration of other possible locations for the cell tower, RF emissions and possible environmental effects, Whether or not the project is a Governmental Public Project (this decision has been made by the Zoning Administrator and the appeal period has passed.)) She advised that the ordinance addresses all of the topics to be considered when deciding on an application for a conditional use permit.

Steve Hanson, addressed the flyway and federal review covered any impact on the bird flyway. Due to the new availability of fiber optics to the property, it is possible to reduce the tower height. The reduced height could be 190 feet, versus the requested 300 feet. This may impact the provision of co-location and may contribute to a need for an additional tower to provide necessary service (under First Net). There will be additional cost to run fiber to the site. However, NEIT is trying to make the tower as aesthetically uneventful as possible, and still provide the service we are required to provide under AT&T's contract with the State of Iowa.

Pratte advised that NEIT being a local company was not a factor in this application. The specific site and the impacts are what is being reviewed today. Are there other tower sites that will need to be considered for this service (in addition to this tower)? Hansen advised that the only other tower being considered at this time is near Harpers Ferry.

Greg Scheiber addressed the Board and advised that in order to approve, the Board needed to find that all standards in the ordinance needed to be met. If any one of the standards was not met, the Board would deny the permit. Governmental Project (GPP) exception only applied to the bluffland impact area and not to the setback from the impact area. Changing that would require action by the Board of Supervisors. Whether or not it is a Governmental Public Project should still be on the table. The Zoning Administrator and County Attorney stance that the appeal of that decision time period has passed only applies in cases where permits have been issued. You cannot appeal something that you do not know has happened. The issue of whether it actually is a GPP is arguable. Comprehensive Plan also considers infrastructure development as a goal, but the Board should not prioritize infrastructure development over the protection of the Bluffs. The towers that the applicant lists as grounds to also approve their tower are not comparable to the current application and some are not within ¼ mile of the bluffland impact area.

Brian Fankhauser questioned whether the lower height tower would be visible from the Great River Road and other areas. Hanson advised that it would be visible.

Genda advised that the Zoning Administrator and County Attorney made the decision that it was a GPP and that was publicly announced at the Planning and Zoning Commission hearing at which this site was being discussed. A hearing at which the Philip and Olga Hammell were present and were made aware of that decision. Statute language and case law regarding similar verbiage, public project, supports that this is a governmental public project (GPP). The current Comprehensive Plan acknowledges that communication infrastructure is a county development need. Our list of 17 towers include 7 in the bluffland setback area, two of which were granted variances from the setback. These sites impact bluffland aesthetics no more or less than the proposed site and do demonstrate that the infrastructure needs over-ruled bluffland aesthetics in those instances. Also, the proposed lower height reduces the visual impact of this tower.

Pratte asked where this particular tower would be in relation to the bluff? Genda advised that it was outside of the impact zone. Pratte read 302.5 and opined that the GPP exception did not apply to areas outside of the impact zone. Pratte asked Blake, wouldn't a variance be required outside of the impact area, but within the setback, since it is a GPP? The ordinance only allows the exception to the Impact Zone, not the setback from the Impact Zone. Blake advised that the ordinance interpretation has been to allow GPP's within the setback and impact areas, without variances. That is how the ordinance has been applied since adoption of the ordinance in 2008. Otherwise, the recent power line improvement project would have been in front of the ZBA for variances for the multiple towers within 1/4 mile of the Bluffland. If, upon appeal, the Board ruled that that interpretation is incorrect, then it would be applied as the Board of Adjustment interpreted it. Pratte advised that this is a GPP, but it is outside the Impact Zone. He referred to the original hearing regarding a variance from setbacks for this tower. Blake advised that he had not ruled that it was a GPP (and would need a variance) at that time. The GPP decision came after communication from the State of Iowa, advising that the State, in partnership with the Federal Government has contracted for this service to be provided. Blake advised that, since it is a GPP, it does not need a variance because the exception (from bluffland regulations) applies to both, the Impact Area and the setback from the Impact Area.

Genda asked Attorney Kistler for her opinion regarding whether the exception applied to the entire zone or simply from the Impact Area. Attorney Kistler advised that she agreed with the Zoning Administrator applying it to the entire Impact area and setback area. The ordinance change that was recommended by the Planning and Zoning Commission was simply a clarification of the believed intent of the GPP, utilities and fencing exception, that it applied to all areas covered by the bluffland overlay regulation.

Karen Pratte advised that she served on the bluffland overlay committee and it was always the concern that the bluffland area was to be protected and that was why the language states "no tower greater than 35". It was the intent that the bluffland needed to be protected. Interpreting the ordinance language as the administrator has will lead to a 'slippery slope' and will result in many additional towers being located on the slope. These bluffs are a treasure that needs to be protected. There is no other area like this in the world. This tower would change that landscape. This tower would be visually obnoxious in this location.

Chairperson Pratte read section 3.5.6 of the 2002 comprehensive plan regarding protection of the bluffs commended the creators of the comprehensive plan for their foresight.

Walleser asked Blake if the guide lines on the tower would impact the zoning permit. Blake advised that it would not.

Hanson, from NEIT Properties, advised that the 190' (shorter) tower would be a self supported structure, not a guyed tower.

Pratte read a excerpt from the zoning ordinance that stated that the more restrictive regulations apply when regulations are in conflict.

Weymiller asked if the GPP status allow the tower to be built where it is proposed to be built under this application? Blake advised that it was allowed as a conditional use, subject to the conditional use permit standards.

Pratte stated that the GPP exception only applies in the Bluffland Impact Zone and does not apply to the ¼ mile setback area and that's the way the ordinance reads. If applied as written, a variance would be necessary to put any tower taller than 35 feet in this location. Blake opined that the exception to the ordinance has been interpreted and enforced as if it applied to all areas addressed under the bluffland overlay regulations. Pratte opined that the ordinance should be interpreted strictly as written and therefore, a variance would be necessary. Blake advised that the Planning and Zoning Commission agreed with his interpretation and recommended a non-substantive change to the ordinance to clarify that the GPP exception included the setback area. Pratte stated that the ordinance change had not happened and did not therefore apply to this application. Blake agreed, but argued that the clarification was not a necessity because the ordinance has been interpreted to exempt GPP's from the bluffland regulations entirely. Pratte stated that that issue was not the Board's decision at this meeting. Blake agreed, advising that the issue in front of the Board is whether or not to grant a conditional use permit under the standards established in the ordinance.

Pratte argued that we needed to apply the ordinance language as written. If we go to court, we need to defend the decision made tonight and we need to act under the way the ordinance is currently written. Kistler advised that the Attorney's office would defend the Board and the Board needs to follow the County Attorney's legal advice. If the Board does not take her advice, she would need to bring in outside counsel because she could not defend the Board action if it goes against her legal advice.

Weymiller asked Kistler, in your opinion, if it is a GPP, then we do not need to review the bluffland regulations. Kistler stated that her advice is to review the permit application under the conditional use permit standards. Weymiller asked if her position is that the Board Chairman is incorrect regarding the bluffland overlay regulations applying to GPP's in the setback area. Kistler advised that yes, she did not agree with the Chairmans position regarding that. She agreed with the Zoning Administrator in that the exception applied to all of the bluffland regulations. Pratte stated that he did not agree with the County Attorney's interpretation of the ordinance.

Blake advised that, if the argument against reviewing the conditional use permit standards was because this tower had a substantial impact on visual resources of the blufflands, then the permit standards would support denying this permit application. A substantial negative impact to visual resources is a good standard or measure to use as a reason to deny the permit. If the Board felt that it is not a substantial negative impact, and it met the other conditional use permit standards, then the permit should be approved. If the Board decides that the tower, as applied for, is not compatible, that it is unsightly, obnoxious or offensive in appearance to abutting or nearby property, which includes public property and not just the neighbors property, or that it has a serious impact on the visual resources of the area, which is another standard for a conditional use permit, the Board can deny the permit. If it fails any one of those permit standards, the Board should deny it. It needs to meet all of the conditional use permit standards listed in the ordinance in order to approve the permit as applied for. The Board can also take action to approve conditionally, setting conditions that would allow the project to meet the standards listed. For example, if the Board felt that reducing the height of the tower would allow it to be considered as compatible or not create negative visual impact to the immediate area, it could approve a use permit with a height restriction.

Pratte closed the public hearing at 6:10 PM, after determining that there was no further new comments to be submitted to the Board.

Weymiller asked Chairperson Pratte if he felt they should vote on the application in front of them. Pratte advised that , if the Board followed the Comprehensive Plan and the Ordinance, he was OK with a vote on the conditional use permit application in front of them.

Pratte read the standards for approval of a conditional use permit that are listed in the Zoning Ordinance. Blake advised that the Board could consider each standard individually, if that would help.

The Board discussed the Compatibility requirement. NEIT was invited to show the Board members graphic representations of the visual impact of the proposed tower (tower superimposed on photos of site from different vantage points). Pratte stated that it was still visible, even though the height was reduced. Keatley advised that he felt it was compatible.

Blake asked if the Board members felt it would interfere with the development of neighboring property. Consensus of all members that it would not interfere with the development of neighboring property.

Brainard stated that the next standard is “is it visually obnoxious or offensive in appearance”? Brainard stated that if it is not lit lessens the visual impact. Weymiller felt that lowering the height reduced the visual impact greatly. However, is it still offensive/obnoxious in appearance to abutting or nearby property? Weymiller asked Hammel, if the tower was moved, would you still be opposed? Phillip Hammel advised that yes, he would be. Weymiller asked him, what if the height is reduced? Hammel advised he would still be opposed and it would interfere with his future development of his property. Weymiller stated that towers are a necessary evil. As an EMS provider, he knew that communications are necessary and not having good communication makes providing the service a challenge.

The Board discussed:

- Traffic conditions. Consensus that the use met the Traffic standard.
- Transition conditions. Consensus that the application as submitted met the Transition standard.
- Environmental Protection. Consensus that the use would not generate excessive noise, vibration, dust, smoke, fumes, odor, glare, pollution or other hazardous or nuisance conditions.
 - Visual Resources. Discussed the impact of visual resources.
- Compatibility. The Board discussed the standards contained in compatibility.

Walleser made a motion to deny the conditional use permit application because it was offensive and obnoxious in appearance to nearby properties. Weymiller seconded. Pratte, Walleser, and Weymiller voted Aye to deny the permit, finding that it was offensive and obnoxious. Keatley and Brainard voted Nay. Motion carried. The permit is denied.

David Byers asked Blake if the permit was denied due to conflicts with the Bluffland Protection District Overlay regulations. Blake advised that the Board denied the permit due to not meeting the standards listed for a Conditional Use Permit, not due to Bluffland Regulations.

Walleser made a motion to adjourn. Keatley seconded. MCU.

Thomas Blake, Zoning Administrator and Board Secretary

**MINUTES OF THE MEETING OF THE
ALLAMAKEE COUNTY BOARD OF ADJUSTMENTS**

October 31, 2018

Board of Supervisors Office, First Floor, Courthouse, Waukon, Iowa

Meeting was called to order at 4:30 P. M. by Chair Bernard Pratte.

Roll call of Commission Members:			Term Expires
	Dennis Keatley	Absent	12/31/2018
	Steve Weymiller	Present	12/31/2019
	Gwen Brainard	Present	12/31/2020
Chair	Bernard Pratte	Present	12/31/2021
Vice-Chair	Nancy Walleser	Present	12/31/2022

Staff present: Tom Blake, Zoning Administrator. All Board members voting “AYE” unless noted. MCU means Motion Carried Unanimously.

Chairperson Pratte called the meeting to order.

Walleser made a motion to approve the meeting agenda. Brainard seconded. MCU.

Brainard made a motion to approve the August 16, 2018 minutes. Weymiller seconded. MCU.

Public Hearings

Stock, Kent and Rhonda—Blake presented a staff report detailing the proposed project and the history of the property. Blake noted that the location of the well and septic system precluded placing this building elsewhere on the property and that there was 30 feet of area between the property line and the public road traveled way. Stock explained his need/desire for a 5 foot setback. Blake recommended approval of a variance, reducing the street rear yard setback to 10 feet where 25 feet is required. Weymiller made a motion to approve a yard setback of 5 feet, unless it is possible to fit the requested building between the well and 10 feet from the property line, per the site plan submitted. Pratte seconded. MCU.

Ken Dine Enterprises, Greg Kerndt— Blake presented a staff report. Ken Dine Ent. Have applied to allow a parcel less than three acres be created and sold for a non-farm residence. The residence was existing and the tenant wanted to buy the property. Kerndt cannot transfer a three acre lot due to terraces and drainage features on the filed next to the property. Kerndt presented a drawing showing a two acre lot that would give the minimum room for maintenance on the terrace system. Weymiller made a motion to approve the request, allowing for a two acre lot. Walleser seconded. MCU.

Walleser made a motion to adjourn. Brainard seconded. MCU.

Thomas Blake, Zoning Administrator and Board Secretary