

**WEXFORD COUNTY ZONING BOARD OF APPEALS**  
**Meeting Minutes: Monday, November 24, 2014**  
**Human Services Building; 401 N. Lake Street**  
**7:00 PM**

1. **Call to Order:** Monroe called the meeting to order at 7:00 PM.
2. **Roll Call:** Prebay, Swank, Adams – Vice Chairperson, and Monroe - Chairperson were present. Wiersma was absent.
3. **Approval of the Agenda:** Motion was made by Adams, with support by Swank, to approve the agenda as amended. Motion carried with all in favor.
4. **Approval of the September 15, 2014 Minutes:** Motion was made by Prebay, with support by Swank, to approve the September 15, 2014 Minutes as amended by adding the following statement at the end of Item #8: “Monroe asked if the Zoning Board of Appeals members had training. They all indicated that they did not.” Motion carried with all in favor.
5. **Correspondence not related to public hearing(s):** *[None]*
6. **New Business:**
  - (a) **PZBA14-005:** Appeal of decision by Planning Commission on September 10, 2014 to approve request for the erection of a 300-foot wireless cell tower and equipment shelter. This project site is located along the south side of E. 24 Road, between N. 29 Road and N. 27 ¼ Road and is accessed by a driveway located just east of the old schoolhouse.
    - i. **Open Public Hearing and Review Request:** Monroe relinquished her role as Chairperson due to her voting on the issue as a Planning Commission member. Vice-chairperson Adams took over for the duration of the public hearing. Green suggested that time limits be placed on speakers and that information given in writing by the two parties doesn’t need to be re-read as the written documents are already a part of the permanent record. The appeal application was then read into the record by ZBA members.
    - ii. **Acknowledge Written/E-mail Comments Received:** *[None]*
    - iii. **Receive Public Comments in Favor of the Appeal:**
      - A. Wendell Johnson, attorney for John Wilson, the appellant, stated that the appeal should be upheld on the following grounds:
        - Verizon failed to show the need for a waiver of the standard separation and setback requirements and failed to show why alternate sites and towers could not be used. Johnson stated that the setback waiver constitutes a taking of part of his client’s property.
        - Environmental and aesthetic concerns identified at the Planning Commission meeting regarding wetlands were not considered, including flooding and water contamination potential.
        - The zoning of the area is for low to medium density residential. A commercial cell tower is an incompatible land use.
        - Johnson took issue with Green’s public comment about the lack of coverage in the area of the proposed tower.
      - B. Patrick Donovan, 2069 S 29 Road in Selma Township, stated that Verizon failed to

present alternate tower sites and insists on placing the tower contrary to the setback and separation requirements. He read from a letter that was entered into the public record.

**iv. Receive Public Comments in Opposition of the Appeal:**

- A. Steve Estey, an attorney representing Verizon Wireless, started by questioning the validity of a letter that was introduced at the meeting by Patrick Donovan. Estey noted that the only support for the appeal comes from the appellant and Donovan, who led the appeal of the Selma Township site. Estey pointed out that evidence presented by Verizon included radio frequency maps with and without the tower along with testimony from an RF Engineer; no evidence presented by appellant, except for a photo of the property with an out-of-scale tower superimposed in the background, which he claimed was an inaccurate representation of what the tower would actually look like. Estey also believed that the photo was not taken at the subject property, but at some other location.
- B. Roy Barnes spoke in opposition to the appeal; citing the lack of coverage in the area. Barnes stated that he is a Verizon customer and has trouble with dropped calls.

**v. Close Public Hearing for Board Comments:**

- A. Swank asked why Verizon did not look at sites on federal land, as the Federal Communications Act supports location on their land; he stated that he voted in favor of the previous appeal because this wasn't addressed.
- B. Prebay asked Roy Barnes about his phone coverage and who his carrier is; Barnes responded that he is a Verizon customer and that is coverage is spotty.
- C. Green asked for permission to address the Board of Appeals before a decision is made. Green backed up his testimony from the previous appeals hearing where he spoke of the poor coverage at his house and points north of Meauwataka to the county line; he didn't view his testimony as a personal opinion, but based on field observations. Green stated that he wouldn't be doing his job if he didn't report about the cell coverage. He also noted that state and federal laws support the provision of wireless communications, particularly in underserved areas.

- vi. Consider Motion:** Motion was made by Swank, with support by Adams, to deny the appeal and uphold the decision of the Planning Commission based on a lack of substantial evidence of record to support a denial, as is required under Section 704 of the Telecommunications Act of 1996. Swank believes the evidence points to the need for further coverage in this area. Motion carried by a 2-1 roll call vote; Prebay voted in opposition. Green informed the Zoning Board of Appeals that a decision may require a majority vote of members, which would mean that three votes would be required to approve a motion on an appeal; as a result, Green recommended that a second motion be considered. Prebay based his vote on the lack of justification for a waiver to the setback/separation tables; he asked Estey if he had a wireless tower near his house. Estey stated that there are many in the area he lives. A motion was made by Adams, with support by Swank, to deny the appeal based on the fact that the Planning Commission considered the adequacy of the setback requirements and the evidence by Verizon showing the fall zone being well away from neighboring properties; Verizon also has shown a need for a tower based on the record provided by the Planning Commission. Prebay believes that the county approved the permit out of a threat of lawsuit by Verizon. The second motion carried on a 2-1 roll call vote. The Zoning Board of Appeals took a 10 minute recess at 8:05 pm to review

documentation available to determine whether either vote constitutes a passed motion. Once the meeting was reconvened, a motion was made by Adams, with support by Swank to close the matter of PZBA14-005 pending legal review of the Michigan Zoning Enabling Act and the Zoning Board of Appeals Bylaws to determine if either motion passed on a 2-1 vote or if a majority of all members (a 3 out of 5 vote) is required to reject the appeal of the special use permit.

7. **Old Business:** *[None]*

8. **Other Business:** *[None]*

9. **Public Comment:** *[None]*

10. **Adjournment:** Motion was made by Adams, with support by Swank, to adjourn the meeting at 8:15 pm. Motion carried with all in favor.

*[This record is supplemented by an official transcript prepared by Kathleen Tulick, Northwest Reporting, dated December 2, 2014]*

Respectfully Submitted by:

Michael Green, Zoning Administrator