

WEXFORD COUNTY PLANNING COMMISSION
Regular Meeting Minutes: Wednesday September 10, 2014, 7:00 PM
Wexford County Services Building, 401 N. Lake St.
Cadillac MI 49601

1. **Call to Order:** Vice Chairperson Wiggins called the meeting to order at 7:00 PM
2. **Roll Call:** Mix, Monroe, Middaugh, Stoutenburg, Mitchell, and Wiggins were present, along with Michael Green, Zoning Administrator. Osborne was absent. Wiggins was the acting chairperson for this meeting.
3. **Approval of the Agenda:** Steve Estey, an attorney representing Verizon, asked the Planning Commission to move public comment on the special use down the agenda so that the applicant could make their presentation before public comment. Mix also requested the addition of Item #7(b) entitled "Turned down Verizon Tower at 29 Road and M-115". Motion was made by Mix, with support by Middaugh, to approve the agenda as amended. Motion carried with all in favor.
4. **Approval of the June 11, 2014 Minutes:** Motion was made by Mix, with support by Mitchell, to approve the June 11, 2014 Minutes as presented. Motion carried with all in favor.
5. **Correspondence [not related to public hearing(s)]:** *[None]*
6. **Other Business:** *[None]*
7. **Old Business:**
 - (a) **PSUP14-002: Verizon Wireless, 2310-32-1201, Colfax Township; Request to erect a 300 ft. wireless tower and equipment shelter. Zoned "Agricultural/Residential". (This is a special use permit that was granted on May 14, 2014 by the Planning Commission then remanded back to the Planning Commission for further review by the Zoning Board of Appeals on July 21, 2014.**
 - i. **Opening announcement by Chairperson describing nature of request:** Wiggins declared a potential conflict of interest by stating that he is an attorney and represented Verizon in negotiations ~~for a couple leases~~ in a collection matter and has represented Haring Township in lease negotiations with Verizon. Wiggins asked for a vote as to whether the Commission considered this as a conflict. Motion was made by Monroe, with support by Stoutenburg, to declare that Wiggins has no substantial conflict and should be allowed to participate in the special use request. Motion carried by a 5-0 roll call vote.
 - ii. **Explanation of facts and related correspondence by staff:** Green provided a written staff report and offered to answer any questions as they arise.
 - iii. **Response by applicant to issues raised in staff reports:**
 - A. Steve Estey stated that this is one of three tower sites approved by the Planning Commission. Estey also explained that the Zoning Board of Appeals overturned the approval of the Woodward Lake site at the same meeting that this site was remanded back to the Planning Commission and that the 37 Road site in Selma Township was not appealed. Estey ~~argued~~ believed that the Zoning Board of Appeals limited the remanding to three issues, including 1) whether the applicant presented evidence that other locations were considered and ruled out, 2) whether the tower height was justified,

and 3) whether the setback and separation requirements should be waived by the Planning Commission. Further, Estey refuted a letter written by Fleis and Vandenbrink on behalf of the appellant as being non-scientific in regards to potential wetlands on the property and the effects of the tower on nearby Lake Meauwataka (Dayhuff Lake). Wiggins questioned Green about whether the review was limited to the three issues specified by Mr. Estey; Green advised that it wasn't limited.

- B. Bob Przybylo, agent for Verizon, handed out an outline showing the zoning requirements and responses by the applicant in support of their request in a letter dated September 10, 2014. Przybylo pointed out testimony from Zoning Administrator Green and others about poor coverage in the area at the Zoning Board of Appeals meeting and handed out coverage maps that illustrated the spotty -coverage in the area.
- C. Rob Labelle, attorney for Verizon, noted that the RF propagation maps are scientifically-based hard data. Labelle also assured that the fall zone requirements are more than adequate considering that tower structures rarely fail, even during major wind storms such as tornadoes and hurricanes. It was also pointed out that the Telecommunications Act does give local governments authority to regulate the placement of towers as long as there isn't the effect of limiting or eliminating coverage where a need is demonstrated, they are not denied based on environmental factors, and that decisions must be based on substantial evidence of record.
- D. ~~Steve~~ Mr. Estey stated that the record of decision from the Planning Commission wasn't complete enough for the Zoning Board of Appeals to make an informed decision and believed the towers would have been otherwise ~~approved~~ upheld. There were no RF maps or other evidence supplied by the appellant at the Zoning Board of Appeals to refute Verizon's position.
- E. Mr. Labelle ~~argued~~ stated that there are no environmental laws that prohibit towers from being located near wetlands and reiterated that a denial must be supported by substantial evidence of record. Mr. Labelle also stated that the nearest wetlands are located 200 feet north and 300 feet south of the proposed tower location.

iv. Public Comments:

- A. Roy Barnes, 1791 E. 24 Road, stated that he lives across the street from the proposed tower and is a Verizon Wireless customer. Barnes reports that he has to walk around the house to find a good signal despite efforts by Verizon to help boost his coverage.
- B. Terry Oliver, Selma Township Supervisor, stated that his residents want to make sure the setback guidelines are adhered to by the Planning Commission for each of the tower sites.
- C. Mike Boyd, Selma Township Trustee, recognizes that towers are needed but questions why they couldn't be approved on Federal lands away from resident's back yards. Mr. Boyd asked the Planning Commission to reconsider and stand up for the local citizens rather than Verizon.
- D. Pat Donovan, S 29 Road in Selma Township, questions the need for the towers and the leniency of the Planning Commission to allow locations that do not meet the guidelines in Table 1 and 2 of the Wireless Communications Ordinance.

E. Randy Zeitz, E. 24 Road in Colfax Township, doesn't want to look at a tower and doesn't understand the need for a tower at this location; his coverage is fine.

~~E.~~ F. John Knapp, 2345 S. 29 Road, stated that there were around 4-5,000 acres of public land in the area where the towers would not have to be viewed by citizens.

~~F.~~ G. Attorney Wendell Johnson, represents John Wilson, appellant. Wiggins granted a request by Mr. Johnson to be allowed more than three minutes to speak, given that Verizon representatives had much more time to speak. Johnson stated that the area is not commercial and should not be considered for commercial use, such as towers. A letter was handed out by Johnson from Fleis and Vandenbrink dated September 2, 2014 which details environmental concerns. The letter stated that any negative impact to the drainage basin or the underground hydrology at the tower site will have irreversible consequences to both property owners as well as those on the watershed that currently benefit from Lake Meauwataka. Items stored on the site, such as back-up generators, propane tanks, and antennae materials containing PCBs have the potential of running into the wetlands causing irreversible consequences. Johnson also refuted the need for the Planning Commission to waive the setback and separation requirements of the Zoning Ordinance, stating that the separation from the tower site to the nearest residence is 492 feet, and to Mr. Wilson's land is 300 feet. Mr. Wilson will have to use 600 feet of his land to provide the safety margin required under the zoning ordinance constituting an inverse condemnation and unconstitutional taking of Mr. Wilson's land. In addition, an existing AT&T tower exists 8,850 feet from the site. The proposed tower site is inconsistent with the purpose and goals of Section 3(a)(1) of the Zoning Ordinance

~~G.~~ H. Dinyar Buhariwalla, RF Engineer for Verizon, stated that the maps are based on phone traffic and reports of dropped calls, which he reported were many in the area around N. 29 Road and E. 24 Road (Meauwataka).

~~H.~~ I. Mr. Estey stated that all cellular carriers have the right to provide coverage in any one area and that allowing one but not the other would constitute a monopoly. Estey argued that the environmental concerns based in the Fleis and Vandenbrink letter were not scientific and shouldn't be considered as evidence. Estey also argued that the Planning Commission did not violate the zoning by waiving the setback and separation standards because the ordinance ~~allows them to do so~~ permits it.

v. **Questions by Planning Commission/ Responses:**

A. Mitchell asked where the pictures supplied by ~~Wendell~~ Mr. Johnson were taken; Johnson replied that they were taken at the entrance to the tower site off of E. 24 Road.

vi. **Deliberation by the Planning Commission:** Monroe stated her understanding is that environmental limits to local government review under the Federal Telecommunications Act only ~~reply~~ apply to RF frequencies and also argued that cellular providers aren't given the right to provide 100% coverage anywhere they choose.

vii. **Consider Motion to Approve, approve with conditions/modifications, or deny request:** Motion was made by Monroe, with support by Stoutenburg, to deny the request based on the following findings:

A. Does not comply with the master plan or the zoning ordinance purpose and intent.

- B. Has a negative impact on residential areas on the basis of proximity to adjacent lots.
- C. A lesser tower height was not considered or offered by Verizon.
- D. The site is not harmonious and has an effect on property values.
- E. Cellular Sservices are available in the area, so no further towers are needed.
- F. There is no evidence of past prohibition of services anywhere; the Planning Commission has approved other towers.
- G. Other alternatives have not been considered or discussed; Verizon has failed to show that alternate sites do not exist.

Motion failed by a 2-4 roll call vote. Mix, Middaugh, Mitchell, and Wiggins voted in opposition.

A second motion was made by Mix, with support by Mitchell, to approve the special use request as presented with the waiver of the setback and separation requirements in Ordinance Section 3A.7.B, as authorized by Section 3A.7.B.4 and 3A.7.B.5. Wiggins asked Mix to give the basis of approval. Mix responded that it was based on the fact ~~the~~ that technology changes since the Zoning Ordinance was adopted ~~that~~ require more towers spaced closer together due to data networks being introduced and that the area is particularly hilly. Mix also stated that the Planning Commission has modified the setback and separation requirements in the past. Motion carried 4-2 by roll call vote. Monroe and Stoutenburg voted in opposition.

- (b) **Turned down Verizon Tower at 29 Road and M-115:** Mix made a motion to ask Verizon to reapply for a special use permit for the Woodward Lake site. Mix explained that Verizon has filed a lawsuit against the County as a result of the Zoning Board of Appeals ~~for~~ overturning the special use permit without showing substantial evidence of record to support it's decision. Motion supported by Mitchell. Mitchell asked why Zoning Board of Appeals denied the special use permit, stating that the record makes it seem unclear. Motion failed by 2-4 roll call vote. Mix and Mitchell voted in favor.

- 8. **New Business:** A motion was made by Wiggins, with support by Mitchell, to have a meeting in October to approve the minutes from this meeting. Motion carried with all in favor.

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

- 10. **Adjournment:** Motion was made by Middaugh, with support by Mitchell, to adjourn the meeting at 8:30 pm. Motion carried with all in favor.

(A transcript of the meeting was also made by Kathleen Tulick of Northwest Reporting and is considered a supplement to the minutes per requests by Verizon Wireless and Mr. Wilson.)