WEXFORD COUNTY PLANNING COMMISSION
REGULAR MEETING

SEPTEMBER 10, 2014 - 7:00 P.M.

Wexford County Services Building
401 North Lake Street
Cadillac, Michigan

BOARD MEMBERS PRESENT:
Corey Wiggins, Chairperson David Middaugh
David Stoutenburg Gordon Mitchell
Beverly Monroe Michael Mix

ALSO PRESENT:
Michael Green, Zoning Administrator
Robert LaBelle, attorney for Verizon
Stephen Estey, attorney for Verizon
Bob Przybylo, Verizon
Dinyar Buhariwalla, RF engineer for Verizon

Wendell Johnson, attorney for the Wilsons

Reported by: Kathleen Tulick, CSR 4601
Certified Shorthand Reporter
231-946-8086

Cadillac, Michigan
Wednesday, September 10, 2014 - 7:00 p.m.

MR. WIGGINS (chairperson): Okay. It is 7:04. I'll call the meeting to order. Can we have a roll call, please?
MR. GREEN: Okay. Mix?
MR. MIX: Here.
MR. GREEN: Monroe?
MS. MONROE: Here.
MR. GREEN: Middaugh?
MR. MIDDAUGH: Here.
MR. GREEN: Stoutenburg?
MR. STOUTENBURG: Here.
MR. GREEN: Mitchell?
MR. MITCHELL: Here.
MR. GREEN: Wiggins?
MR. WIGGINS: Here.
MR. GREEN: Osborne?
(No response)
MR. WIGGINS: Okay. Approval of the agenda.
MR. MIX: I would like to add agenda item 7(b), and we will just call it the turn down of Verizon tower on South 29 and 115.
MR. MITCHELL: And this is for the purpose of?

MR. MIX: We will discuss it when we get to it.
MR. MITCHELL: So it's for discussion?
MR. MIX: Yeah.
MR. WIGGINS: I'm sorry, what was the location?
MR. MIX: 29 Road and M-115.
MR. GREEN: Okay. Mr. Chairman?
MR. WIGGINS: Yes.
MR. GREEN: The representatives from Verizon were wanting to make a change to the public hearing order. I can let them explain what they are asking for, if you'd like.
MR. WIGGINS: Okay.
MR. ESTEY: Sure, I'll address that. My name is Steve Estey. I'm an attorney representing Verizon Wireless. We received a copy of your agenda this evening, and we were just looking through it and it seemed a little unorthodox on remand to have the public give comment before the applicant had an opportunity to set forth its position on remand. So I don't have a problem with public comment obviously, but we were really just requesting that we have the ability to go first before the commission and explain our position.
MR. WIGGINS: Okay. So we want to switch 7(a)(iii) and (iv) around.
MR. ESTEY: Mm-hmm.

MR. WIGGINS: And change that to -- okay.
MS. MONROE: I believe there's a correction under the 14-003, make sure everybody has that.
MR. WIGGINS: Mike, the special use permit number, did that actually change? Are we still at 14-002?
MR. GREEN: Let's see, let me check on that. I've got the file right here. My folder says it's SUP14-002.
MR. ESTEY: I believe that's correct.
MR. GREEN: Mm-hmm.
MS. MONROE: Are you sure?
MR. GREEN: There's a ZBA number that's different.
MR. ESTEY: Yeah. The confusion was created because the ZBA identified them as 002, 003 and 004 also, but switched them. So it created a little bit of confusion in our eyes when we looked at it.
MR. WIGGINS: Anything else?
MR. MIX: I make a motion to approve the agenda.
MR. MIDDAUGH: Second.
MR. WIGGINS: All those in favor, as amended, all those in favor?
MR. GREEN: Who was the second?
MR. WIGGINS: Second was --
MR. MIX: Mitchell.
MR. GREEN: Okay. Thank you.

0af728a6-5afe-4124-b233-350e67d392c9

1 MR. WIGGINS: All those in favor?
2 BOARD MEMBERS: Ayes.
3 MR. WIGGINS: Opposed?
4 (No response)
5 MR. WIGGINS: Okay. So moving on to the approval
6 of the June 11, 2014 minutes.
7 MR. MIX: I make a motion we approve the June 11
8 meeting minutes as written.
9 MR. MITCHELL: Support.
10 MR. WIGGINS: So was that Mitchell support?
11 MR. MITCHELL: Correct.
12 MR. WIGGINS: Moved and seconded. All those in
13 favor say aye.
14 BOARD MEMBERS: Ayes.
15 MR. WIGGINS: Opposed?
16 (No response)
17 MR. WIGGINS: Hearing none, the motion passes.
18 Mike, do we have correspondence not related to public
19 hearings?
20 MR. GREEN: No, I don't have anything.
21 MR. WIGGINS: Any other business, number 6?
22 MR. GREEN: No.
23 MR. WIGGINS: Okay. Moving on to item number 7,
24 old business. Special use permit number 14-002,
25 Verizon Wireless, tax ID number 2310-32-1201, Colfax

1 Township; a request to erect a 300-foot wireless tower
2 and equipment shelter. Zoned agricultural/
3 residential. This is a special use permit that was
4 granted on May 14, 2014 by the Planning Commission,
5 then remanded back to the Planning Commission for
6 further review by the Zoning Board of Appeals on July
7 21, 2014.
8 Mike, do you want to elaborate on that?
9 MR. GREEN: Well, I think, I mean, the description
10 pretty much says what we're doing. You had a copy --
11 you have an updated copy of the minutes from July 21,
12 2014 from the Zoning Board of Appeals. Really, not
13 much has changed as far as except a couple of
14 corrections that are highlighted on there.
15 So the motion -- excuse me one minute here. The
16 motion that was made was by Wiersma with support by
17 Prebay to uphold the appeal -- excuse me, no, I'm
18 sorry, I'm reading the wrong one. Let me back up.
19 Oh, I'm sorry, I'm getting something wrong here.
20 Oh, okay. I'm sorry, I was reading it right. There
21 was two motions, excuse me. There was a motion that
22 failed on the 2 to 2 tie vote to uphold the appeal by
23 Mr. Wilson. The motion failed. The second motion was
24 made by Adams, support by Swank to remand the decision
25 to the Planning Commission for further review. The

1 motion carried by 3 to 1 roll call vote with Wiersma
2 voting against.
3 So I did talk to the prosecuting attorney to make
4 sure that we could do this. He assured me at least to
5 his best knowledge based on his read of the ordinance
6 that it was okay to come back here and re-hear this.
7 So I've also talked to representatives of Verizon
8 about the possibility or told them there's the option
9 of re-applying with a clean application or just
10 re-application for the same one, because I did not find
11 any ordinance section that said that they cannot.
12 MR. WIGGINS: That they cannot re-apply?
13 MR. GREEN: Right. There's nothing that gives
14 them a time limit or a time freeze for them to come
15 back again.
16 MS. MONROE: Is this a re-apply or --
17 MR. GREEN: This is the remanding. We're doing
18 what the Zoning Board of Appeals asked us to do and
19 we're just taking it back again. So, and that's why
20 the number is the same as it was before just to
21 indicate that it's the same application.
22 MS. MONROE: I have a question for Corey. When we
23 have a tie like that what's the usual --
24 MR. WIGGINS: When you have a tie on a motion?
25 MS. MONROE: Mm-hmm.

1 MR. WIGGINS: The motion dies.
2 MS. MONROE: I didn't know that.
3 MR. WIGGINS: Is there anything else, Mike?
4 MR. GREEN: Other than what's in the written
5 record I have nothing to expound on, unless you have
6 questions, which I'm sure there's a lot of questions
7 about the meeting, but it's all in the minutes, at
8 least everything I put in there. I know that perhaps
9 there might be other points that other members might
10 have. Bev, you might want to make points if you want
11 to add to what was said, you know, you are welcome to
12 do that.
13 MR. WIGGINS: Okay. Then I guess we will turn it
14 over to Verizon.
15 MR. ESTEY: Thank you. Good evening, Members of
16 the Planning Commission, Mr. Chair. My name is Steve
17 Estey. I'm an attorney, as I said, with Dykema
18 representing Verizon Wireless. I'm a land use and
19 zoning attorney in the State of Michigan, and have been
20 practicing in that area about 17 years.
21 I think, as Mr. Green noted, a little bit of
22 history might be helpful. There were originally three
23 applications for three separate towers that were
24 brought before the Planning Commission on May 14, 2014.
25 There's the site that's before you tonight, which is

0af728a6-5afe-4124-b233-350e67d392c9

1 PSUP14-002; there's a site PSUP14-003, which was
2 approved by this Planning Commission and not appealed
3 to the ZBA; and then there was finally PSUP14-004,
4 which was also approved by this commission, appealed to
5 the ZBA, and the ZBA upheld that appeal, and that's now
6 the subject of a federal lawsuit.
7 All three of the applications that were before you
8 were approved by the Planning Commission. And Verizon,
9 obviously, believes that this commission looked at all
10 of the evidence, concluded that there was not
11 substantial evidence in the record as a basis to deny
12 any of the applications and that your decision was
13 correct.
14 When we appeared before the ZBA on the two
15 applications that were appealed we informed the ZBA
16 that your decision should, in fact, be upheld and that
17 your decision was correct, and that there was no
18 evidence to the contrary that was submitted that would
19 be a sufficient basis in law to reverse it.
20 The Planning Commission obviously -- I'm sorry.
21 The Zoning Board of Appeals, obviously, disagreed with
22 us on one site and upheld the appeal, and, again,
23 that's the subject of a current federal lawsuit. The
24 second site, which is this site that's before you
25 tonight, was remanded to the Planning Commission for

1 further consideration.
2 As a preliminary matter, Section 11.7 of your
3 ordinance states that if the Zoning Board of Appeals
4 sends the application back to the Planning Commission
5 they shall also send a detailed record of their
6 findings and the reasons for their action on remand.
7 Was that done, do you know? Just as a point of order.
8 MR. MITCHELL: That's what I was going to ask.
9 MR. WIGGINS: The minutes just simply state they
10 included the comments of the public. The motion was to
11 remand the decision to the Planning Commission for
12 further review.
13 MR. ESTEY: So you don't have any separate record
14 or written report from the ZBA; is that a fair
15 statement?
16 MR. WIGGINS: That is our -- as of right now that
17 I'm aware of, yes.
18 MR. ESTEY: Okay. Well, let me just say, there
19 was a court reporter present at the ZBA hearings, and
20 let me tell you what my reading of that particular
21 proceeding was, and I understand you don't have the
22 benefit of this report pursuant to 11.7 of your
23 ordinance or probably the transcript itself.
24 But I believe it's clear from the record that the
25 remand was limited to three particular issues before

1 this board, which means that I think the ZBA upheld
2 your decisions or at least in reverse, your decisions
3 as to all other issues on the actual application. And
4 those issues were limited to whether the applicant
5 presented evidence of alternate locations to be
6 considered for the tower, whether the applicant
7 addressed the particular height of the tower and the
8 need for that height, and whether the reduction of the
9 setbacks was an appropriate decision by this Planning
10 Commission.
11 There was an additional piece of evidence that was
12 presented by the appellant to this Zoning Board of
13 Appeals. I don't know if it's been submitted to this
14 board or not, but it was a letter from an attorney from
15 out of state, from Washington I believe, that you may
16 or may not have seen it or it may or may not come up
17 tonight. It's dated July 17, 2014.
18 The only thing I would note for this Planning
19 Commission with respect to that letter is it isn't
20 evidence. It was submitted by an attorney not licensed
21 in the State of Michigan. It's a self-serving letter
22 effectively on behalf of the appellant. It's hearsay,
23 and the individual that wrote it was not present at the
24 Planning Commission proceedings, didn't review the
25 transcripts, wasn't present at the ZBA proceeding

1 either. This letter was submitted for the first time
2 at the ZBA hearing, and it purports to make statements
3 about comments that Mr. LaBelle made related to the
4 Telecommunications Act that are, frankly, inaccurate.
5 So to the extent that that comes up from the
6 appellant side tonight I want to point out I don't
7 think that's an appropriate document that should be
8 considered at all. I don't even think it's evidence,
9 and it certainly doesn't meet the standard of
10 substantial evidence in the record, nor was it in the
11 record.
12 So the only other thing I would ask is that,
13 obviously, the applicant is here tonight on remand, we
14 would like to address the items that the ZBA was
15 dealing with pursuant to the appellant's application,
16 and we have some supplemental materials we also want to
17 provide to you. So I'm going to turn it over to Mr.
18 Przybylo and he'll present that information to you.
19 Again, I want to reiterate that we feel that this
20 Planning Commission made the correct decision the first
21 time around. The reason that this sort of got off the
22 rails, if anything, is because unfortunately the
23 minutes don't reflect fully the two hours worth of
24 testimony, evidence and all of the material that was
25 put in before you at that hearing. There is a

0af728a6-5afe-4124-b233-350e67d392c9

1 substantial amount of information that you heard, a
2 substantial amount of information that you weighed and
3 reviewed, and then you rendered your decision.
4 The ZBA did not have the benefit, unfortunately, I
5 think of viewing all of that information at the time.
6 And the member from the Planning Commission that was
7 also a member of the ZBA recused themself. So there
8 was not the benefit of that person even to put that
9 information before the ZBA.
10 So it's unfortunate that at least that one site
11 where the appeal is upheld is now the subject of a
12 federal lawsuit. We're hoping that that can be
13 resolved, but it's nothing that this Planning
14 Commission did. This Planning Commission correctly
15 approved the application. That suit was filed against
16 the Zoning Board of Appeals for what we feel was an
17 error in law relative to their decision to uphold the
18 appeal.
19 So we will ask you at the end of our presentation,
20 obviously, to affirm the decision you previously made
21 and continue to approve the application.
22 The last thing I would point out is the one site
23 that was not appealed, which is what we call our site
24 3027 but it's actually your number PSUP14-003, had
25 virtually all the same issues that you are going to

1 hear tonight, and this Planning Commission approved
2 that site, it was not appealed, and it's a final site
3 and permits have been issued in fact.
4 So it really also establishes, again, that the
5 Planning Commission's decision was correct in all
6 respects in approving these applications on the evening
7 of May 14, 2014 when they were originally approved.
8 So with that I'll turn it over to Bob. And, Bob,
9 if you can address the Planning Commission, and then we
10 will be happy to entertain any questions that you have.
11 MS. MONROE: Quick question.
12 MR. WIGGINS: I want to stop just for a quick
13 second, because something just popped into my head, and
14 in the interest of full disclosure I want to bring this
15 up. I'm an attorney. I have represented Haring
16 Township in negotiations of a lease, two leases now,
17 with Verizon Wireless. I also represented Verizon
18 Wireless once in a collection matter. They were not my
19 direct clients. I was representing Alltel at the time
20 and the buy-out became my client.
21 So I want to, before we go any further, I want to
22 disclose that now while I'm thinking about it, and I
23 guess it's up to the board, the commission, to decide
24 whether or not there's a conflict.
25 MR. MITCHELL: I don't believe so.

1 PUBLIC VOICE: Are you backing out?
2 MR. MITCHELL: I don't believe there's a conflict
3 on this board.
4 MR. MIX: I have none.
5 MR. WIGGINS: Mike, do you want to put that to a
6 vote?
7 MR. GREEN: Okay. Sure.
8 MS. MONROE: Do you need a motion?
9 MR. WIGGINS: Yes.
10 MS. MONROE: I make a motion that the conflict is
11 not substantial.
12 MR. STOUTENBURG: Support.
13 MR. MITCHELL: Second.
14 MR. GREEN: Okay. I'm sorry, excuse me for a
15 minute.
16 MS. MONROE: I have a quick question.
17 MR. WIGGINS: Let's get a vote on the motion
18 first.
19 MR. GREEN: So I have a motion by Monroe, support
20 by who?
21 MR. STOUTENBURG: Me.
22 MR. GREEN: Okay. And that there was no
23 substantial conflict.
24 MS. MONROE: Yes.
25 MR. GREEN: Okay. Okay. Thank you for waiting

1 for me. Okay. You want a roll call on that?
2 MR. MIX: May I ask a question before we vote?
3 MR. GREEN: Sure.
4 MR. MIX: A yes vote keeps Corey involved in
5 this; is that correct?
6 MR. GREEN: Yes. Because the motion is that
7 there's no substantial conflict.
8 MR. JOHNSON: Could I inquire?
9 MR. WIGGINS: Sure.
10 MR. JOHNSON: How long ago was that
11 representation?
12 MR. WIGGINS: When I actually represented Verizon
13 that would have been back in 2008 roughly. And when I
14 represented Haring Township, it's been, I think the
15 last time was in 2013, and before that I think it was
16 2010, and in that case I represented a township that
17 was negotiating a lease with Verizon. I did not
18 represent Verizon in that matter.
19 PUBLIC VOICE: Are you ready to back them up yet?
20 MR. MITCHELL: Go ahead.
21 MR. WIGGINS: Let's take the votes I guess.
22 MR. GREEN: Okay. Motion, just to recap the
23 motion by Monroe, support by Stoutenburg, that there's
24 no substantial conflict of interest. And I'm assuming
25 that means that you are voting to keep him on the

0af728a6-5afe-4124-b233-350e67d392c9

table; correct?
MR. MITCHELL: So a yes vote would keep him here, and a no vote would not.
MR. GREEN: Yes. Okay. All right. Mix?
MR. MIX: Yes.
MR. GREEN: Monroe?
MS. MONROE: Yes.
MR. GREEN: Middaugh?
MR. MIDDAUGH: Yes.
MR. GREEN: Stoutenburg?
MR. STOUTENBURG: Yes.
MR. GREEN: Mitchell?
MR. MITCHELL: Yes.
MR. GREEN: Wiggins?
MR. WIGGINS: I abstain.
MR. GREEN: Okay. Just want to make sure. Okay.
MR. WIGGINS: Okay. With that said, I can tell you, to put the public's mind at ease, it has no influence on my vote one way or the other.
MS. MONROE: My quick question was, maybe I should ask Mike Green, but could we ever see those transcripts?
MR. WIGGINS: Yeah. Mike, were those ours or did we have the reporter there?
MR. GREEN: No, they were not ours. I believe

they were Verizon's.
MR. ESTEY: That's correct.
MR. WIGGINS: Okay. So I'm going to ask, and this is a little bit out of the order of the agenda, but I think it's pertinent at this point, our liaison, what her understanding of the remand was from the ZBA. Were we limited to three specific items or were we sent all the way back?
MS. MONROE: I don't recall that at all. The remand was kind of thrown out there with not a lot of background as to why it should be done that way. My thinking was perhaps they should have debated and taken a re-vote. The remand is covered under --
PUBLIC VOICE: Can you speak up a little bit, please?
MS. MONROE: -- site plan review. However, it's not really covered under the Zoning Board of Appeals procedure part of the ordinances. So there was some question in my mind about that, and I also talked to Tony Badovinac and he said that it could go either way.
MR. WIGGINS: Mike, what was your understanding of the remand?
MR. GREEN: Well, that's why I asked Corey. The context of the writing is actually the site plan review, it's not the special use section. However,

site plan review is part of the special use permit. So in part we're addressing the decision, and in part we're not.
But, anyway, the wording in 11.7, which is the site plan review article, says that "the appeal board shall determine if there exists a significant reason to have the Planning Commission re-examine the site plan. If the board sends the application back to the Planning Commission they also send a detailed record of their finding reasons," and so that's why you have the minutes with you, but that's for site plan review.
Tony felt comfortable at least giving us the go-ahead for this meeting to do so. I don't know if that meant that he was totally sold that this was, this wording gives us the go, but --
MR. WIGGINS: I guess that's not necessarily my concern. My concern is whether we are limited to certain aspects of our review or if the whole thing was sent back to us --
MR. GREEN: No.
MR. WIGGINS: -- for review.
MS. MONROE: Shouldn't our information have included this letter that was --
MR. GREEN: Actually, if I can back up in that paragraph.

MS. MONROE: Okay.
MR. GREEN: If I may, it says when there's an appeal of a decision of the Planning Commission it says there shall be no new evidence. "The appellant shall not have the right to present new evidence but shall be bound by the record for the Planning Commission." So everything that was brought to the Zoning Board of Appeals really was not admissible in the first place, because it was new evidence.
So this -- but this is kind of a do-over. So this is where the new evidence can come back, because it's a new one, it's a re-hearing of it, because you guys can bring evidence or collect it.
MS. MONROE: So I don't see anywhere where we talk about re-hearing. Does remand allow new evidence?
MR. WIGGINS: Yeah. I'm just trying to get clarification as to what we're -- if we had specific issues we're supposed to look at or not, so --
MR. GREEN: I wrote the minutes. The motion is what it was. It was read back to me verbatim. It says remanded for further review. There's nothing more that that was told in that motion. There was discussion about it, but that motion was simply remand it back to the Planning Commission.
MR. WIGGINS: Okay.

0af728a6-5afe-4124-b233-350e67d392c9

Page 21

1 MR. GREEN: I asked the person making the motion
2 to repeat it back to me and that's what it said.
3 MR. ESTEY: And I'm happy to comment on that if
4 you'd like. I don't disagree with Mr. Green. He
5 accurately reflected the way the motion was worded, but
6 the motion was sort of an extended discussion that
7 began with Mr. Wiersma, and he started to make the
8 motion basically saying that he wasn't convinced that
9 the co-location of the tower issue or alternate sites
10 was reviewed and then he wanted to review the setbacks
11 and have it, and then there was basically a motion to
12 uphold the appeal, which was denied.
13 And then there was this discussion by Mr. Adams to
14 make this motion to remand, and basically he, Mr.
15 Adams, kept referring to I would like to make a motion
16 the Planning Commission re-examine this site plan, and
17 then in due diligence the document, that they report on
18 this issue in greater detail with full input from the
19 public. This issue was what he was referring back to
20 what Mr. Wiersma was referencing in his original
21 motion.
22 And so that's where I view that the remand was
23 limited to these three issues. Obviously, you can, you
24 know, review however you deem to see fit, but I'm not
25 trying to fool anybody.

Page 22

1 MR. WIGGINS: Sure.
2 MR. ESTEY: Just when I read through the
3 transcript it seemed to me that the basis of the motion
4 was limited to those three particular issues that the
5 ZBA was looking for more information for.
6 MR. WIGGINS: Okay.
7 MR. JOHNSON: Mr. Chair, I was at that meeting and
8 there was no limitation put on the discussion and the
9 second motion was let's just send it back. It's back
10 at step one. There are no restrictions on this. There
11 can't be. This board is bound by the minutes. They
12 sent it back. It's a remand to consider the
13 application.
14 MR. WIGGINS: My thought is along those same
15 lines, and since we have no clarification, it was just
16 sent back according to the minutes on remand, so we
17 will go ahead and proceed as if we're looking at this
18 for the first time, unless there's any objection to
19 that from the board. Okay. So back over to Verizon I
20 guess.
21 MR. GREEN: Right.
22 MR. PRZYBYLO: Okay. Great. If you don't
23 remember me from before, my name is Bob Przybylo and I
24 represent Verizon Wireless. My colleague, Rob, is
25 passing out some supplemental information. This is all

Page 23

1 information that we actually covered in the first
2 hearing that we've talked about. We just -- I've just
3 written it down and we will go over it quickly to save
4 everyone's time.
5 A general overview. The basic reason why we are
6 here is because Verizon Wireless would like to improve
7 their network in Wexford County, in particular Colfax
8 Township, and for a general geographic area, 24 Road
9 and 29 Road area of the township is what this site is
10 designed to improve the coverage of that area.
11 There was testimony at the Zoning Board of Appeals
12 by a woman who had a rollover accident, it was a four
13 and a half car rollover accident in that area, that was
14 unable to use her phone between her and the other
15 occupant in the car. One had an AT&T phone, one had
16 the Verizon phone, and neither one had service to be
17 able to call 911.
18 There was also testimony by Mike Green at the
19 Zoning Board of Appeals who either lives in that area,
20 I can't remember, or travels in that area and testified
21 that there is no coverage in that area.
22 The reason I bring that up is that's unbiased
23 evidence that there is no coverage. It's not just us
24 telling you there's no coverage. There is no coverage.
25 Your residents are telling you that there's no coverage

Page 24

1 in that area, and the point of us being here is to
2 improve that.
3 So I would point you to -- let me step back. When
4 we come into a community and we look to place a new
5 site to improve coverage the first thing we look at is
6 the zoning ordinance of the municipality, the
7 jurisdiction, in this case Wexford County. We review
8 that ordinance to find out what the rules and
9 regulations are of the county as it pertains to new
10 cell towers or new cell sites, whether it's
11 co-locations and new towers.
12 It's always our preference to co-locate on an
13 existing tower wherever possible. It is an issue of
14 speed the market for us. We can get our antennas up
15 and on the air faster in most cases if we co-locate on
16 existing structures, whether it be a water tank,
17 whether it be an existing building, whether it be an
18 existing tower.
19 If there is not an existing structure in the area
20 that meets our coverage objectives or our engineer's
21 coverage criteria, then we have no other choice but to
22 build a structure to get the appropriate height for the
23 antennas that we need to meet those coverage
24 objectives.
25 In this particular area there are no existing

0af728a6-5afe-4124-b233-350e67d392c9

towers that meet our coverage objectives. So with that I'll roll into more specifics as we talk about Section 3(A)(7), special land use permits, subsection B, towers, and we go through sub-item 1, all of these issues were addressed in the last meeting. If we go down to subsection G, my letter refers to all of these items that they want a description, that the county wants a description of compliance, the first one being 4(C), and that would be Exhibit A of your packet. This is a list of all of the existing Verizon Wireless cell sites in the county.

If you can see, there are five existing sites in the county. Four out of those five sites are co-locations on existing towers. We co-located on an existing monopole tower. We co-located on a water tower in Haring Township, which is probably what Mr. Wiggins was referring to. We co-located on an AT&T monopole. We co-located on a self-support tower owned by American Tower, and then we did build one what we call raw land, one new site, and that was on Wexford County property, at the Wexford County Road Commission property.

So I point that out just, again, to reiterate that co-location is our first, our first choice whenever possible, whenever it is feasible for us to do that.

The next item is 3(A)(D). That item refers to aesthetics of the tower. It talks about the painting and color of the equipment on the ground, as well as screening from public rights-of-way. The existing -- or the proposed tower I should say will be a galvanized steel finish, which is what the ordinance requires. The equipment building will be of an aggregate beige finish. The backup emergency power generator is the steel painted beige, a noncorrosive beige color. The backup emergency power propane tank is just a plain and simple white.

We did not propose any landscaping at this site due to the fact of its location from the public right-of-way. We are approximately 750 feet setback from the public right-of-way. The property that we are on is surrounded by tall mature trees in all four directions. So even along 24 Road there is a huge line of mature trees. If you've visited the site you can see that. So the fact of us being able to screen the site back 750 feet is really moot, because it's screened from the existing public right-of-way.

The next item is sub-item E. That refers to lighting. The only thing I would say about lighting is we're mandated by the FCC to light the tower. In this particular case this tower will be lighted. It's over

200 feet, so the FCC will require it to be lighted.

I've been in many hearings where residents have voiced concern about the lighting, about, you know, lighting glaring into their bedrooms and being kept up at night. We do use a new flash technology type lighting system. It's not the old lighting that you see on old towers where the light cascades 360 degrees all over the place. The new lighting technology is the lighting beam is a horizontal beam. So it doesn't cascade down below the height of the lighting on the tower, and we will be using that technology in this particular site.

The next item is item F. That refers to state and federal requirements. The only thing that I would say about that is that Verizon Wireless's facility will comply with all federal, state and local laws, rules and regulations. I mean, we're bound by that and we will honor that.

The next is subsection G, the building codes. Again, Verizon Wireless will comply with all applicable building codes and standards not only from the county but from the state as well, and we will be bound by the requirements in this section.

The next subsection is J. J refers to franchises and our rights to be here. We do have an FCC license

that we purchased that gives us the right to provide wireless communication service in Wexford County. And we will be happy to provide a copy of that license or licenses if the county deems that necessary as a condition of approval.

The next item is subsection L. L refers to signage. The only signage on the tower is what's required by us by the FCC. There won't be any signage on the tower. There won't be any signage on the fence that's advertising saying, you know, come get a Verizon phone, "Can You Hear Me Now." There will be no advertising. The only signage is what's required by us by law.

The next item is sub-item M, buildings and support equipment. Again, this just talks about, this talks about the equipment or refers to 3(A)(8), and some specifics about what is required about the setbacks of the equipment, the equipment buildings, and we will comply with all of those items of that section.

The next item, then we go to Section 3(A)(7)(B)(4), which is where we start to get into the meat of probably what we're going to really discuss here tonight, and that is setbacks. The ordinance states that the tower must be setback a distance equal to or at least the height of the tower from any

0af728a6-5afe-4124-b233-350e67d392c9

adjoining lot line of the parent parcel, that's 3(A)(7)(4) sub A. Prior to that in the setbacks column it also says that, halfway through the sentence, "however, that the Planning Commission may reduce the standard setback requirements if the goals of this ordinance would be better served."

As a part of your packet I have attached in here Exhibit B, which is what we would consider a fall zone letter. This is a already stamped by a licensed engineer in the State of Michigan that describes in the unlikely event that this self-support tower fails that it's designed to fall upon itself or fold over, if you will. In the unlikely event that there's a catastrophic failure at the base of the tower this tower is designed to fall within 300 feet. Our setback from the closest property line is 300 feet. So by the ordinance we do meet the setback definition.

The next item is Section 3(A)(5), separation. In this section it refers to Table 1 where it talks about the separation from the tower to any offsite uses or zoned land. In this particular case it's really the first item that's the issue where it talks about single family or two family residential units. The ordinance requires 200 feet or 300 percent of the tower, whichever is greater. In this particular case it would

be 300 percent, which would be 900 feet. Again, in the separation section it does give the ability for the Planning Commission to reduce that separation requirement if it feels the ordinance would be better served.

Again, if you remember at the first meeting we had a lot of discussion about this. We are not currently 300 percent from the nearest residential structure, but we are over 200 percent from the nearest residential structure. So being the nearest residential structure was 657 feet away.

There was discussion at the first meeting of, and this I'm going off the top of my head, that was that 300 percent necessary if we're setback from the property line the height of the tower, is that sufficient to meet this requirement. And the Planning Commission agreed or believed with us that they felt that that was sufficient.

Again, we have provided a fall zone letter that states how the tower will fail and will definitely stay within that 300 feet. Again, we are over 200 percent away from the nearest residential structure.

And then I would refer to the ordinance goes on to talk about -- just a second. And then, again, if we continue to move on from 3(A)(7)(B)(1) from G to H it

talks about statement of co-location. We have provided, again, we talked about it at the first meeting, that we have provided this letter as a condition of approval. We have provided a letter in this packet from the real estate manager for Verizon Wireless here in the State of Michigan that the tower will be designed for two additional carriers, so for a total of three. So there will be the ability for co-location.

The next section, subsection I, talks about the backhall network. We bring fiberoptic cable to every one of our cell sites. So whoever the fiberoptic provider is in this area, there's usually more than one, we will bid that work out to them from their nearest demark, and then we will award that bid to them, and then they will be the one that provides that backhall.

So the short answer is, we don't have that information now but we would be happy to provide it once that bid is won, if you want to make that a condition of approval.

The next is subsection J, which talks about the suitability of existing towers or structures for alternative technologies. That would refer us to Exhibit D, which, again, these are propagation maps.

There's also a letter here from our RF engineer, who's on his way. He's running late because of bad weather in the Detroit area. He got a slow start.

But these propagation maps show, the first one shows the network as it stands today, and you can see on the top it says "before plots." The next one shows the plot of the AT&T microwave tower, which is really going to be an issue that I'm sure is going to be brought up tonight. There is an existing AT&T tower approximately 1.6 miles southeast or 8,500 and some change feet southeast of our proposed tower. The ordinance requires a tower separation rule of 10,000 feet. This plot shows what that -- what our coverage looks like at what we project to be the available RAD center on that AT&T site. And the final propagation map shows what our network would look like if this site was built 300 feet.

So let me go through and kind of talk about these in layman's terms. I mean, it looks like a lot of pretty colors, but let me talk about what you're seeing here.

So in general simplistic terms, and I'm not an RF engineer, so that's how I prefer to talk, what you are looking at are coverage of -- if you look at the "before plot" you are looking at how our network is

0af728a6-5afe-4124-b233-350e67d392c9

1 operating right now based on data that's real-time data
2 that we're getting from our cell sites.
3 What you see in green is what we would call
4 optimum coverage, that's in-building coverage, in your
5 car, outdoors, that is 100 percent coverage. In the
6 perfect world we would want this whole map to be all
7 green. If you were in an urban area this map would be
8 all green.
9 If you step away from the green the next level
10 would be a blue coverage, and I would consider green to
11 be 100 percent coverage. Blue would be your next level
12 of coverage, if you will, and I would equate that to 75
13 percent coverage. We have good coverage in the area.
14 It's not the optimum coverage that we want, but it
15 would provide 75 percent of what I would call a success
16 rate on making calls and transferring data and using
17 data on your phone.
18 If you step down in the red is what I would call a
19 50 percent success rate in the red. You would have a
20 50 percent success rate of making calls and of
21 transferring data using your phone for data purposes.
22 And the white would be no coverage.
23 PUBLIC VOICE: Excuse me, who can get coverage?
24 MR. MITCHELL: No, sir, you can't talk.
25 MR. PRZYBYLO: So the white would be what we would

1 consider no coverage, okay, from our network
2 standpoint.
3 Now, to say all this, there's also a caveat, to
4 say in the white someone could say I'm standing in that
5 white and I can make a call. We're not saying that you
6 would never make a call. What we're saying is your
7 probability is very low that you are going to continue
8 to be able to make a call, stay on that call, transfer
9 data, you know, update your Facebook, send Instagram
10 photos, that sort of thing. So that's the general look
11 at the plot.
12 You now can look at the AT&T tower, which we did
13 evaluate and we did talk about this, again, at the
14 first meeting. We evaluated this between this site and
15 the site, our site 3020, which is the subject of a
16 lawsuit. This site almost fits exactly in the middle
17 of those two sites. It's almost exactly in the middle
18 of them, which is what presents the problem to us. It
19 doesn't provide enough coverage to the south and it
20 doesn't provide enough coverage to the north. So even
21 if we were to use this tower we would still have to
22 come to you for two more sites.
23 So, yes, we can co-locate on it, but it doesn't
24 solve the problem of eliminating any need for towers.
25 It just results in us having to add. So instead of two

1 sites here we now need three sites. But you can see
2 from the AT&T site there's very limited green, there's
3 not that much blue, and there's a whole lot of red, and
4 if you compare that to our site that we're proposing
5 you can see there's a lot more green and a lot more
6 blue. So that explains the plots.
7 Again, we have a letter that we provided that's
8 the last page of the document from our RF engineer who
9 in their analysis determined that 300 feet is the
10 minimum height necessary for us in this particular
11 location to meet the coverage objectives.
12 So that's the gist of what I had to say, and,
13 again, I'll be happy to answer questions for you, and
14 I'll turn it over to Rob.
15 MR. LABELLE: I'm going to talk about just shortly
16 what we talked about before with regard to the
17 Telecommunications Act. I do want to make comment on
18 two other things that Bob talked about.
19 The first thing is those propagation maps in your
20 hand. Those are not the guesses of an RF engineer.
21 Those are based on hard data and computer modeling by
22 someone who has 20 years experience in the field as
23 well as a radio frequency engineering degree. This is
24 not something in which is someone making assumptions.
25 This is based on hard data.

1 The second thing I wanted to note is we were
2 talking about a fall zone in terms of in the unlikely
3 event of the failure of the tower. That is an
4 amazingly unlikely event. Towers, in fact, stay up.
5 For example, if you look back on the information about
6 Hurricane Katrina you'll find that the only thing that
7 still operated after the hurricane was over were the
8 cell towers. They didn't come down. They continued to
9 operate after that time period while most of the
10 landlines were, in fact, severed during that time
11 period.
12 The same thing can be found when you look at, for
13 example, descriptions of a tornado swatch. You can see
14 situations where the entire area looks like devastation
15 and right in the middle of it is a cell phone tower
16 still standing. These things are made to withstand
17 just about anything and they don't come down. They
18 have an extremely much better success rate than say,
19 for example, telephone poles or even trees.
20 So in this circumstance when you are talking about
21 your setback requirements, as far as safety is
22 concerned 200 percent is well within the requirements
23 necessary that you don't require, for example, for
24 telephone poles and trees. So from that standpoint I'm
25 basically pointing out the fact that we're not talking

0af728a6-5afe-4124-b233-350e67d392c9

1 about a failure rate of any kind of significance, in
2 fact, virtually zero.
3 With regard to the Telecommunications Act, a
4 couple of things there. The first thing, the
5 Telecommunications Act is one that creates our right to
6 be able to get these licenses that Bob referred to in
7 the first place. Those licenses give us the right,
8 which we purchased from the FCC for the purpose of
9 being able to provide telecommunication services within
10 an area. As part of those licenses we commit to the
11 FCC that we will provide coverage on the greatest
12 extent possible with regard to basically keeping the
13 license as a condition to the license. So for the
14 process of actually getting these sites in place it's
15 not only a matter of business, it's a matter of trying
16 to get these things in a full coverage.
17 The Telecommunications Act itself, if you look at
18 the legislative history behind it, you'll see that one
19 of the basic reasons for the existence of this in the
20 first place was to make for nationwide coverage. There
21 was an acknowledgement that with regard to our
22 liability, with regard to effectiveness and with regard
23 to things like safety that cell phones were, in fact, a
24 great deal better communication source than landlines.
25 And to that end, at this day more people have cell

1 phones alone with no landline at all than do not. At
2 this point there are more homes out there that don't
3 have a landline at all and rely totally on their cell
4 phones.
5 Homeland Security has noted the fact that these
6 particular cell phones constitute a strong first line
7 of defense with regard to dealing with issues that
8 first responders or even for that matter terrorism. So
9 from the standpoint of these processes, the
10 Telecommunications Act was designed to be able to get
11 nationwide coverage.
12 So from that standpoint the reason why we're here
13 at all, the reason why we're doing any of this has to
14 do with the congressional mandate that exists to
15 establish that, this nationwide coverage.
16 Now, I will read you a couple of things that I've
17 read to you before with regard to our previous time
18 here at the Planning Commission. It is the portion of
19 the Telecommunications Act which talks about the
20 limitations on local zoning authority and what they can
21 do and what they can't.
22 In the original minutes of this I was personally
23 characterized as saying that a zoning board has no
24 ability to say no to a telecommunications tower. That
25 is, in fact, not what I said. What I said was that you

1 retain the discretion that you would have with regard
2 to use of your ordinance and establishment of your
3 ordinance and, in fact, noting that you have compliance
4 with the ordinance, but there are certain limitations
5 on the application of that discretion you have.
6 Let me read you two of them. The first one said,
7 "The regulation of the placement, construction and
8 modification of personal wireless service facilities by
9 any state or local government or instrumentality
10 thereof shall not prohibit or have the effect of
11 prohibiting the provision of personal wireless
12 services." The circumstance that was described just a
13 few moments ago by Bob is the fact that right now there
14 is a prohibition, there is no personal services at this
15 point. You don't have them.
16 If by application here, by the denial of a permit
17 of this special land use permit in this circumstance,
18 you keep those two poles to the north and south that
19 was discussed by Bob, that is the effect of prohibiting
20 personal wireless services. That's what I talked about
21 previously.
22 If you have a reason to deny, this is what the
23 Telecommunications Act says. "Any decision by a state
24 or local government or instrumentality thereof to deny
25 a request to place, construct or modify personal

1 wireless service facilities shall be in writing and
2 shall be supported by substantial evidence contained in
3 a written record."
4 The substantial evidence standard has been, in
5 fact, considered by a number of courts, including the
6 Sixth Circuit Court of Appeals, which is the one that
7 governs the State of Michigan. It has been very clear
8 that when they are talking about evidence that's
9 exactly what they are talking about, evidence. Not
10 supposition, not the suggestion that there was a
11 problem or even a question by, you know, for example,
12 someone saying, well, I can get service, that's not
13 evidence against the fact that there is, in fact, a
14 gap. We have presented evidence, but if you simply
15 have the assertions in your record, that's not
16 substantial evidence.
17 The last thing I want to mention, and only because
18 it might come up in a circumstance, is the last
19 prohibition, which says, "No state or local government
20 or instrumentality thereof may regulate the placement,
21 construction and modification of personal wireless
22 service facilities on the basis of the environmental
23 effects of radio frequency emissions to the extent that
24 such facilities comply with the Commission's
25 regulations concerning such emissions."

0af728a6-5afe-4124-b233-350e67d392c9

1 Bob has already presented you with the information
2 regarding the fact that we do, in fact, comply with the
3 FCC's rigorous standards to us with regard to our
4 emissions.
5 I would also point out that a cell tower creates,
6 despite the fact that you will hear the phrase
7 radiation, this is not radiation in a layperson's
8 sense. What most people think of when they think of
9 radiation is they are thinking of ionizing radiation.
10 That's the kind of radiation that has an effect on
11 human tissue like x-rays. What we're talking about in
12 this case are radio waves, and basically those are
13 non-ionizing radiation.
14 And I'm not going to go into any more detail about
15 it than that, other than to say you can look to the
16 American Cancer Society website, an independent source,
17 which says specifically that there is no evidence
18 supporting the effect of cell towers as having any
19 deleterious health effects.
20 MR. ESTEY: And I would just conclude by saying,
21 you know, we believe that the initial decision,
22 although it was only 4 to 1 I believe, of the Planning
23 Commission that affirmed this particular application
24 was correct. It saw that there was not substantial
25 evidence in the record to rebut positions that Verizon

1 submitted.
2 I think the problem was, and I can't emphasize
3 this enough, I think that unfortunately through
4 whatever or however it occurred the record that was
5 presented to the ZBA was incomplete, be it that all of
6 this didn't get into the minutes or what not. That's
7 why there's a court reporter here tonight. It will all
8 be in the minutes. If it's not in the minutes it will
9 be in the transcript.
10 But the point is that I don't think the ZBA would
11 have put this back here if they had seen all of this,
12 because I think you did your job, and I don't think
13 that the other site would have been upheld on appeal
14 and now be in a federal lawsuit if the ZBA had seen all
15 of the evidence, because they would have recognized
16 they didn't have a basis to overturn it, but I think
17 through a series of unfortunate circumstances the
18 minutes didn't fully reflect everything that was put
19 before this commission.
20 So I just want to reiterate. We think you did
21 everything right the first time. We think that you
22 appropriately approved the application. We think we
23 submitted the evidence into the record that
24 demonstrated that you should approve it. We think we
25 have done that again here tonight. We have

1 supplemented the record to address any additional
2 concerns that may be raised.
3 To the extent that there is this issue related to
4 environmental permits and what not raised, I think that
5 the case law makes clear that, you know, we don't have
6 to have permits in hand when we come to you, we just
7 have to get them to construct the site, and that's part
8 of the permitting and approval process. And,
9 obviously, if we can't get them we won't build them,
10 but there's a particular case up in New York, Lucas vs.
11 Planning Board, which addresses this issue, and I don't
12 believe that's a legitimate basis to deny an
13 application before you.
14 So I would reserve our opportunity I guess to
15 address whatever the appellants are going to raise
16 before this commission, and certainly any questions
17 that this commission has. But, again, we feel that the
18 commission made the correct decision the first time,
19 and we would urge you to do so again. Thank you.
20 MR. WIGGINS: Okay. At this point I'm going to
21 turn it over to public comment. I'll ask that you
22 state your name for the record, so we've got it. And,
23 am I correct, we try to limit public comment to three
24 minutes?
25 MR. GREEN: That is your option, but, yes.

1 MR. WIGGINS: And one other thing. To the extent
2 if we can keep it limited to things that haven't been
3 brought up. I mean, you can state you agree with
4 somebody. We don't need to rehash the same thing over
5 and over. So with that said, any public comment? Yes.
6 MR. BARNES: Roy Barnes, I live about three-
7 quarters of a mile down the road, and I know that
8 there's a lock on it, and there's supposedly a lawsuit
9 going against it, and this is hearsay, but it gets to
10 where I have to be on one side of my house and be able
11 to talk. I was just got on the phone tonight with
12 Verizon, because my internet wasn't working right,
13 because it wasn't loading the way it's supposed to. I
14 have a bad connection. I get -- it jumps from just the
15 towers that you see and if it's loaded down to 1X, it
16 can be 1X to 4G in just a second, bounces back and
17 forth.
18 And there's somebody that decides that, he's out
19 of state or not, not out of state but almost, he's in
20 Lansing, and he's got somebody that has a deal with a
21 helicopter with the sheriff's department that I have
22 seen land next door, but is blocking this situation. I
23 don't know what his name is or nothing. But for me, I
24 don't have a whole lot of money, but I'd like to be
25 able to not throw my cell phone across the room because

0af728a6-5afe-4124-b233-350e67d392c9

I got disconnected, and a $600 cell phone to me is a lot of money. Flying in with a sheriff department helicopter to me is a lot of money, and trying to find a way to put that where he wants to put it still, to me, I'd like to be able to make a call.

MR. WIGGINS: Okay.

MR. BARNES: That's all I have to say.

MR. WIGGINS: Okay. Thank you. Anybody else? Yes.

MR. OLIVER: I'm Terry Oliver, Selma Township supervisor, 3280 Maplewood Drive, Cadillac. I'm just here voicing my opinion on some of the constituents in my township, and the concern is that some of these things aren't -- the ordinances, they aren't complying with the ordinance, and all I'm asking is the board really think this through. Once the infrastructure is up there that everything is in place, and if it does happen that they go by the laws and the laws and regulations, and that's a big concern of my constituents.

so I just wanted to voice my opinion on it. I had my constituents, quite a few, ask me to come here and voice my opinion on it. So, thank you.

MR. WIGGINS: Okay. Thank you. Yes.

MR. BOYD: Mike Boyd. I'm on the board of Selma

Township. I'm also here representing my constituents. I realize that we need cell service and we need it everywhere, so we can get it. I guess my only problem is where the placement of this tower is, I mean, with all the federal forest land and stuff out there why does it have to be in someone's backyard?

And, again, they say they can't use the AT&T tower because it's -- and I'm not an engineer, so I don't know. Okay. So they can't use it, and they would have to build another tower. Well, couldn't they put the other tower some place less conspicuous to make that one work and so on?

And also, I got a question too. I'm not a lawyer, but when the appeal was sent back isn't this supposed to go to circuit court? No?

MR. GREEN: We've already discussed that.

MR. WIGGINS: It's two different things.

MR. BOYD: But, anyway, I'd like this board to reconsider and stand up for the citizens rather than the cell phone company.

MR. WIGGINS: Yes.

MR. KNAPP: John Knapp, I reside at 2345 29 Mile Road. I was here at the meeting when the young lady spoke of her unfortunate accident and wasn't able to connect through Verizon. I'm not positive I heard her

say what this gentleman said, that there was a AT&T phone in the vehicle. I guess my question is that I have AT&T coverage, I travel that area quite often, and I have no concern with coverage on AT&T. Maybe there is with Verizon.

But also being a resident in the area I can feel for these folks here who have to look at and stare at the tower when there are other opportunities. There's 4,000 or 5,000 acres of public land in the area where the towers would not have to be viewed by citizens that moved into that area for a reason, to escape lights, towers, things of that nature.

I was just hoping that maybe the board could re-evaluate or give them an opportunity to, as was mentioned at the appeal, to look at putting the towers possibly on state land, which they said could be done, to where only people passing through that state land have to view the towers and not citizens that support paying taxes in the community will have to look at and see those towers every minute that they are at their house. Thank you.

MR. WIGGINS: Okay. Yes.

MR. DONOVAN: My name is Patrick Donovan. I live at 2069 South 29 Road in Selma Township. And I'm objecting to the issuance of a permit for the tower on

24 Road principally because it's key to the lawsuit that covers the proposed tower that's going to be just down the road from my home on 29 Road.

And as I read the zoning ordinance I call your attention to Article 1, Section 1.3, scope, which says that the ordinance is to be the minimum requirements, and "whenever the requirements of the ordinance are at variance with the requirements of other lawfully adopted rules, regulations or restrictions or with existing easements, covenants or other agreements between parties, the requirements imposing the more restrictive standard shall govern."

Now, all I've been asking for since May 14 is adherence to the minimum requirements of the zoning law, and that requires that 10,000 foot isolation from an existing tower, and that requires 300 percent setback from a property line.

I've also asked that even though there's new technology on these lights that these towers are going to go in that the towers be shrouded, because not everybody's bedroom is going to be level with the base of the tower.

And also, I'm not an attorney, but I did review the Telecommunications Act and I did a word search on it, and I could not find the word Verizon anywhere in

0af728a6-5afe-4124-b233-350e67d392c9

1 the Telecommunications Act, and this is not Verizon's
2 act. It's an act for all the telecommunications
3 companies, and I haven't heard any evidence either on
4 May 14 or this evening that says there's somewhere in
5 this proposed area for these three towers where you
6 can't make a phone call on a cell phone. It's not just
7 Verizon's system.
8 And I asked in the May 14 meeting to avoid
9 redundancy of tower placement that we look at
10 co-location, and it's required by the zoning ordinance
11 as a minimum requirement. Thank you.
12 MR. WIGGINS: Thank you. Yes.
13 MR. ZIETZ: My name is Randy Zietz, and I live on
14 24 Road across from the proposed tower location.
15 Basically, I don't like the idea of the tower being
16 there because I don't want to see it. I mean, that is
17 the number one thing. I've been there 33 years. I'm
18 there and stayed there because I like the area and I
19 like the way it is. I like the partial agriculture and
20 forest and residential location.
21 Second of all, I don't understand the absolute
22 need to put it where they want to put it, because I
23 have Verizon. I have good phone connection. I have
24 the internet. I have no problem whatsoever. I do
25 agree when you drop into the valley from the area you

1 do lose reception, I can see that point, but where I'm
2 at I'm not understanding that.
3 Earlier Bob referred to a car accident where the
4 people could not use the phone. I came across that
5 accident probably about 15 minutes after it occurred.
6 The vehicle was in a valley and it went down into a
7 lower area, it was lower than the road. You know, I
8 don't know that Verizon's mission should be to be able
9 to make cell phone access 100 percent in every
10 basement, corner, valley, nook, cranny, behind trees or
11 hills or anything like that. That's just my opinion.
12 I don't know that we have to do that, that it has to be
13 that way.
14 I do know that like three-eighths of a mile
15 located to the west of the area there's township
16 property. There should be state forest, federal forest
17 in that area that should be available. To me, I think
18 that should be looked at. It has like no neighbors to
19 worry about or almost none. That's all I have to say.
20 Thank you.
21 MR. WIGGINS: Anybody else?
22 MR. BARNES: Possible?
23 MR. WIGGINS: Let's give everybody else a run-
24 through first before we come back.
25 MR. BARNES: Anybody else?

1 MR. JOHNSON: My name is Wendell Johnson, and I'm
2 an attorney from Traverse City, Smith & Johnson, 603
3 Bay Street. I'm here representing John Wilson, his
4 mother and daughter, owners of the property adjacent to
5 the west of the applicant's property. I handled the
6 appeal that took this matter to the ZBA and got it back
7 here.
8 I have some evidence I would like to present to
9 this board. I cannot do that within three minutes. I
10 would ask for the courtesy of additional time. The
11 applicant had nearly an hour to present their case.
12 I'd like some special disposition, if you will, from
13 this board.
14 MR. WIGGINS: How much time do you think you want?
15 MR. JOHNSON: I don't know.
16 MR. WIGGINS: Okay.
17 MR. MIX: Corey, he's an attorney.
18 MR. WIGGINS: Okay. Go ahead.
19 MR. JOHNSON: Thank you. I guess initially I
20 appreciate that. I want to point out that the land
21 we're talking about is residential property. This
22 isn't commercial. This isn't industrial. What we're
23 talking about is a drastic change of use for that
24 area. We oppose not the towers but the location that's
25 been selected for a variety of reasons.

1 Principally, this site violates your zoning
2 ordinance. This site is not, and under the federal law
3 that's been referred to tangentially here, is not the
4 least intrusive alternative location. And, finally,
5 there are available other suitable existing towers that
6 are out there.
7 I guess I'd like to inquire initially, because I
8 see a smaller crowd here, what notice was given for
9 tonight's meeting?
10 MR. GREEN: 300 feet from the property, everyone
11 within 300 feet from the property was notified as
12 required by law.
13 MR. JOHNSON: Thank you. The statute that has
14 been referred to, the federal law, that allows this
15 board full power to consider what's going on, that's
16 been acknowledged here I think, that I just take a
17 second and read the preservation of local authority
18 section. It says that "nothing in this act shall limit
19 the effect of the authority of a state or local
20 government. . .," that's you, ". . .or instrumentality
21 thereof over decisions regarding the placement,
22 construction and modification of personal wireless
23 service facilities."
24 It goes on to list three -- no, four exceptions.
25 You couldn't freeze out all towers, and that's what

0af728a6-5afe-4124-b233-350e67d392c9

1 subparagraph 3 referred to by Mr. LaBelle, shall not
2 prohibit or have the effect of prohibiting provision of
3 personal wireless services. You are not. You have
4 wireless service by at least two different service
5 providers here. So that's not an issue. You have full
6 power.
7 There is -- federal law does impose certain well-
8 defined limitations, but those limitations are
9 prescribed by the governing statutes and don't
10 interfere with your authority. So I would urge you to
11 not give up any of the turf of your zoning ordinance
12 here tonight.
13 Now, the initial concern we have is on a
14 environmental approach to what's going on. I had asked
15 for an opinion on this site from an engineering firm in
16 Traverse City, Fleis & Vanderbrink. I got a letter
17 from a Harry Wierenga, which I would like to offer to
18 the board and make some comments on.
19 MR. GREEN: Could I get a copy of that for the
20 file? I'd like your letter to Verizon when you get
21 one.
22 PUBLIC VOICE: Hey, Verizon needs a letter too.
23 MR. LABELLE: We got it. Thank you.
24 MR. JOHNSON: Mr. Wierenga here in this letter had
25 not been on the site because he can't get on the

1 private property, but he viewed the property from next
2 door. He says, "We've been requested to conduct an
3 environmental impact assessment on the subject property
4 by the owner, Mr. Wilson. We were contacted because of
5 our extensive experience in land planning community
6 zoning and site plan approval for a wide range of
7 projects. These services include both submission for
8 approval and the defense in development of cellular
9 communication towers."
10 He goes on in the next to the last paragraph, "Mr.
11 Wilson and the adjoining properties in question share
12 an important wetland and associated forest that is
13 important to the quality and condition of nearby
14 Meauwataka Lake, which is fed and sustained by the
15 wetland on the properties, and on the stream that flows
16 into the lake. Any negative impacts on the drainage
17 basin or the underground hydrology that feeds and
18 sustains the wetlands from the construction of the
19 proposed tower or its use in the future would have
20 irreversible consequence on both the property owner as
21 well as those on the watershed and those that currently
22 benefit from the lake, including the users of the
23 township park."
24 Now, was the site marked? Did anyone on the board
25 here go out and look at it? Got one. The neighbors,

1 Mr. Wilson, are aware that there is a spring right near
2 the proposed site. There's wetlands near the proposed
3 site. The drilling of the footings to put that tower
4 in creates a potential that threatens the hydrology of
5 the entire area interfering with the natural flow.
6 That's on the water, and then you've got what's
7 going to be stored there. They are going to have their
8 backup generators, they are going to have propane, they
9 are going to have antenna materials containing PCBs,
10 all of which can run into the wetlands, causing, as Mr.
11 Wierenga's letter says, irreversible consequences.
12 Now, in that second paragraph of Mr. Wierenga's
13 letter he comments that he had toured the area and
14 noticed towers in other areas, and attached to his
15 letter then are photographs of a couple towers just to
16 demonstrate what is being considered in his mind, and
17 on the final page standing on Mr. Wilson's property he
18 shows what that tower is going to look like from the
19 adjacent property, and it's a pretty offensive kind of
20 look. It's not in the middle of nowhere. It is
21 offending the neighbors that live right next door and
22 throughout the neighborhood.
23 We are also concerned with safety issues. You
24 know, the proposed site that's here on this big map
25 down by Mike, the distances violate your own zoning

1 ordinance. It infringes both on the setbacks and on
2 the fall zone. Now, the Wexford County zoning
3 ordinance way back at the beginning of in the scope
4 says this zoning ordinance is the minimum requirements
5 for promoting the health, safety and welfare.
6 That's what this board is all about and having to
7 protect, and the distances that are in your zoning
8 ordinance then are minimums. When you look at the
9 section, in the tower section, 3(A)(7)(B)(5), the
10 separation is discussed in the tables and it calls for
11 a 300 percent setback from any single family residence.
12 Now, I've looked at this map over here. The
13 proposed tower is 300 feet from Mr. Wilson's land.
14 Zoning says it's supposed to be 300 percent of the
15 height of the tower, that would be 900 feet. It's only
16 setback 300, and to the nearest residence is marked at
17 492, that's not 200 percent of a 300 foot tower.
18 What we have then is the nextdoor neighbor, Mr.
19 Wilson, a law-abiding citizen being stuck with the law
20 of the zoning ordinance, that if he's going to do
21 something on his land he's going to have to set it back
22 another 600 feet onto his land. Folks, that's a
23 taking, that's an unconstitutional act by a board of
24 government saying you can't use your land for something
25 we the government did and we're not going to pay you.

0af728a6-5afe-4124-b233-350e67d392c9

You know, the placement of this tower causes my client damage to his property value, it reduces his ability to use his land. If he's going to put in some housing he then loses 600 feet of his land to set it back to create his own safety zone. And you can see from the photos attached to Mr. Wierenga's letter, this thing is going to affect the scenic quality, one of the factors this board has to consider. Again, we're not against the tower. We're against the location of the tower.

Furthermore, the location violates the zoning ordinance in its distance. You have under that Table 2 a 10,000 foot minimum requirement, but the distance from the existing tower to the proposed site, as you can see, is far less than the 10,000 feet. To the site would be 8,850 feet. The furthest distance on this land to separate it from the proposed tower would be 9,330 feet. Again, there is not space on this location to make a legitimate siting.

I call your attention to your own application form for special uses. It says everything has to be harmonious, has to be harmonious to the character of the vicinity. Well, this effectively is a commercial use of this land in a residential area. It has to be harmonious and not hazardous or disturbing to the

existing or future uses of the nearby land. Clearly, this will, when it starts using up Mr. Wilson's land. And it has to be consistent with the intent and purposes of your zoning ordinance.

I refer you to the introduction to Article 3(A) of the zoning ordinance, 3(A)(1), the purpose says, in part, the goals of the ordinance are to: "1) protect residential zoning districts from potential adverse impacts of towers and antennas; 2) encourage the location of towers in nonresidential areas; 3) minimize the total number of towers throughout the community; 4) strongly encourage the joint use of new and existing tower sites; 5) encourage users of towers and antennas to locate them to the extent possible in areas where the adverse impact on esthetics is minimal; and 8) consider the public health and safety of the communications tower."

Now, the burden of proof to get through this zoning application is not on the neighbors, it's on Verizon. The site presented to you is a clear violation of your zoning ordinance. There's many thousands of acres around. There are national park areas -- not national park, but federal forest area, and it seems like on the other tower that has been denied totally, Verizon is running off to the federal

courts, then they can maybe use some of the federal land then to satisfy their needs rather than taking private property.

We're asking that you consider the impact on the adjacent property, not just the impact on the applicant Verizon, and that you deny this application in its entirety. And a denial coming out of this board is going to have to be supported by what they say in law, substantial evidence contained in a written record.

Now, substantial evidence is defined to be "such evidence relevant in a reasonable mind might except as adequate to support a conclusion." I submit to you that what you've heard from the neighbors here speaking in opposition and the points that I have made substantiate the sufficient opposition to uphold your zoning and deny this application. Thank you, Mr. Chairman.

MR. WIGGINS: Thank you.

MR. ESTEY: May I respond, Mr. Chairman?

MR. WIGGINS: Yes, but let's just get one more public comment. He's been waiting.

MR. BARNES: What I have seen so far tonight is I know round-about the one that flies a helicopter, the ones down the street, ones that I'm going against, I'm not naming names, they are the ones that got the money.

I don't have the money. Maybe they will give me a couple dollars to shut up, I don't know, but they get, they get their way. My feeling, that's my own personal feeling.

But like I'm down the road and Mike is next door, and I'll tell you what, he probably gets less than I get for reception. I have to go to the one side of the house totally to get reception, and I get it from Boon. Verizon, like I said earlier, I talked with a tech. I got internet connection, the card, somebody is buzzing my card. He worked with it. He did everything he could, but after I set it down somebody was still buzzing my card, and he told me what I had to do. He just said take that card, take the battery out, shut her down.

And there was a survey, I give them number one, because he did what he had to do. Verizon, myself, these guys, they do good.

Myself, AT&T or whatever, I dropped AT&T. I had a landline. AT&T, they screwed me left and right, and I ended up going Verizon. Yeah, I had problems because they are still building and so on, but the money makers, they want to do what they have to do. They want their scenery, they got their gerber out back, they are making their money and stuff like this and so

0af728a6-5afe-4124-b233-350e67d392c9

on. But myself, I'd just like to be able to sit and talk on the phone without getting dropped and get so pissed off that I'm throwing it against my couch.

MR. WIGGINS: Okay. All right. Thank you. Mr. Estey.

MR. MITCHELL: Before Mr. Estey's rebuttal, Mr. Chair, if I could ask a question of this.

MR. WIGGINS: Sure.

MR. MITCHELL: It was brought up some stuff about going on state property and stuff, and now I see that your RF guy is here, what would be the impact of moving said location, and I'm sure you've plotted it out to see if it would work, can you give me the rebuttal if you did move it, how would it affect your coverage? Because I don't really know, because that's not going to be listed here.

MR. LABELLE: Before Dinyar answers, it's going to be both Bob and Dinyar. Bob is the one who is the site opposition specialist.

MR. MITCHELL: That's fine.

MR. WIGGINS: Could you give us your name for the record?

MR. BUHARIWALLA: Dinyar Buhariwalla. Do you want me to spell it?

(Laughter)

MR. WIGGINS: She can get it afterwards.

MR. BUHARIWALLA: Okay. Sorry I'm late, but anyway. So, yes, initially we did look at the print search rings. Like the source of the traffic, we look at the source of the traffic, and when I say traffic I mean the calls, the dropped calls and all this stuff. So when we do that, Myespies (phonetic), who is the tech, he tells me, he gets a lot of trouble tickets from the farm houses, farmlands northeast of, what is this?

MR. PRZYBYLO: That would be 24 and 29 Mile Road.

MR. MITCHELL: So right where that secondary tower is already, the AT&T tower.

MR. BUHARIWALLA: Almost.

MR. PRZYBYLO: He's talking about in the area of 24 Road and 29 Road.

MR. MITCHELL: Okay. Essentially, the site.

MR. MIX: Just east of it.

MR. BUHARIWALLA: So it would make sense for me to put the location of that search ring in that particular area where I get trouble tickets, where I see most of the dropped calls. And why would I see anywhere else if my problem is solved right there?

MR. ESTEY: I mean, that's the point, we're trying to fill a particular gap in coverage in a particular

area, and all three of these sites address different concerns that the company has with the gaps that you see on the maps that you have. I mean, before you is just one of them, but obviously there were two others that were part of that Planning Commission meeting. So the goal, obviously, is to fill in that entire area, so that there's adequate coverage. This is just one piece of the puzzle.

MR. MITCHELL: So you have plotted out different areas, but this was the best location?

MR. BUHARIWALLA: This was the best location, exactly.

MR. LABELLE: Basically, moving into that area would not cover the coverage gap that we're talking about.

MR. BUHARIWALLA: Exactly.

MR. MITCHELL: So moving it outside of that area is going in the opposite direction?

MR. BUHARIWALLA: Yes.

MR. MITCHELL: Thank you, Chair.

MR. ESTEY: I'd like to be brief. First, I'd like to address some of the legal points that were raised briefly. I'm not sure who raised it. I think it was the opponent's counsel, but there was a mention that there is other coverage in the community through

AT&T, maybe T-Mobile, and that so long as that other coverage is sufficient you can preclude Verizon from having a tower in this particular area to cover its lack of coverage. That is not what the law is. It is just simply not what the law is.

And Bob can talk about it in a minute, but there's a case directly on point. It's the prohibition of services when a provider is prevented from filling significant gap in its own service coverage. That's T-Mobile Cent, LLC vs. Unified Government of Wyandotte County, Kansas City, 2007, 528 FSUP 2V 1128.

MR. LABELLE: The case we're talking about in this case is the Sixth Circuit Court of Appeals decision. It's the one that governs Michigan in general. It is the case of T-Mobile Central vs. Charter Township of West Bloomfield, and in this circumstance where he was talking about is sometimes referred as the one provider rule, meaning that if only one provider is providing service in the area then that's fine, and that's not an effective prohibition.

The Sixth Circuit Court specifically said, "We must determine as a matter of first impression whether the significant gap in service focuses on the coverage of the applicant provider. . .," T-Mobile in this case, ". . .or whether service by any other provider. . .,"

0af728a6-5afe-4124-b233-350e67d392c9

1 us, Verizon, AT&T, Sprint, et cetera, ". . .is
2 sufficient."
3 "The Ninth Circuit rejected the one provider
4 rule. . .," that's what that is, ". . .and adopted a
5 standard that considers whether a provider is prevented
6 from filling a significant gap in its own service
7 coverage. In light of the FCC's endorsement of the
8 standards used by the First and Ninth Circuits
9 we. . .," meaning the Sixth Circuit Court of Appeals,
10 which governs the State of Michigan, ". . .we now adopt
11 this approach."
12 In other words, if a single provider can provide
13 in this area, that's not sufficient. Under the act an
14 effective prohibition is created if it's in our own
15 coverage. One of the major reasons for the
16 Telecommunications Act being adopted in the first place
17 was to encourage competition between providers. That's
18 not possible if the one provider rule is adopted, and
19 that's why the Sixth Circuit Court went that direction.
20 MS. MONROE: When did that opinion come down, Bob?
21 MR. LABELLE: 2012.
22 MS. MONROE: So that's not included in here;
23 correct?
24 MR. LABELLE: No.
25 MR. ESTEY: Part of what we're trying to do here

1 today is affirm your decision. We don't want you to
2 commit error. We want you to follow the law. All of
3 what I'm trying to do is reiterate that what you did
4 originally was correct and that you should do the same
5 thing tonight, and so all of this is directed to that
6 end.
7 I just want to cover a couple of points. I
8 respect the political officials who are here from Selma
9 Township, and I appreciate their concerns. To the
10 extent that their concerns are related to Verizon,
11 they can rest assured that Verizon will comply with
12 whatever the ordinance is pursuant to their approved
13 permits, but this site is not in Selma Township, it's
14 in Colfax. So I believe that they are referring to
15 different towers and different jurisdiction.
16 There was a concern raised by the resident that
17 appealed the other site that's now the subject of the
18 federal lawsuit related to this scope of the ordinance
19 in Section 1.3. I would just indicate that that
20 doesn't apply, because there is no conflict here. I
21 mean, the PC has clear discretion under its ordinance
22 to review these issues and make determinations. So
23 it's not that this tower is in violation of the
24 ordinance. It's not that, you know, somehow there's a
25 conflict. You have clear discretion to review these

1 issues and make determinations.
2 The second thing that I would point out is -- or
3 the third thing rather, is that the case law is very
4 clear that citizens' generalized expressions, while I
5 understand them from an emotional perspective of
6 aesthetics and decreases in property values and the
7 like, those are not legitimate concerns under federal
8 law for this board to consider with respect to an
9 approval or a denial of this application.
10 And I then want to now specifically turn to and
11 address the things that Mr. Johnson raised. He started
12 by indicating that this is a residential property.
13 Well, that's not a real fair characterization. This is
14 an agricultural property, it's a farm, and this tower
15 is on a farm. There are other towers that have been
16 approved in the community that are on similarly
17 situated land. So I think that's a little bit of a red
18 herring.
19 I also think that what he presented to you
20 tonight, with all due respect, was not evidence. It
21 was a lot of opinion testimony and his own
22 interpretation of the ordinance, some of which, as well
23 as federal law, some of which I think was just wrong.
24 But, secondly, let's look at the letter that he
25 submitted from this Mr., I don't know, I'll probably

1 mispronounce this, Wierenga of Fleis & Vanderbrink.
2 This letter, first of all, states by its own admission
3 that these pictures don't adequately describe the
4 view. I don't know where he got these pictures of
5 these towers. It appears that he took these towers
6 from other towers. I don't know how high they are. I
7 don't know where they were located. I don't know what
8 their design standards were, but he took some towers
9 somewhere and posed them on a picture, and he wants you
10 to believe that that's what it's going to look like on
11 this site. There is no court in the world that would
12 accept that as evidence. It's just flat out, and I
13 know Mr. Wiggins is well aware of that --
14 MR. LABELLE: And it's the wrong kind of tower.
15 That's a picture of a guyed tower.
16 MR. ESTEY: So, with all due respect, it's just
17 deceptive, and I think it's important to point that out
18 to this Planning Commission.
19 Secondly, what he does is he talks about this
20 wetland issue, and in addition to the Lucas case, which
21 I cited, while that's not an appropriate consideration
22 for this commission, and we will comply with whatever
23 wetland permits we need to get, I do want to note and
24 point out, and we're happy to give this letter to the
25 Planning Commission, I have one copy but we can get

0af728a6-5afe-4124-b233-350e67d392c9

1 additionals made, that this site is not in the wetland.
2 The wetland is 200 feet north and 300 feet south of the
3 proposed tower. So that also is a red herring.
4 MR. MITCHELL: Can we get copy of that?
5 MR. LABELLE: I can get you copies of this.
6 MR. ESTEY: This was based on a Phase I that an
7 environmental attorney from my office reviewed and
8 provided an opinion to our client about. So, again,
9 just to correct the record, the so-called evidence
10 that's being submitted on behalf of the opponent in
11 this case, and really, it sounds like only one primary
12 opponent, it just does not meet the criteria and
13 doesn't hold muster.
14 We have submitted evidence from an RF engineer
15 who's here to testify. We have an RF engineer's
16 letter. We have propagation maps. They have not hired
17 an RF expert. They haven't put before you propagation
18 maps. They haven't even pointed you to a specific
19 tower that they said we should co-locate on or provided
20 you RF propagation maps to demonstrate that that tower
21 would be sufficient. They haven't presented any
22 evidence to you that would be substantial evidence to
23 overcome the applicant and all of the evidence that the
24 applicant has put before you.
25 So if you were to weigh the evidence, what you

1 have is an attorney hired by an out-of-state resident
2 that's coming in now and opposing this particular site
3 in this community. You have residents that have
4 testified they can't get coverage. You have an RF
5 engineer who has testified that this is the only
6 potential coverage to fill this gap. You have letters
7 that indicate that's the minimum height that's needed.
8 You have propagation maps that scientifically
9 demonstrate that this is appropriate. All of which
10 supports this particular application and the weight of
11 the evidence is significantly overwhelming, frankly.
12 The opponent has presented essentially a
13 self-serving letter with false pictures attached to it,
14 and their own opinion as to how they interpret the
15 ordinance, which in and of itself is incorrect, because
16 they have alleged violations of the ordinance when this
17 commission has the authority and discretion to waive
18 certain setback criteria and make other decisions on
19 the basis of the criteria of its own ordinance, which
20 it did, it did properly, and those decisions should be
21 upheld.
22 There's absolutely nothing that's been presented
23 here today or nothing that I've heard that would
24 provide a substantial basis to overturn the prior
25 decision of this Planning Commission which should be

1 affirmed tonight.
2 MR. LABELLE: I just want to add a couple of
3 things, and it will come from that. One was related to
4 the environmental concerns. Steve already mentioned
5 the fact that we're not actually in the wetland. I'd
6 like to note, Mr. Johnson did not actually cite any law
7 that would make us not be able to go into that space
8 because of a nearby wetland, and the reason he didn't
9 is because there is none. We are regulated by the DNR
10 for purposes of doing this kind of thing. If we're not
11 in the wetland we don't require a permit.
12 I want to read you a section of our environmental
13 consultant's report. He says the "report identifies
14 wetland areas at 200 feet north and 300 feet south of
15 the proposed tower compound location, both at down
16 gradient elevations. It recommends that an EES. . ."
17 that's our analysis, ". . .for erosion control and a
18 diesel restriction be developed for this site. We
19 agree with that recommendation."
20 Those two recommendations are not required by
21 law. Those are things that we do because we do make
22 some consideration about this. We are not required by
23 the DNR to do either one of those things, because we
24 are not in the wetland, yet we will do them in both
25 cases, incurring additional costs for the purpose of

1 doing it, in order to make sure those wetlands are, in
2 fact, protected even though we are not required by law
3 to do it.
4 The second thing I want to note here is Mr.
5 Johnson referenced the substantial evidence standard
6 and read that to you. He actually read that from this
7 case, the one I've already read to you. What he failed
8 to read to you is what comes later. It says, "General
9 concerns from a few residents that the tower would be
10 ugly or the resident would not want it in his backyard
11 are not sufficient. There must be evidence, and not
12 just any evidence, evidence that is substantial, and
13 substantial evidence must be substantiated by
14 something. Substantial evidence in the usual context
15 can mean less than a preponderance but more than a
16 scintilla of evidence."
17 It then goes on to state, "Instead the cases cited
18 with the Sixth Circuit remarked that the opinion is not
19 sufficient to meet the substantial evidence
20 requirement. Consistent with the Sixth Circuit Court
21 precedent this court does not find that lay opinion
22 evidence is sufficient to satisfy the substantial
23 evidence requirement."
24 These are all things ignored by Mr. Johnson when
25 he was describing to you what, in fact, was the case.

0af728a6-5afe-4124-b233-350e67d392c9

Page 73

1 The Sixth Circuit Court of Appeals established pretty
2 substantially in what, in fact, is the standard by
3 which this substantial evidence standard has to be
4 evaluated by this Planning Commission. That's true in
5 this circumstance as well.
6 MR. ESTEY: That's all I have too, Mr. Chairman.
7 MR. WIGGINS: We have a request from a couple of
8 members of the board to take about a five-minute
9 recess, so we can use the bathroom and what not. So
10 unless there's an objection we're going to recess for
11 about five minutes or so.
12 (From 8:43 to 8:53 p.m. off record)
13 MR. WIGGINS: All right. We will reconvene at
14 8:53. What is this that was just handed out?
15 MR. PRZYBYLO: That's just pictures of the
16 signage, the markings out there.
17 MR. MITCHELL: How about the wetland document that
18 you guys had that you were reading, are we still going
19 to get a copy of that?
20 MR. LABELLE: You mean this? Yeah. Mike made
21 copies of this already.
22 MR. MITCHELL: Oh, I apologize. All I got was
23 this.
24 MR. GREEN: I've got more copies coming. You
25 didn't hand this one out to anyone else?

Page 74

1 MR. LABELLE: No, I just gave it to you.
2 MR. GREEN: Oh, okay. I only made a couple of
3 copies. There's more in the copy machine.
4 MR. MITCHELL: Is this an easement?
5 MR. PRZYBYLO: That's the staking required of the
6 public right-of-way where the proposed access entrance
7 will be as far as where the center of the tower would
8 be.
9 MR. WIGGINS: Okay. At this time we will open it
10 up to questions by the Planning Commission, if there
11 are any.
12 MR. MITCHELL: I asked my one question before you
13 opened that, so I apologize, Mr. Chair. But to just
14 revisit that to make sure everyone on the board knows
15 or didn't hear my question, it was the picture that
16 they presented us, and I asked them if this was the
17 picture of the easement, and they said yes.
18 MR. WIGGINS: Any other questions?
19 (No response)
20 MR. WIGGINS: In that case we will close the
21 public comment, and we will go into deliberation by the
22 Planning Commission.
23 MS. MONROE: I read the FCC paper too, and there
24 are things on there that I saw that were a little
25 different in some places than what Verizon has said. I

Page 75

1 noticed in there that the environmental, to deny on the
2 basis of environment is strictly related to the radio
3 frequency. It does not say whether you can deny or not
4 on wetlands, but it does say the radio frequency only,
5 you cannot use that as a basis for denial.
6 You can deny if other service is available. You
7 can deny if there are still gaps remaining, as I
8 understand it. It's not -- you are not obligated to
9 have 100 percent coverage everywhere. That was what I
10 read out of here. I can go on, if you want.
11 MR. MITCHELL: Mr. Chair?
12 MR. WIGGINS: Yes.
13 MR. MITCHELL: In talking about the FCC ruling,
14 since I'm not an attorney, my attorney is not present,
15 it's hard for me to make a decision based on the FCC
16 ruling when my layman's sense could be incorrect. I
17 don't think presenting some of the FCC ruling in effect
18 on this board is appropriate at this time.
19 I think that we just need to go off of the
20 information that was given to us by Verizon, and it
21 looks like they have done their due diligence with
22 bringing all the proposals to us and also the
23 information, the data requirements. So bringing the
24 FCC into this I don't think is necessary at this time.
25 MS. MONROE: Well, it's certainly been brought in.

Page 76

1 I just wanted to say that what the FCC rules are pretty
2 much falls right in with our zoning ordinances. A
3 couple of details were fleshed out by reading the FCC
4 ruling, but it's pretty consistent with our ordinance.
5 The ordinance follows a lot of these rules that were
6 given to us.
7 MR. MITCHELL: I don't have any other questions.
8 MR. WIGGINS: Any other comments?
9 MR. MIDDAUGH: This right here is federal land?
10 MR. MITCHELL: All the gold is federal land,
11 that's correct.
12 MR. MIDDAUGH: And the state's is --
13 MR. MITCHELL: And where they are proposing is
14 east of the federal land, but the reason why they are
15 proposing that is the RF indications that they need on
16 this map would be clearer over here and it wouldn't
17 fulfill this obligation that they are trying to fulfill
18 over here.
19 MR. MIDDAUGH: Yeah.
20 MR. MITCHELL: So that's why it's not on the map
21 in that location.
22 MR. WIGGINS: Mr. Mix, do you have anything?
23 MR. MIX: No, sir.
24 MR. WIGGINS: Mr. Stoutenburg?
25 MR. STOUTENBURG: No.

0af728a6-5afe-4124-b233-350e67d392c9

Page 77

1 MR. WIGGINS: Mr. Middaugh?
2 MR. MIDDAUGH: No, sir.
3 MR. WIGGINS: Ms. Monroe?
4 MS. MONROE: I can make a motion.
5 MR. WIGGINS: Okay.
6 MS. MONROE: Are you ready for a motion?
7 MR. WIGGINS: Certainly.
8 MS. MONROE: I would make a motion that we deny
9 this on the basis of the fact that it does not comply
10 with the master plan or the zoning ordinance purposes.
11 It has impact on the residential areas, negative impact
12 on residential areas on the basis of the proximity to
13 the neighboring lots. We had not considered a lesser
14 height, and that is a possibility.
15 Also deny on the basis of the effect on property
16 values and aesthetics and the fit and whether it's
17 harmonious, which is covered in our ordinances. Deny
18 on the basis of services available. We don't have to
19 have 100 percent coverage. There can be gaps left.
20 Some wireless coverage is available in those areas. I
21 know, I went out there and tested it myself with
22 Verizon.
23 We can also deny on the basis of public
24 opposition, and there is nothing in the evidence that
25 shows that we have ever had any --

Page 78

1 MR. MIX: Is this a motion or a speech?
2 MS. MONROE: Yes, it is a motion.
3 MR. MIX: Let's get on with the motion here.
4 MS. MONROE: It's a motion based on the fact there
5 is no evidence of prohibition of services anywhere. We
6 have approved many, many other Verizon cell towers and
7 other cell towers, and I think that the wireless
8 company has not demonstrated that there's no reasonable
9 alternative existing out there. Those are the reasons
10 for my motion of denial.
11 MR. WIGGINS: So there's a motion. Is there a
12 second?
13 MR. STOUTENBURG: Support.
14 MR. WIGGINS: Motion made by Monroe, seconded by
15 Stoutenburg.
16 MR. GREEN: Excuse me, may I interrupt? Do you
17 have this in writing? So I can --
18 MS. MONROE: Not really.
19 MR. GREEN: Can you repeat it? I mean, that was a
20 mouthful, I'm sorry.
21 MS. MONROE: Here's my notes.
22 MR. GREEN: Okay. Thank you.
23 MR. MITCHELL: Could you repeat what the motion
24 was, Mr. Chair?
25 MS. MONROE: It's a motion of denial, and I gave a

Page 79

1 list of reasons why.
2 MR. WIGGINS: Can you just summarize the reasons
3 again?
4 MR. GREEN: Yeah, go ahead.
5 MS. MONROE: It does not comply with the master
6 plan or the purposes of our zoning ordinances, because
7 of the negative impact on residential areas, because of
8 the proximity to neighboring lots, and not meeting our
9 zoning setback rules. We did not consider a lesser
10 height, which I think is something that we had the
11 option of doing, and we didn't, so I'm denying on the
12 basis of what was presented. Denying on the basis of
13 property values, aesthetics and the harmonious fit to
14 the neighborhood. Denying because service is
15 available. We are allowed to have gaps in the service.
16 We don't have to provide 100 percent coverage. Some
17 level of wireless coverage does exist there.
18 We can also deny based somewhat on public
19 opposition. We can deny because the wireless company,
20 in my opinion, has failed to demonstrate that there is
21 no reasonable alternative sites for their service. I
22 also went on to say that we do not have a practice of
23 rejecting wireless towers. So that is not a reason for
24 us to approve it, because we've already approved so
25 many of them. We do not have a practice of eliminating

Page 80

1 or prohibiting services.
2 MR. WIGGINS: Discussion on the motion?
3 (No response)
4 MR. WIGGINS: Hearing none, can we have a roll
5 call vote?
6 MR. GREEN: Okay. Mix?
7 MR. MIX: No.
8 MR. GREEN: Monroe?
9 MS. MONROE: Yes.
10 MR. GREEN: Middaugh?
11 MR. MIDDAUGH: No.
12 MR. GREEN: Stoutenburg?
13 MR. STOUTENBURG: Yes.
14 MR. GREEN: Mitchell?
15 MR. MITCHELL: No.
16 MR. GREEN: Wiggins?
17 MR. WIGGINS: No.
18 MR. GREEN: Okay. That is a 2 to 4 roll call vote
19 on the motion. The motion fails.
20 MR. MIX: Mr. Chairman, I would like to make a
21 motion.
22 MR. WIGGINS: Okay.
23 MR. MIX: I would like to make a motion to approve
24 Verizon Wireless's communication tower 2310-32-1201,
25 Colfax Township, a request to erect a 300 foot wireless

0af728a6-5afe-4124-b233-350e67d392c9

tower and equipment shelter. I would like to waive the distance between the towers and waive the setbacks. I do not have the correct numbers for that. Mike said he could add those in.

MR. GREEN: Mm-hmm.

MR. MITCHELL: Mr. Chair, if I may add, I will support Mr. Mix's motion if Article 3(A) Section 2 is also added.

MR. MIX: Can you tell me what that is?

MR. MITCHELL: That's the section allowing us the requirement -- no? The one you showed me.

MR. MIX: Oh, you are talking about that. Okay.

MR. MITCHELL: The Planning Commission may reduce the burden.

MR. MIX: It also just says that the Planning Commission may waive or reduce the burden on the applicant of one or more of these criteria, if the Planning Commission concludes that the goals of this ordinance are better served thereby.

MR. MITCHELL: So I would request Mr. Mix to add Article 3(A) Section 2, also the license being necessary in my opinion would be the information that was provided for the wetland documentation, the FCC license, and then the RF's indications of plotability, and I'll support.

MR. MIX: I will add those to my motion as Mr. Mitchell stated.

MR. WIGGINS: Moved and seconded. Moved by Mix, amended by Mix, and seconded by Mitchell. Is there any discussion on the motion?

MS. MONROE: We should have that repeated too.

MR. WIGGINS: Go ahead, can you repeat the motion?

MR. MIX: The motion is to approve Verizon Wireless 2310-32-1201, Colfax Township, a request to erect a 300 foot wireless tower and equipment shelter, and to waive Article, and I don't know the number, but it's to the distance between the towers and to waive the setbacks; and also, what was that number again, Article 3(A)(2), which says Planning Commission may waive or reduce the burden on the applicant of one or more of these criteria, if the Planning Commission concludes that the goals of this ordinance are better served.

MR. MITCHELL: With licenses deemed necessary, I'll repeat myself.

MR. MIX: Oh, okay. Go ahead.

MR. MITCHELL: With licenses deemed necessary, wetland documentation, FCC license and RF's plotting map.

MR. WIGGINS: Does everybody understand the

motion? Discussion on the motion. I have a question. Under what standard or reason are we waiving the setback requirements of the distance between the towers?

MR. MIX: We did it in Buckley last year.

MR. WIGGINS: Is that the only reason?

MR. MIX: Well --

MR. WIGGINS: I'm just asking, Mike.

MR. MIX: It's an arbitrary number. It's just picked out of the sky, and this book was written in 1995 and a lot has happened since then. We have moved forward. These wireless towers are going to be going in closer than 10,000 feet, in some areas. We live in a county with hills and trees. So that's the reason.

MR. WIGGINS: Okay.

MR. MIDDAUGH: It's real close to the 10,000.

MR. MITCHELL: We're talking 8,850. We're just shy of 10,000 feet. I don't perceive that as being an issue.

MS. MONROE: Does it have to go through a variance procedure?

MR. WIGGINS: I don't think so, because my understanding is the ordinance gives us the ability to change setbacks if it's demonstrated there's a need to do so.

MR. MITCHELL: That's my understanding as well.

MR. WIGGINS: Any other discussion on the motion?

(No response)

MR. WIGGINS: Roll call vote, please, Mike.

MR. GREEN: Okay. Mix?

MR. MIX: Yes.

MR. GREEN: Monroe?

MS. MONROE: No.

MR. GREEN: Middaugh?

MR. MIDDAUGH: Yes.

MR. GREEN: Stoutenburg?

MR. STOUTENBURG: No.

MR. GREEN: Mitchell?

MR. MITCHELL: Yes.

MR. GREEN: Wiggins?

MR. WIGGINS: Yes.

MR. GREEN: Okay. That is a 4 to 2 vote.

MR. WIGGINS: The motion carries. I'm sure they are aware of it, but do you want to explain the appellate procedures, Mike?

MR. GREEN: Mm-hmm, yes. The decision is final when the minutes are approved. After that there is a 15-day appeals process to the circuit -- or to the ZBA, excuse me, to the Zoning Board of Appeals. So if there is an appeal it would go back to the Zoning Board of

0af728a6-5afe-4124-b233-350e67d392c9

Appeals, and that's within 15 days of the final decision in writing, which is the approval of the minutes, presumably next month.

MR. WIGGINS: I would like to make a formal request that we do have a meeting next month, so we don't hold this up any longer than we need to.

MR. GREEN: Okay.

MR. MITCHELL: I'll support.

MR. WIGGINS: All those in favor of the motion to have a meeting next month to approve the minutes say aye.

BOARD MEMBERS: Ayes.

MR. WIGGINS: Opposed?

(No response)

MR. WIGGINS: Hearing none, the motion carries. Okay. Moving on to old business, 7(b), discussion to turn down the Verizon tower at 29 Road and M-115. Mr. Mix, I believe this was your addition.

MR. MIX: As we have heard, Verizon has filed a federal lawsuit against Wexford County. There's not enough difference between these two towers, and Wexford County cannot afford a lawsuit at this time. I am going to make a motion to ask Verizon to reconsider and re-apply for that wireless tower at 29 Road and 115 in an effort to stop this lawsuit from going on.

MR. MITCHELL: I would think you'd need to make a motion for that.

MR. MIX: Well, we're going to do it and I would like the board to vote on it and offer it to Verizon. Whether you take it or not, it doesn't matter, but I want to make that offer.

MR. MITCHELL: Okay.

MR. MIX: So with that said, unless you want to have discussion I will make that motion that this board vote and extend an offer to Verizon to re-apply with Mike for the wireless communication tower at 29 Road and 115.

MS. MONROE: Do we have that authority?

MR. MIX: Don't know, but we're going to try it.

MR. STOUTENBURG: I don't think you should be getting involved.

MR. WIGGINS: Just a second. We have a motion made. We need a second before we discuss it.

MR. MITCHELL: I'll support that.

MR. WIGGINS: Motion made by Mix, seconded by Mitchell. Discussion.

MR. STOUTENBURG: It's not a good idea.

MS. MONROE: I don't think you have the authority to do that.

MR. STOUTENBURG: The suit has been filed. Let

counsel take care of it. We're not here to settle lawsuits.

MR. MITCHELL: If we're just in discussion right now, I have been advised by Mr. Hinton to see if this could be settled differently with Verizon, and I was asked by other commissioners to request that Verizon, to ask them if they would consider coming back to the board with some new information and present themselves again. That's what I was told.

MR. STOUTENBURG: Why not let the county reach out and do that? Don't make us do that. It's not a good idea.

MR. WIGGINS: I tend to agree. My position on that is that it almost gives the implication that we would be finding in favor of Verizon, if we ask them to come back and re-apply, and that's a taint that I don't want this commission to have.

MR. MITCHELL: Do we know why the Zoning Board of Appeals denied their approval, their first approval, by this board?

MS. MONROE: Well, you can look in the minutes, you know.

MR. MITCHELL: I don't want -- that's, that's up for debate. There is no real reason. It doesn't give me anything. There's no clarity to it. I would like

clarity to something that I'm supposed to look at.

MR. STOUTENBURG: You'd probably need some time to get the information, and now is not the time if you want clarity on it.

MR. MITCHELL: So I think that's why we should re-look at their information and --

MS. MONROE: Well --

MR. MIX: All we're asking is for this to come back before the board.

MS. MONROE: I think it shows prejudice to ask Verizon to do that. I think you are worried about Verizon suing, but if the vote had gone the other way then there would probably be another different lawsuit, and so it's not like you are going to avoid having a lawsuit.

MR. MITCHELL: You're probably correct.

MS. MONROE: So we just do the same thing in that situation?

MR. MITCHELL: Potentially.

MR. WIGGINS: Okay. I will call the question. There was a motion made, a second and discussion. Let's do a roll call on this one, please, Mike.

MR. GREEN: Okay. Mix?

MR. MIX: Yes.

MR. GREEN: Monroe?

0af728a6-5afe-4124-b233-350e67d392c9

MS. MONROE: No.
MR. GREEN: Middaugh?
MR. MIDDAUGH: No.
MR. GREEN: Stoutenburg?
MR. STOUTENBURG: No.
MR. GREEN: Mitchell?
MR. MITCHELL: Yes.
MR. GREEN: Wiggins?
MR. WIGGINS: No.
MR. GREEN: Okay. That's a 4 to 2 against the motion.
MR. WIGGINS: The motion fails. Any new business, Mike?
MR. GREEN: No.
MR. WIGGINS: Any other public comment that we haven't already heard tonight?
(No response)
MR. WIGGINS: Hearing none, I'll hear a motion for adjournment.
MR. MIDDAUGH: So moved.
MR. MITCHELL: Support.
MR. WIGGINS: Moved by Middaugh, seconded by Mitchell. All those in favor?
BOARD MEMBERS: Ayes.
MR. WIGGINS: Opposed?

(No response)
MR. WIGGINS: Thank you, everybody. We're adjourned.

(At 9:16 p.m. meeting concluded)

--ooOOoo--

STATE OF MICHIGAN)
COUNTY OF WEXFORD)

I certify that this transcript, consisting of 91 pages, is a complete, true, and correct transcript of the proceedings and testimony taken in this case on September 10, 2014.

KATHLEEN TULICK, CSR 4806
3434 Veterans Drive
Traverse City, Michigan 49684

September 19, 2014

0af728a6-5afe-4124-b233-350e67d392c9