

**APRIL 15, 2008 ZONING HEARING
"OTHER BUSINESS"
COMMISSION DISTRICT 2**

ITEM #5

PURPOSE

To consider adopting the written decision as required by the Federal Telecommunications Act regarding SLUP-2 (CROWN CASTLE INTERNATIONAL) for property located in Land Lot 677 of the 17th District, on the south side of Main Street, west of Lois Street.

BACKGROUND

This case was heard on March 18, 2008 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

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

In the Matter of	:	SLUP-2/Z-16
CROWN CASTLE	:	
INTERNATIONAL,	:	(2008)
Applicant,	:	
	:	
ANGIE C. SCROGGINS,	:	
Titleholder.	:	

DECISION

This matter came before the Board of Commissioners on March 18, 2008, upon application by Crown Castle International (“Crown”) for a rezoning and special land use permit (“SLUP”) which would allow Crown to construct a telecommunications tower on property owned by Angie C. Scroggins and located in Cobb County.

FINDINGS OF FACT

Crown filed an application with Cobb County seeking a rezoning and SLUP (which county staff designated “SLUP-2” and “Z-16”) for the purpose of constructing a 180 foot tall telecommunications tower to be located on the south side of Main Street west of Lois Street. This location is parcel sixteen of land lot 677 in the 17th district of Cobb County. In its application, Crown stated that the proposed structure would be a monopole tower.

The Planning Commission heard the case at its meeting of March 4, 2008. In a unanimous vote, the Planning Commission voted to recommend rejection of the SLUP and rezoning. Thereafter, on March 18, 2008, the Board of Commissioners conducted a public hearing on this matter. At that hearing, the only person who spoke in favor of the SLUP was Michael Tyler who represented Crown as its attorney. He indicated that the proposed tower was intended to replace another one in the area which was scheduled to be removed. He presented data which he contended demonstrated that wireless service would improve if the proposed tower were built. No evidence was presented which indicated that persons living in or passing through the area where the tower would be located lacked wireless service.

Mary Rose Barnes of the Oakdale Community Association spoke in opposition to the application. She noted that although the proposed site technically was not zoned for residential use, substantial residential development was located in very close proximity to this site. She also stated that additional residential development is planned for this area. Ms. Barnes pointed out that this site did not provide any vegetative screening of the proposed tower, unlike the existing tower it is designed to replace. She also testified that this tower would be located upon a hill and would "loom" over the adjoining residential neighborhoods. This proposed tower would be 187 feet tall, whereas the one it is designed to replace is 105 feet tall. Finally, Ms. Barnes noted that there was a structure located within

the fall zone of the proposed tower and a home just seven feet outside the fall zone of the proposed tower.

Suzanne Ballew of the West Vinings Civic Association also spoke against the proposed application. Her comments were similar to Ms. Barnes'. She also noted that there was not a demonstrated need for additional wireless capacity in the area.

Following the close of the public hearing, Commissioner Thompson, the District Commissioner, stated it was inappropriate to locate the tower at this site because it would loom over the nearby residential area. He also stated that there was insufficient evidence of a lack of cellular coverage in this area and that the applicant failed to demonstrate that there were no other suitable sites available. Finally, Commissioner Thompson voiced concerns regarding the proximity of the proposed tower to the structure within the fall zone as well as an occupied residence being located just seven feet from the fall zone. Commissioner Thompson then moved to deny SLUP-2/ Z-16. His motion carried by a vote of 5-0. After the vote, the County Attorney was directed to prepare a written decision memorializing the denial of SLUP-2/Z-16 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:

- The proposed tower will have a significant adverse effect on the neighborhood and area surrounding it. Evidence showed the tower would be an eyesore and spoil the scenic views in a residential and area. The County Zoning Ordinance specifically discourages towers being located in residential areas. It is important to protect the quality of life and aesthetics of residential neighborhoods. Although this location is not residentially zoned, it is adjacent to a developing residential area. 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.
- The proposed tower is not compatible with the neighborhood, as there is nearby residential development. Additionally, the evidence did not reveal the need for this extremely tall proposed cell tower when a much smaller one at a less prominent location adequately served the public's wireless needs.

It is the opinion of the Board that the testimony from various residents combined with the evidence submitted, and the individual commissioners' experience and interpretation of the evidence and testimony, constitute substantial evidence that is competent, relevant, and adequate to support denial of the SLUP/rezoning Application. Wherefore, the said application SLUP-2/Z-16 is hereby DENIED.

This written denial is entered upon the record of the County Clerk this _____ day of _____, 2008.

Samuel S. Olens, Chairman
Cobb County Board of Commissioners