STATE OF INDIANA	)	IN THE HAMILTON CIRCUIT COURT
	)SS:	
HAMILTON COUNTY	)	CAUSE NO. 29C01-1511-MI-9308

CROWN CASTLE TOWERS 06-2 LLC,

Petitioner,

vs.

CITY OF WESTFIELD, BOARD OF ZONING APPEALS, and certain named Remonstrators,

Respondents.

29C01-1511-MI-009308
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CLERK OF THE HAMILTON CIRCUIT COURT

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above cause of action came before the Court for a hearing on the Petitioner's Verified Petition for Judicial Review on March 30, 2016. The Petitioner, Crown Castle Towers 06-2 LLC ("Crown Castle" or "Petitioner"), appeared by counsel, Scott R. Leisz. The Respondents, City of Westfield, Board of Zoning Appeals ("BZA") and certain named Remonstrators, appeared by counsel, Brian Zaiger and Jeffrey M. Heinzmann, respectively. Having reviewed the pleadings and arguments of counsel, and being duly advised in the premises, the Court now enters the following Findings of Fact and Conclusions of Law.

I. FINDINGS OF FACT

1. Petitioner is a provider of telecommunications infrastructure serving the wireless communications industry with communications towers throughout Hamilton County, Indiana. Petitioner filed for a special exception[1] to place a wireless communications facility[2] at 16414

[1] A "special exception" is defined by the Westfield Unified Development Ordinance ("UDO") as "[a] use that requires a greater degree of scrutiny and review because of its potential adverse impact upon the immediate neighborhood and the community that is reviewed by the Board of Zoning Appeals for its characteristics and impacts to determine its suitability in a given location for the Zoning District in which it is permitted." A special exception differs from a variance in that the granting of a variance is a matter of discretion, while the granting of a special exception is mandatory once the applicant show compliance with the relevant criteria. *Town of Merrillville Bd. of Zoning Appeals v. Public Storage, Inc.*, 568 N.E.2d 1092, 1094 (Ind. Ct. App. 1991).

Towne Road, Westfield, Indiana. (Tr. at 2: 1–4, attached hereto as Exhibit A.) The Westfield Board of Zoning Appeals (the "BZA") held a public hearing on October 13, 2015. (Tr. at 2: 14–15.)

2. In order for a special exception at the proposed location to be approved, pursuant to WC § 16.04.140(D) the BZA must make a written determination that seven listed criteria are met. At the hearing, Petitioner presented evidence in an attempt to comply with each of the following criteria:

a. The establishment, maintenance, or operation of the Special Exception will not be detrimental to or endanger the public health, safety, morals, or general welfare.

b. The Special Exception will be designed, constructed, operated, and maintained so as to: (i) not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted; (ii) not substantially diminish and impair property value within the neighborhood; (iii) be harmonious and appropriate in appearance with the existing or intended character of the immediate vicinity; and (iv) not change the essential character of the area.

c. The establishment of the Special Exception will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the Zoning District.

d. Adequate public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools have been or are being provided and the Special Exception will not result in excessive additional requirements at public expense for such public facilities and services.

e. Adequate measures have been or will be taken to provide ingress and egress designed to minimize traffic congestion and have vehicular approaches are designed as not to create an interference with traffic on surrounding rights-of-way.

f. The Special Exception will be harmonious with and in accordance with the objectives of the Comprehensive Plan.

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[2] The proposed monopole tower would be 168 feet in height and include ancillary equipment buildings, perimeter fencing, and landscape screening. (Tr. at 2: 5–8, attached hereto as Exhibit A.) The tower would be over 200 feet from any property line and approximately 475 feet from the nearest structure, an existing residential structure on the parent parcel. (Tr. at 2: 9–13.)

g. The Special Exception will be located in a Zoning District where such use is permitted and that all other requirements of the Zoning District and this Ordinance, and as may be applicable to such use, will be met.

3. The Petitioner offered evidence that the proposed facility would not cause any odors, noise or increased traffic. (Tr. at 4: 18–19; 6: 4–9.) Further, the Petitioner demonstrated that the improved wireless coverage could contribute to the public health and general welfare by enhancing emergency communications capabilities, including 911 service to the vicinity, as well as improving communications for commercial purposes. (Tr. at 6: 4–9; 21: 1–6.)

4. The Petitioner submitted site plans showing how the proposed facility would be designed, constructed, operated, and maintained. (Tr. at 5–6: 19–9; 23: 9–11.) In addition, Petitioner submitted detailed information pertaining to another similar facility south of the proposed location and immediately adjacent to a now fully developed subdivision with high value homes. The Petitioner argued that this evidence demonstrates that the current similar proposal would not substantially diminish or impair property value within the neighborhood. (Tr. at 22–23: 3–4.) Further, the Petitioner showed that the facility was nearly a quarter mile away from any dwelling (other than the Petitioner's landlord's own residence). (Tr. at 5: 5–18.) The Petitioner also agreed to construct a monopole tower (as opposed to a lattice structure or a tower requiring guy wires) in order to provide the necessary infrastructure in a manner that would be harmonious and appropriate in appearance for the vicinity, in the same manner that other similar facilities have been proposed and constructed upon other properties in the jurisdiction within the same zoning classification. (Tr. at 3: 13–16.) Lastly, the Petitioner showed that this facility would occupy only a small lease parcel. The Petitioner urged the BZA to believe that occupying a small lease pacel would not change the essential character of the area, given the small amount of property involved, the design of the tower as a monopole, and the need for the infrastructure in the area. (Tr. at 3: 13–16; 5: 1–4; 6: 4–9.) The Petitioner agreed to

design the tower so that it could be shared by multiple carriers in order to limit the overall number of towers necessary to serve the area, thereby maintaining the essential character of the area. (Tr. at 3–4: 20–6.)

5. The Petitioner provided an exhibit showing a tower facility like the tower proposed in this matter located in a nearby area adjacent to a then-developing residential subdivision. (Tr. at 22: 10–23.) The exhibit demonstrated that the subdivision property developed over time and in an orderly fashion. (Tr. at 22–23: 3–4.) The Petitioner argued that its proposed facility would also not impede the normal and orderly development of the surrounding property for uses permitted in the Zoning District. (Tr. at 5: 20–22.)

6. The Petitioner testified that the proposed site was equipped with utilities and that it would not increase traffic along Towne Road or otherwise result in any material increases or additional requirements upon public facilities and service. (Tr. at 4: 20–25; 6: 1–3.)

7. The Petitioner testified that the proposed facility would not involve any increase in traffic or contribute in any way to traffic congestion, and that the ingress and egress for the site were designed in accordance with the City's requirements. (Tr. at 4: 24–25.) The Petitioner additionally explained that because the facility would be visited only intermittently by maintenance personnel for the individual carriers approximately once per month, it would generate very little traffic. (Tr. at 4: 20–25.)

8. The City indicated in its staff report prepared in anticipation of the public hearing that telecommunications services were not specifically referenced in the Comprehensive Plan. Petitioner testified that such infrastructure would complement the uses contemplated in the Comprehensive Plan by providing enhanced communications services for those working, traveling, and living in the area. (Tr. at 6: 4–9; 21: 3–6.)

9. The City and Petitioner agreed that the proposed facility was located in a zoning district where such uses are permitted as special exceptions. (Tr. at 4: 7–10.)

10. Although remonstrators did appear at the public hearing, no property owner adjoining the proposed tower spoke in opposition to the facility. (Tr. at 21: 7–11, 19–23; 23: 12–14.) Nor did the owner of nearby Bent Creek subdivision speak in opposition. (Tr. at 21: 19–23.) The remonstrators, many of whom lived over a mile from the proposed site of the facility, offered no factual evidence in opposition to the facility. (Tr. at 12–15.) Rather, they made generalized comments about the aesthetic appearance of the tower and argued that the tower should not be approved because of potential, future changes to the City's Comprehensive Plan for the vicinity surrounding the tower.[3] (Tr. at 7–19.).

11. On November 6, 2015, the City denied the special exception in a letter indicating the findings. That letter provided the following criteria and the findings which are included here in italics:

> 1. Criteria: The establishment, maintenance, or operation of the Special Exception will not be detrimental to or endanger the public health, safety, morals, or general welfare:
> **Finding:** *It is unlikely that allowing a Wireless Communication Service Facility on the Property would be injurious to the public health, safety, morals, and general welfare of the community. Wireless communication facilities are located nearby, and there is no evidence of harm to the community as a result of those facilities. Adding a new tower would increase cell/wireless service in this area of Westfield.*
>
> 2. Criteria: The Special Exception will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property value within the neighborhood:

[3] For example, remonstrator Ginny Kelleher testified "I do not live next to this. So, this is not an in-my-backyard thing. I'm here because I have concerns about this project." (Tr. at 7: 16–18.) She later specified her concerns that the proposed facility would, among other things, "be injurious to the use and enjoyment of neighboring properties, and it will not be harmonious or appropriate in appearance in this conservation area." (Tr. at 9: 7–10.)

Finding: *It is possible the use and value of adjacent property would be affected in a substantially adverse manner. The proposed Special Exception may have a negative impact on surrounding properties because of some general perceptions that living next to (or near) a wireless communication tower is undesirable. While there is little market evidence to support that claim, those perceptions may influence potential future home-buyers and/or negatively impact adjacent property values.*

3. Criteria: The establishment of the Special Exception will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district:
Finding: *The proposed location of the tower would be within a couple hundred feet of new home lots in a pending subdivision (Bent Creek). The tower's presence may impact the final layout of the subdivision or design decisions for lots/homes closest to the tower in order to mitigate any visual or other impact the tower may have on the development.*

4. Criteria: Adequate utilities, streets, drainage and other necessary facilities have been or are being provided:
Finding: *The use should have little or no impact on utilities, streets, drainage or other necessary facilities.*

5. Criteria: Adequate measures have been or will be taken to provide ingress and egress designed to minimize traffic congestion:
Finding: *The Special Exception is expected to have a nominal increase, if any, in the number of trips to be generated beyond that of a typical residential or agriculturally utilized property. As a result, no traffic congestion is expected.*

6. Criteria: The Special Exception will be harmonious with and in accordance with the objectives of the Comprehensive Plan:
Finding: *The Westfield-Washington Comprehensive Plan (the "Comprehensive Plan") does not address wireless communication facilities. The proposal neither frustrates nor further advances the vision of the Comprehensive Plan.*

7. Criteria: The Special Exception will be located in a Zoning District where such use is permitted and that all other requirements set forth, applicable to such Special Exception, will be met:
Finding: *The UDO contemplates the use with in the AG-SF1 (Agriculture-Single Family Rural) District. The use and Property will otherwise comply with or exceed the applicable standards of the AG-SF1 (Agriculture-Single Family Rural) District and the Wireless Communication Service Facilities ordinance.*

II. CONCLUSIONS OF LAW

A. Standing of Remonstrators.

1. In its Verified Petition for Judicial Review, Petitioner identified certain remonstrators as "parties" to this matter out of an abundance of caution and while specifically noting that none had a legally recognizable interest in the outcome of this dispute.

2. Specifically, Indiana Code § 36-7-4-1606(d)(2) states that each person "who is aggrieved by the zoning decision and entered a written appearance as an adverse party to the petition or applicant before the board hearing that led to the zoning decision, as described in section 920(h) of this chapter, is a party to the petition for review."

3. The term "aggrieved" is not defined in the statute, and, at the time of filing the Verified Petition, Petitioner made the decision to simultaneously identify the remonstrators as parties to the proceeding, while noting that none maintained a sufficient property or other interest in the outcome of this matter to be deemed "aggrieved" by the BZA's decision (Verified Petition, p. 6, fn.2). In *Bagnall v. Town of Beverly Shores*, 726 N.E.2d 782, 786 (Ind. 2000), the Indiana Supreme Court explained that:

> To be aggrieved, the petitioner must experience a substantial grievance, a denial of some personal or property right or the imposition of a burden or obligation. The board of zoning appeals' decision must infringe upon a legal right of the petitioner that will be enlarged or diminished by the result of the appeal and the petitioner's resulting injury must be pecuniary in nature. A party seeking to petition for certiorari on behalf of a community must show some special injury other than that sustained by the community as a whole.

4. Thus, while the statute does not define the term "aggrieved" as used in Indiana Code § 36-7-4-1606(d)(2), Indiana case law provides that, in order for a person to be aggrieved, that person must demonstrate a legal right or pecuniary interest that will be impacted by the outcome of the proceedings.

5. Here, while the remonstrators did enter an appearance prior to the hearing (in the form of a speaker's card) as an adverse party to the Petitioner, none has any personal or property right that would be impacted by the outcome of this dispute, and this is undisputed in the record (*i.e.*, none is the owner of any property adjoining the property which is the subject of the special exception application, and none was even entitled to any personal notice of the application's filing). (Tr. at 7:3-4 (respecting speaker cards); 11:23; 14:17-18; 21:7-11, 19-23; and 23:12-14 and *See* Hamilton County Notification List.).

6. In addition, no remonstrator made any showing or provided any evidence at the hearing that he or she would suffer any injury as a result of the BZA's decision. It is clear that no remonstrator will suffer any injury that is pecuniary in nature as a result of the outcome of this matter, and, therefore, none could be aggrieved by the outcome of these proceedings. As such, Remonstrators have no standing in this matter.

7. Petitioner has not waived the issue of standing by naming the Remonstrators in this action. The Court appreciates the Petitioner's concern of including the certain named remonstrators in this action in order to ensure those adverse, but not aggrieved, to the special exception were notified of their Verified Petition for Judicial Review.

B. The Special Exception Application and Decision.

1. This matter arises from the BZA's denial of Petitioner's special exception application.

2. Under Indiana law, if a petitioner for a special exception presents sufficient evidence of compliance with the relevant statutory requirements, the exception must be granted. *Town of Merrillville Bd. of Zoning Appeals v. Public Storage, Inc.*, 568 N.E.2d 1092, 1095 (Ind. Ct. App. 1991).

3. The *Town of Merrillville* case also noted that while some special exception ordinances are regulatory in nature and require an applicant to show compliance with objective standards (*e.g.*, setbacks, structural specifications, etc.), providing the board of zoning appeals with very little, if any, discretion, some special exception ordinances provide a zoning board with a discernable amount of discretion (*e.g.*, those which require an applicant to show that its use will not injure the public health, comfort, convenience, welfare, and morals). *Merrillville*, 568 N.E.2d at 1095 n.3; see also *Midwest Minerals v. BZA*, 880 N.E.2d 1264 (Ind. Ct. App. 2008).

4. When a zoning ordinance provides the board of zoning appeals with a discernable amount of discretion, the board is entitled to exercise its discretion. *Crooked Creek Conservation and Gun Club, Inc. v. Hamilton County Board of Zoning Appeals*, 677 N.E.2d 544, 548 (Ind. Ct. App. 1987). Here, the special exception criteria under the UDO include several criteria that granted the BZA discretion (*e.g.*, the special exception will not be injurious to the general welfare; special exception will not be substantially affect the use or value of other property; and the special exception will be harmonious with and in accordance with the objectives of the Comprehensive Plan). See *Midwest Minerals*, 880 N.E.2d at 1269 (all three criteria of the ordinance were found to "involve discretionary decision making").

5. However, Indiana case law makes clear that a board's discretion is not unfettered. Due process requires that a board, in exercising its discretion, make findings of fact based upon substantial evidence in the record in order to support its decision. *Merrillville*, 568 N.E.2d at 1094; *Midwest Minerals Inc.*, 880 N.E.2d at 1269. In this same vein, the Court in the *Network Towers* case concluded that "the Board had the discretion to deny the Permit, even if Network met all the other conditions, provided the evidence supported a finding that the tower would not serve the public welfare." *Network Towers v. Board of Zoning Appeals of LaPorte County,*

Indiana, 770 N.E.2d 837, 843 (Ind. Ct. App. 2002) (Emphasis added). The requirement for findings relative to stated criteria and supported by substantial evidence is the essence of due process and the basis for meaningful judicial review. It should also be noted that the board in *Network Towers* failed to find that the tower would not serve the public welfare, just as the BZA here also found it unlikely that the tower would endanger the public welfare. *Network Towers*, 770 N.E.2d at 843. (Letter at 1, fn. 4 *infra).*

6. No authority cited by the BZA or the Remonstrators provides that a board of zoning appeals has an independent right to deny a special exception in its complete discretion, even if the petitioner demonstrates compliance with the stated criteria. Rather, a board's discretion is tied to the standards set forth in the underlying zoning ordinance, and its decisions must include basic findings of fact and ultimate conclusions supported by substantial evidence in the record. To conclude otherwise, the board would be permitted to approve or deny special exceptions without regard to any standard, thereby promoting arbitrary decision making, denying parties' due process rights, and rendering meaningful judicial review impossible. While Courts have recognized that the criteria set forth in the underlying zoning ordinance establishes the degree of discretion available to a board in determining a special exception, none has found that a board has such discretion that would nevertheless permit denial of a petition where the applicant satisfied all criteria for the approval.

7. The Westfield UDO's use of the word "may" in relation to the BZA's approval of special exception applications refers to its authority to approve such applications pursuant to the legislatively established criteria for such uses. UDO Article 10.11(D). The term "may" in this context in no way authorizes the withholding of a special exception where an applicant demonstrates compliance with the criteria because such an interpretation would lead to arbitrary decision making without standards and render judicial review meaningless. This Court wholly

disagrees with the argument that the BZA may deny a special exception once the BZA determines that an applicant has complied with each of the criteria contained in the ordinance. If the BZA determines that the applicant has satisfied each criteria of the ordinance, then the BZA must approve the special exception.

8. Courts in Indiana have long recognized that the form and content of written findings and conclusions are of great importance because the findings and conclusions provide the basis for judicial review and assure that the parties before the board are afforded due process, while protecting against careless or arbitrary administrative action. *Pack v. Indiana Family and Social Services Administration*, 935 N.E.2d 1218, 1222 (Ind. Ct. App. 2010); *Town of Merrillville Bd. of Zoning Appeals v. Public Storage, Inc.*, 568 N.E.2d 1092, 1094 (Ind. Ct. App. 1991). Specifically, written findings must determine what the facts are and state those as findings of basic fact. These basic findings, in turn, must form the basis for the agency's decision or ultimate finding. *Pack* at 1223; *see also*, *Town of Merrillville*, 568 N.E.2d at 1094 (holding that a board of zoning appeals has a duty to enter both specific findings of fact and ultimate findings or determinations). Such findings "must be tailored to address specific facts presented to the Board." *Network Towers, LLC v. Board of Zoning Appeals of LaPorte County, Indiana*, 770 N.E.2d 837, 844 (Ind. Ct. App. 2002). "These basic findings of fact are not sufficient to support the board's ultimate findings if they are merely a general replication of the requirements of the ordinance at issue." *Metropolitan Bd. Of Zoning Appeals, Div. II, Marion County, v. Gunn,* 477 N.E.2d 289, 300 (Ind. Ct. App. 1985). Conclusory findings unsupported by factual findings are inadequate as a matter of law. *Network Towers*, 770 N.E.2d at 844. Conclusory findings, unsupported by facts in the record, constitute an abuse of discretion requiring reversal of the BZA's decision. *Id.*

9. With respect to findings 1, 4, 5, 6, and 7, the BZA adopted a statement supportive of the proposal and supporting approval of the special exception.

10. The statements in five of the seven findings (1, 4, 5-7) support approval of Petitioner's special exception. As a result, this matter must be determined with respect to the two remaining findings, finding number 2 and finding number 3.

11. With respect to finding number 2, the BZA fails to make an ultimate finding of fact relative to the criteria specified in the City's Ordinance. The finding states that "[i]t is possible the use and value of adjacent property would be affected in a substantially adverse manner." The language in the finding does not follow the standard set forth in the City's ordinance—that standard asks whether the tower will be "designed, constructed, operated, and maintained," so as not to be "injurious to the use and enjoyment of other property" and not "substantially diminish and impair property value within the neighborhood." UDO, Article 10.11(D).

12. The BZA's finding does not link the "possibility" of an adverse impact on the use and value of adjacent property to the tower's "design, construction, operation or maintenance," but rather attributes the "possibility" to unspecified "perceptions" about cell towers generally.

13. Here, the BZA failed to make an ultimate finding of fact on the central factual question before it as presented by finding 2, namely, whether the proposed tower's design, construction, operation and maintenance would "substantially diminish and impair property value within the neighborhood." Rather, finding 2 states there is "little market evidence to support that claim". The Court cannot discern where in the record the BZA finds "little market evidence". The Petitioner's own evidence showed that in a similar neighborhood, the property closest to a cell tower had the least value of nearby parcels. However, because of the lack of any specificity within the BZA's findings, the Court cannot guess whether this is the evidence they

are citing or something else. Additionally, in the context in which the BZA states that "there is little market evidence," it seems to be saying that the Petitioner's evidence and argument that a cell tower will not substantially be adverse to property values, has not been rebutted. Either way, the conclusory way in which the BZA wrote finding 2, makes it impossible for this Court to determine whether the BZA found the Petitioner met its burden or not. This Court is troubled by the fact that the findings adopted by the BZA make no reference to any evidence in the record and were, in fact, *prepared before the public hearing on the special exception*, making such findings a factual impossibility.

14. The only factual evidence in the record on the subject of property values depicts the growth of a residential subdivision immediately adjacent to a cell tower with home values ranging from $350,000 to over $400,000. (Petitioner's Packet distributed during rebuttal presentation for Petition No. 1510-SE-03) Finding 2 is arbitrary and not based on any evidence in the record whatsoever. Finding 2 is deficient as a matter law and fails to include any basic or ultimate findings of fact. As a result, the BZA's decision must be remanded for a determination whether the Petitioner met its burden.

15. Similarly, with respect to finding 3, the BZA found that the "tower's presence may impact the final layout of the [Bent Creek] subdivision or design for lots/homes closest to the tower in order to mitigate any visual or other impact the tower may have on the development." This language was apparently adopted to find that the special exception "will impede the normal and orderly development" of the surrounding area. This finding does not conclude that the tower's presence actually will have any impact on the subdivision and contemplates that the subdivision will be built, not that its development will be impeded.

16. At the special exception hearing, Petitioner also noted that the owner of the nearby Bent Creek subdivision did not remonstrate against the tower.[4] Again, the only evidence in the record on this point was Petitioner's exhibit showing how the location of a similar facility in an adjoining jurisdiction (along the same street as the proposed tower) had no impact on the development of a high value residential subdivision. (Tr. at 22:8-25; 23:1-11; Petitioner's Packet distributed during rebuttal presentation for Petition No. 1510-SE-03). To the extent finding 3 may be read to support the denial of the special exception, it is legally deficient because it too is not supported by the evidence in the record — rather, it rests only upon unfounded speculation — nor does it actually reach an ultimate conclusion of fact meeting the standard set forth in the Ordinance and as required by law. Finding 3 is deficient as a matter of law and must be remanded for a determination whether the Petitioner met its burden.

17. The BZA quotes *dicta* from the *Ripley County* case to the effect that an applicant may not shift its burden of proving that each criteria for a special exception is met to either the board or the remonstrators. (BZA's Brief at 8). However, in the later published *Crooked Creek Conservation* case, the Court of Appeals clarified the requirements for findings where a board determines that an applicant has failed to meet its burden. In *Crooked Creek*, the Court observed:

> [I]n the event that boards of zoning appeals deny applications for special exceptions upon the grounds that the applicant failed to carry its burden to show compliance with the relevant statutory criteria, boards would be well advised to at least state as much in their findings and to point out what they see as any deficiency in the applicant's evidence. Boards should be able to perform this task without improperly assuming the burden of negating the

[4] Moreover, those that did remonstrate did not own property adjoining the proposed tower and offered only generalized comments about the aesthetic appearance of the tower and concern for tower with regards to the potential, future changes to the City's Comprehensive Plan. As a result, the remonstrators lack standing upon judicial review because they would not be "aggrieved" by the special exception and have no legal right or pecuniary interest that would be enlarged or diminished by the special exception. *See Thomas v. Blackford Cnty. Area Board of Zoning Appeals and Oolman Dairy, LLC*, 907 N.E.2d 988, 991 (Ind. 2009).

applicant's case. *Crooked Creek Conservation and Gun Club, Inc. v. Hamilton County Board of Zoning Appeals*, 677 N.E.2d 544, 548, n.1 (Ind. Ct. App. 1997).

18. In this matter, none of the BZA's findings state that the applicant failed to meet its burden of demonstrating compliance with each criteria. Similarly, none points out any deficiency with the applicant's evidence. To the contrary, five of the seven findings clearly support approval of the special exception, and the findings relating to the second and third criteria may or may not support the special exception. Each simply fails to make specific findings, refer to any evidence in the record or reach an ultimate conclusion as required by law, and the BZA has expressly conceded these points in its briefing.

III. FINAL JUDGMENT

Based upon the foregoing Findings of Fact and Conclusions of Law, the Court finds in favor of Crown Castle. Accordingly, it is Ordered, Adjudged, and Decreed that BZA's denial of Crown Castle's application for a special exception is hereby set aside, and this action is remanded to the BZA for final disposition of Crown Castle's petition and instructs the Board to accept further evidence from Crown Castle and/or aggrieved parties on the two issues of whether: (1) the Special Exception will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property value within the neighborhood; and (2) the establishment of the Special Exception will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district and for further proceedings consistent with this judgment.

So Ordered this 15 day of April, 2016.

Judge, Hamilton County Circuit Court

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