

WEXFORD COUNTY ZONING BOARD OF APPEALS
REGULAR MEETING

NOVEMBER 24, 2014 - 7:00 P.M.

Wexford County Services Building
401 North Lake Street
Cadillac, Michigan

BOARD MEMBERS PRESENT:

Beverly Monroe, Chairperson
Matthew Adams, Vice Chairperson
William Swank
John Prebay

ALSO PRESENT:

Michael Green, Zoning Administrator
Robert LaBelle, Attorney for Verizon
Stephen Esty, Attorney for Verizon
Wendell Johnson, Attorney for the Wilsons

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

1 Cadillac, Michigan

2 Monday, November 24, 2014 - 7:00 p.m.

3

4 MS. MONROE (chairperson): Okay. I'll call the
5 meeting to order. Roll call, please.

6 MR. BREEN: Prebay?

7 MR. PREBAY: Here.

8 MR. GREEN: Swank?

9 MR. SWANK: Here.

10 MR. GREEN: Wiersma is absent. Adams?

11 MR. ADAMS: Here.

12 MR. GREEN: Monroe?

13 MS. MONROE: Here. I'd like to make some
14 additions to the agenda. Under the new 3 I'd like
15 procedural issues. And then down what would be the new
16 8; 8(a) description of the case, (b) speakers in favor
17 of the appeal, (c) speakers in opposition of the
18 appeal, (d) board discussion and decision. Can I have
19 a motion to approve the agenda as changed?

20 MR. ADAMS: I'll motion to approve the agenda as
21 changed.

22 MR. SWANK: Support.

23 MS. MONROE: All those in favor?

24 BOARD MEMBERS: Ayes.

25 MS. MONROE: Any opposed?

1 (No response)

2 MS. MONROE: Okay. Let's go on to that item
3 then. What I wanted to talk about was making sure that
4 everybody has had access to all the records all through
5 this whole thing, which I think we have. I understand
6 you've seen the site plan, et cetera.

7 The question as to whether I can vote has been
8 brought up repeatedly, and so I investigated that.
9 Under our Wexford County zoning ordinance number 5
10 there is no restriction on my voting on this issue.
11 Under our ZBA bylaws there is no restriction on my
12 voting.

13 However, under the ZBA Tool Kit Training Manual
14 that we've been through it does limit me under ZBA
15 rules 4(c) to not vote on something I've already voted
16 on. Also, in the Enrolled House Bill 5032, Section
17 60-113 I'm not able to vote again on this issue. So I
18 just wanted to make sure that was clear.

19 The question of a quorum here. Our bylaws say we
20 have to have a quorum. It has to be a majority. In
21 this case that would be 3. We need to have a vote of
22 the majority in order to pass anything, the majority of
23 the total board, not just those that are present. In
24 one place it says two-thirds of the membership, and I
25 don't know how we can get 3.33 people. It might be a

1 little tricky. I want to make sure you understood that
2 it will take a vote of 3 to pass any measure. And make
3 sure, please, when you make your motion to have your
4 reasons sufficiently clear for Mike to record. Those
5 are the things I wanted to mention there.

6 Okay. Moving on to the minutes of September 15,
7 was it?

8 MR. SWANK: Yes.

9 MS. MONROE: Yes. On the second page in that
10 paragraph right before the last paragraph, the top
11 paragraph there, I'd like to have it that "Monroe asked
12 if the ZBA members had received any training when they
13 were appointed, they replied that they had not." If
14 you would add that, please, Mike.

15 MR. GREEN: Mm-hmm.

16 MS. MONROE: Okay. Do I have a motion to approve
17 those minutes as altered?

18 MR. PREBAY: I make a motion to approve those
19 minutes.

20 MR. SWANK: Second.

21 MS. MONROE: All those in favor?

22 BOARD MEMBERS: Ayes.

23 MS. MONROE: Any opposed?

24 (No response)

25 MS. MONROE: Okay. Correspondence. Any

1 correspondence, Mike?

2 MR. GREEN: No.

3 MS. MONROE: Any new business?

4 MR. PREBAY: I have a question, Bev. Going back
5 to your saying that you already voted, you can't vote.
6 This whole board already voted once. Can we vote again
7 on this proposal?

8 MS. MONROE: Well, yes, because this is like a
9 do-over.

10 MR. PREBAY: A do-over. You had your do-over once
11 with the Planning Commission, so you can't vote on
12 this? You have never voted on this, this particular
13 case here, except --

14 MS. MONROE: Yeah, on the Planning Commission.

15 MR. PREBAY: -- except on the Planning Commission.

16 MS. MONROE: Mm-hmm. And the law specifically
17 says even though --

18 MR. PREBAY: Okay. I just wanted that clarified.

19 MS. MONROE: -- I can serve on both boards, if
20 I've already voted on the issue on one board I can't
21 vote on it again.

22 MR. PREBAY: Okay. I just wanted to get that
23 clarified there.

24 MS. MONROE: Yeah. Okay. So at this point I
25 guess I'll turn it over to you.

1 MR. ADAMS (vice chairperson): Okay. On to our
2 only business tonight. PZBA14-005, appeal of decision
3 by the Planning Commission on September 10, 2014 to
4 approve request for the erection of a 300-foot wireless
5 cell tower and equipment shelter. This project site is
6 located along the south side of East 24 Road, between
7 North 29 Road and north 27 1/4 Road, and is accessed by
8 a driveway located just east of the old schoolhouse.

9 As far as the speakers, Mike, is there a limit on
10 how long?

11 MR. GREEN: That's up to you to determine that.
12 Typically, three to five minutes each.

13 MR. ADAMS: Gentlemen, three to five minutes
14 acceptable?

15 MR. SWANK: I think so.

16 MR. PREBAY: Yes.

17 MR. GREEN: Can I make a suggestion too? We have
18 a lot of written correspondence. I guess I encourage
19 you to determine whether it's necessary for your
20 speakers to re-read this stuff. It is entered into the
21 record. It is in the packet. It will be a part of the
22 official record if it goes to circuit court or federal
23 court or wherever it goes. So if you want to have them
24 read it that's up to you, but I would recommend not.

25 MR. ADAMS: All right. Michael Green, zoning

1 administrator, is referring to, oh, two separate
2 packets; one is the transcription of the Wexford County
3 Planning Commission on September 10, and the second
4 packet is the Zoning Board of Appeals for the County of
5 Wexford. This would be the procedure of history. And
6 then am I missing one?

7 MR. GREEN: There was a couple different
8 communications in here. I mean, you have the
9 application, the appeal with transcripts, and then the
10 response from the Verizon people.

11 MR. ADAMS: This is all a matter of public record
12 at this time?

13 MR. GREEN: Yes. If they want to summarize it, I
14 guess that would be appropriate.

15 MR. ADAMS: All right. I move that this being a
16 matter of public record and it's on file that we skip
17 the complete reading of it. If anyone here would like
18 to read these documents we can make them available to
19 you, but for now, them being several hundred pages, we
20 can skip them.

21 MR. SWANK: Sounds good to me.

22 MR. ADAMS: Okay. So, second the motion?

23 MR. SWANK: Sure.

24 MR. ADAMS: Roll call vote.

25 MR. GREEN: Okay. Prebay?

1 MR. PREBAY: Yes.

2 MR. GREEN: Swank?

3 MR. SWANK: Yes.

4 MR. GREEN: And Adams?

5 MR. ADAMS: Adams, yes.

6 MR. GREEN: Okay.

7 MR. ADAMS: All right. I guess tonight we're
8 going to start out by taking public comment at this
9 time. We're going to start with speakers in favor of
10 the appeal. If you could keep your comments to three
11 to five minutes. We will take one speaker at a time at
12 the podium. And when you step up to the podium can we
13 please have your name and address? Do I have any first
14 takers tonight?

15 MR. JOHNSON: Mr. Chairman, if I might, I'm
16 Wendell Johnson.

17 MR. ADAMS: Sure. Sir, if you could please step
18 up to the podium.

19 MR. JOHNSON: I'm an attorney from Traverse City
20 with Smith & Johnson. I represent Mr. John Wilson,
21 who's here tonight with his wife, Helen. I have -- I'm
22 basically the moving appellant here, and I don't know
23 that I'm a speaker in favor. I think I'm a presenter.
24 And I would ask, we're the only thing on the agenda for
25 tonight, for, like I did the last meeting, a special

1 due consideration from a five-minute rule to present
2 the full appeal.

3 MR. ADAMS: Sure. What would you gentlemen say
4 for equal time for each presenter?

5 MR. SWANK: Yeah. But I think we should still
6 limit it, because some of this is going to be real
7 repetitious from what we've heard in the past and what
8 we've read.

9 MR. ADAMS: Are you saying a ten-minute limit
10 would be acceptable?

11 MR. SWANK: That would be really long.

12 MR. ADAMS: Okay. What would you say?

13 MR. SWANK: I think what he stated earlier.

14 MR. ADAMS: Five minutes. Okay.

15 MR. SWANK: That's sufficient.

16 MR. ADAMS: Yeah. I make a motion that each
17 presenter for each side, being officials, one for
18 Verizon and one for Mr. Johnson, we will give you five
19 minutes to present their case.

20 MR. SWANK: Second.

21 MR. GREEN: Will you allow them to also speak
22 during the --

23 MR. ADAMS: Oh, absolutely, yeah.

24 MR. GREEN: -- using another three to five
25 minutes. Does that seem fair?

1 MR. ADAMS: All those in favor.

2 BOARD MEMBERS: Ayes.

3 MR. ADAMS: Okay. Sir, if you would, give your
4 presentation.

5 MR. JOHNSON: Very good. Well, we would rely in
6 large part on the written application for appeal that
7 we submitted, and point out to you that the decision of
8 the Planning Commission that we are appealing ignores
9 the setbacks and separation minimums. It ignores
10 aesthetics, violates the goals of your own zoning
11 ordinance.

12 Furthermore, that a tower permitted at that site
13 creates special damages for the Wilsons that are not
14 shared with others. Primarily, it's a loss of use of
15 their land. There's a shared wetlands risk. There is
16 or creates, if that tower goes in, a hazardous
17 situation with their helicopter access and helopad.

18 You have an extensive record before you. I trust
19 that you have read the information that's been
20 provided. I want to focus quickly on the environmental
21 issues. Your zoning ordinance requires that special
22 due consideration be given to environmental matters.
23 You have attached to my application the Fleis &
24 Vanderbrink letter that indicates that there would be
25 irreversible consequences to the property of the

1 owners, if there were a problem.

2 When you read the information from the applicant,
3 the Dykema letter of April 17, 2014 referred to at the
4 transcript page 71, it says, "The property at the site
5 is 200 feet north and 300 feet south of the proposed
6 tower." What's in the middle? That's where the tower
7 is going to go. We have a legitimate concern that the
8 drilling placement of that tower will cause a
9 irreversible change in the natural flow of the water
10 and contamination to our property, creating flooding.

11 We have zoning setbacks, safety requirements that
12 have been violated here. They have been waived, but
13 not with sufficient justification. The zoning
14 ordinance says this district for my client is to
15 promote areas of low to medium density. That's
16 housing, that's putting in a subdivision, platting
17 land, single family/duplex family properties.

18 However, with the setback requirements that are --
19 that surround a tower, a 900 feet setback, the
20 placement of the site is only 300 feet from my client's
21 property, thus using up 600 feet of his own property.
22 The action in putting that tower in and then forcing my
23 client to mind the zoning ordinance creates technically
24 a taking, a constitutional taking, of his property,
25 limiting him to lose his use.

1 We also have before the board this spacing
2 requirement. Your zoning calls for a 10,000 minimum
3 difference between sites. The separation of towers
4 here, there is a AT&T tower 8,800 feet away. Verizon
5 has failed to show that that is the only site or even
6 the best site. It's simply a working site.

7 Now, in looking at the transcript page 34 the
8 Verizon RF engineer states that, you know, that AT&T
9 tower that is only 8,800 feet away is right in the
10 middle of what we want to do, and he does say that, oh,
11 yes, we can co-locate on it, and that's at page 34,
12 line 23.

13 Coverage maps were provided, and I ask you, are
14 those coverage maps for like 2G or 3G or is it
15 streaming data? You know, they don't have any
16 obligation to saturate the area, and they are currently
17 covering the area. So what the waiver that the
18 Planning Commission gave for this application is
19 there's a demonstrated need to give the waiver.
20 There's no need, no need was demonstrated.

21 Their engineer acknowledges that they had no
22 attempt to find an alternate to this site. They only
23 looked until they got to the site and then they quit
24 looking. That approach constitutes a lack of
25 competent, material and substantial evidence on the

1 record. There's just no testimony to support this as
2 the best and least intrusive site. If it's a good
3 site, why trample with the rights of my client?

4 Now, there is a rush here. I'm being limited to
5 five minutes, which I find highly irregular in the case
6 of an application on appeal. I know that Mr. Green at
7 the last hearing got out from behind the table as a
8 public servant and advocated for the support of this
9 application. I think that is totally wrong. It's
10 clearly a conflict of interest for a public servant.
11 There seems to be an unusual commitment here to
12 accommodate this applicant.

13 Now, Verizon has sued the county, but the Planning
14 Commission put that ahead of an actual review of what
15 application was before them. In fact, at the end of
16 the meeting in the minutes that you have before you,
17 you will see that a motion was presented, didn't make
18 it, to have them re-consider the application that had
19 been appealed where the appeal was upheld. There is a
20 favoritism that's going here on these boards that's
21 just not justified and is absolutely not fair to the
22 people of Wexford County. That zoning ordinance is
23 here to protect all of the people, not just a
24 commercial applicant coming before you.

25 I ask that you uphold my appeal, that you deny the

1 application. It does not rise with sufficient
2 competent, material and substantial evidence as
3 required by your own zoning ordinance. Thank you.

4 MR. ADAMS: Thank you, sir.

5 MR. ESTY: Would you like the Verizon speakers to
6 go up?

7 MR. SWANK: Are we still on in favor?

8 MR. ADAMS: Yeah. We're going to stick with our
9 platform and speakers in favor of the appeal, and then
10 we will give you a chance. Next? If we could have
11 your name and address, sir.

12 MR. DONOVAN: Thank you, Mr. Chairman. My name is
13 Patrick Donovan. I live at 2069 South 29 Road in Selma
14 Township, and I'm here to speak in favor of this
15 appeal.

16 And the conditions for my support of the appeal
17 are that the applicant, Verizon, failed to find a piece
18 of property where they could get a 900 foot setback.
19 The physical description of the property in question on
20 24 Road, there's nowhere on that property that you can
21 be 900 feet from all the property lines. The road
22 frontage is just over 1,300 feet. There's nowhere on
23 that 80 acres where you can be 900 feet in without
24 infringing on somebody else's property.

25 And then the second has to do -- and that's

1 referenced as a minimum mandatory requirement in
2 Article 3A.7, Table 1, page 42 of the Wexford County
3 zoning ordinance. Also, in that same reference of
4 3A.7, Table 1, page 42 there's a requirement for a
5 minimum 10,000 foot isolation requirement from an
6 existing tower. There is an existing tower available
7 on 29 Road that's less than 10,000 feet away from this
8 proposed site.

9 There's a second tower that's currently located on
10 the Wexford County Road Commission property, which I
11 understand to be under the control and in use by
12 Verizon for cellular phone service, that's closer than
13 the tower on 29 Road, and it's on property that's
14 already commercialized. There's a ready access road.
15 It would be a simple matter to co-locate on that tower
16 or construct another tower on that property. And it's
17 just over one mile as the crow flies from the proposed
18 site.

19 And the Wexford County zoning ordinance Article
20 3A.1(9), describing Purpose, requires deference to the
21 Wexford County master plan and currently existing land
22 uses prior to granting a permit. The Planning
23 Commission failed to adhere to this portion of the
24 ordinance when they voted to waive the requirements of
25 the zoning permit.

1 And Article 1.3, Scope of the Ordinance, requires
2 adherence to minimums, and when there's an area of
3 conflict, when something is in conflict with what's
4 written, the zoning ordinance requires the more
5 restrictive standards shall govern the determination,
6 and the Planning Commission ignored that when they
7 granted waiver. They didn't adhere to their own law.

8 And we have a county plan and it's been in effect
9 for almost 20 years, and it governs the way we do
10 business with people that are going to invest in the
11 county and come in here, and I find it ironic that if
12 the Planning Commission had just followed the rules the
13 Wexford County Verizon towers would be constructed
14 already and they would be in use. They just wouldn't
15 be on properties that were ill-suited because of
16 residential use or other zoning issues.

17 And when a sitting board acts in error it's the
18 responsibility of the citizens to bring that to their
19 attention, and the Planning Commission had a
20 responsibility to adhere to the law of Wexford County
21 when they made their decision. They did not do that.
22 This board, the Zoning Board of Appeals, has a
23 responsibility to ensure that the Planning Commission
24 does their job. And I'm asking you to uphold the
25 appeal and deny the permit, and let Verizon find a more

1 suitable place to construct their tower. Thank you.

2 MR. ADAMS: Thank you very much, sir. Next
3 speaker in favor of the appeal. Mr. Donovan has given
4 me two documents here?

5 MR. DONOVAN: One document, two pages.

6 MR. ADAMS: One document, two pages that he wishes
7 to be entered into the record.

8 MR. GREEN: You should read that since it wasn't
9 available to the public.

10 MR. ADAMS: Oh, right. "The Wexford County Zoning
11 Board of Appeals, Beverly Monroe, Chair, 401 Lake
12 Street, Cadillac, MI 49601. Michael Green, Zoning
13 Administrator, Wexford County Zoning Board of Appeals,
14 401 Lake Street, Cadillac, MI 49601.

15 Subject: The Wexford County Zoning Board of
16 Appeals and Verizon communication tower.

17 Ladies and gentlemen: I write to support the
18 appeal of the preliminary decision by the Wexford
19 County Planning Commission to grant construction and
20 use permits to Verizon Telecommunications Company to
21 construct a 300 foot tall tower on the south side of
22 East 24 Road, Colfax Township, Wexford County, granted
23 under a contested majority vote on September 10, 2014.
24 I write for support of the appeal, and request the
25 Zoning Appeals Board to convene and overrule the

1 Planning Commission and deny the permit in question for
2 the following reasons:

3 1. The Verizon Telecommunications Company, hereon
4 known as Applicant, failed to select a host property
5 which has the dimensions to afford the minimum
6 mandatory setback requirements of three times the
7 height of the proposed tower of 300 vertical feet above
8 finished grade --

9 THE COURT REPORTER: Slow down, please. Thank
10 you.

11 MR. GREEN: We can get you a copy.

12 MR. ADAMS: Yeah. Why don't we make you a copy?
13 And we will enter that into the public record.
14 Gentlemen, would you like to read this while we
15 continue to hear speakers?

16 MR. SWANK: I'd like to hear it, yeah.

17 MR. ADAMS: Okay. So we will enter that into the
18 public record.

19 MR. SWANK: Now, where did you end?

20 MR. ADAMS: Number 1.

21 MR. SWANK: I'm at number 1, huh.

22 MR. ADAMS: Number 1, yeah.

23 MR. SWANK: "The Verizon Telecommunications
24 Company, hereon known as Applicant, failed to select a
25 host property which has the dimensions to afford the

1 minimum mandatory setback requirements of three times
2 the height of the proposed tower of 300 vertical feet
3 above finished grade (Wexford County Zoning Ordinance,
4 Article 3A.7, Table 1, page 42). There is no physical
5 place on the host property where it is possible to
6 achieve a 900 foot setback from neighboring property
7 lines. The paper planning documents, submitted by the
8 Applicant, propose a construction site which will
9 infringe upon the property line setback, and fall zone
10 setback of John Wilson, East 24 Road, Cadillac.

11 2. The Applicant's proposed location is within
12 the existing tower isolation distance mandatory minimum
13 of 10,000 feet, required by the Wexford County Zoning
14 Ordinance (Article 3A.7, Table 1, page 42); therefore
15 requiring Applicant to co-locate on an existing tower,
16 not construct on the proposed host property. A tower
17 registered as FCC 1006463, currently exists inside the
18 specified isolation distance of the proposed tower
19 site. Even closer to the proposed site than the above
20 referenced tower, is a second tower, located on already
21 commercially approved property under the control of
22 Wexford County Road Commission. I understand this
23 second tower to be currently in use by, and under the
24 control of Verizon, and available for co-location as
25 required by the Wexford County zoning ordinance."

1 Your turn.

2 MR. PREBAY: Okay. "The proposed host location
3 appears to have less to do with broadcast coverage than
4 it appears to have to do with profit maximization for
5 the applicant, at the expense of the comfort, repose,
6 and current conforming use of the host property, and
7 neighboring properties of citizens. The applicant
8 appears to be attempting to use spot zoning requests in
9 order to circumvent their requirement to adhere to the
10 Telecommunications Act of 1996, and to the Wexford
11 County Zoning Ordinance.

12 3. The Wexford County Zoning Ordinance, Article
13 3A.1: Purpose(9), requires deference to the Wexford
14 County master plan and existing land uses, prior to
15 granting a use permit. The Planning Commission failed
16 to adhere to this portion of the ordinance. Article
17 1.3: Scope of the ordinance requires adherence to
18 minimums and that in areas of conflict the more
19 restrictive standards shall govern.

20 4. Wexford County has a County Plan, approved by
21 the Wexford County Board of Commissioners. A principal
22 foundation of the County Plan is zoning. Without
23 zoning and adherence to zoning, the County Plan is
24 ineffectual. Property owners and taxpayers, rely upon
25 zoning to protect their moneyed interests in their

1 investments, in their properties, and in their county.
2 These property owners and citizens, pay taxes to
3 support adherence to existing law, including zoning.
4 Those taxes fund a planning commission, and when
5 necessary, a board of appeal, to ensure adherence to
6 law and protection of the interests of the property
7 owners and the citizenry. The essence of zoning law is
8 to ensure that one property owner cannot use their
9 property to profit themselves at the expense of
10 declining property value, or inconvenience imposed upon
11 their neighbors. An action by the Planning Commission,
12 in this instance, to grant nonconforming use
13 development, does undermine the zoning law. It also
14 infringes upon the property rights of neighboring
15 citizens, who were here first.

16 5. When a sitting board acts in error, it is the
17 civic responsibility of the citizenry to appeal and
18 correct the mistake. It is the responsibility of the
19 Planning Commission to adhere to the Zoning Ordinance.
20 It is the responsibility of the Zoning Board of Appeals
21 to ensure the Planning Commission does follow the law.

22 Please overrule the Planning Commission and deny
23 this permit. Sincerely, Patrick J. Donovan."

24 MR. ADAMS: All right.

25 MR. GREEN: Thank you.

1 MR. ADAMS: Next speaker, please, in favor of the
2 appeal.

3 (No response)

4 MR. ADAMS: All right. We will now close the
5 section of speakers in favor of the appeal and move on
6 to the next section, speakers in opposition of the
7 appeal.

8 MR. ESTY: Good evening. My name is Steve Esty.
9 I'm the attorney representing Verizon Wireless. I was
10 also present at the Planning Commission meeting. Let
11 me just start by saying that procedurally I believe
12 it's improper to accept that letter that was just read
13 into the record by Mr. Donovan, as it's new evidence
14 that's being presented for the first time or at least
15 new information that was not part of the record below.
16 You're only permitted pursuant to this proceeding to
17 review the record that was established at the Planning
18 Commission. So I'll place that objection into the
19 record.

20 The other thing I will note is that there were two
21 sites. The other is what I'll call 30-20. It was the
22 subject of a federal lawsuit. That lawsuit has
23 subsequently been concluded, and the county
24 acknowledged that the actions of this ZBA were improper
25 pursuant to a judgment that was entered in federal

1 court. Mr. Donovan, who apparently other than the
2 applicant himself for this appeal, is the only person
3 that spoke in favor of this appeal. That's not
4 surprising, given that he was the very individual that
5 appealed the 30-20 site.

6 In fact, at the Planning Commission, as you saw
7 probably from reading the transcript from that
8 proceeding, there was support for this particular
9 site. The evidence overwhelmingly demonstrated every
10 criteria of the ordinance had been met. There was no
11 evidence presented that would meet any evidentiary
12 standards to counter the evidence that was presented by
13 Verizon.

14 We've submitted papers in response to the appeal
15 through a letter dated November 19, 2014, which I know
16 you acknowledged you have it at the beginning of this
17 proceeding. But in those papers we have identified
18 just a sampling of the evidence that is clearly in the
19 record from the papers you have, as well as in the
20 transcript, including the testimony of an RF engineer,
21 our propagation maps, site plans, and a letter from an
22 environmental attorney interpreting the phase one
23 environmental report to address with real evidence the
24 environmental concerns that were raised by the
25 applicant.

1 The applicant in turn submitted photographs that
2 were not even the site in question, that didn't even
3 remotely resemble what could or will be constructed on
4 these sites. And, in fact, I think deliberately
5 attempted to mislead the Planning Commission by
6 providing pictures of effectively a lattice tower with
7 guy wires that wasn't identified and that has no
8 bearing in this proceeding and can't even meet the
9 minimum of evidentiary standards.

10 No one testified as to where those pictures were
11 taken. No one testified as to the height of them. No
12 one testified as to who constructed them. So I think
13 that they were properly wholly disregarded by the
14 Planning Commission.

15 The Planning Commission is the commission that
16 this county has elected to review these materials in
17 depth. They have done so now twice. On both occasions
18 those very experienced individuals who looked
19 thoroughly at this information, sat through very
20 lengthy hearings, listened to all the evidence in the
21 record, which is now before you in transcripts, which
22 was apparently not before you the first time when it
23 was remanded, clearly found under the ordinance
24 criteria that the criteria had been met, and that where
25 there was necessary variances or relaxed standards

1 under those ordinances to be applied pursuant to the
2 authority of the Planning Commission that there was
3 justification to do so.

4 There is nothing that is before this ZBA tonight
5 that would justify or warrant the reversal of what the
6 Planning Commission has done. I think if you take a
7 look at the evidence, if you are honest in what the
8 evidence shows, an applicant who happens to live in
9 Chicago but owns land up here, coming up here and
10 basically saying over and over again the standards
11 weren't met, but not showing why they weren't met,
12 isn't sufficient for you to reverse the Planning
13 Commission's approval of this site on not one but on
14 two separate occasions.

15 There's nothing unusual going on here. What
16 unusually is going on is the normal process. The
17 Planning Commission has reviewed the evidence. They
18 have done their job. There is a landowner, one
19 landowner, who doesn't like the fact that this site is
20 going to be built in his area, who arguably doesn't
21 even have standing to challenge this matter, who is
22 taking issue with it, and now he's coming before you
23 trying to have you reverse the very body that this
24 county has designated as the body to review these
25 materials with no basis or evidence whatsoever.

1 So I'm not going to belabor the point. I think
2 you have all the evidence. You have the record before
3 you. You have our papers. We will rely on that in
4 support of what the Planning Commission did, which I
5 think it properly did in this situation. Thank you.

6 MR. ADAMS: Thank you very much. Next speaker in
7 opposition to the appeal, sir.

8 MR. BARNES: Roy Barnes, 1809 East 24 Road. I
9 live just down the road from where the tower is
10 supposed to go. I walk my dog quite a bit down that
11 road, and I've seen the helicopter, so-called. I pay
12 for that helicopter to fly in there, because it's the
13 sheriff's helicopter.

14 MR. ADAMS: Sir, we're going to have to ask you to
15 keep your remarks specifically on why you are opposing
16 the appeal.

17 MR. BARNES: Because I get tired of losing my
18 signal. I have to get in to a specific part of my
19 house to get a signal. And, like the last time,
20 luckily I haven't screwed up my phone throwing it
21 against the couch, because I'm talking to somebody and
22 my phone gets dropped. It ticks me off. So, yeah, if
23 I get up here and fight for that tower and fight for
24 Verizon. Yeah, I used to have AT&T, and AT&T is a good
25 company too, but I got Verizon.

1 MR. ADAMS: Mm-hmm.

2 MR. BARNES: And I'd like to see Verizon to be
3 able to keep going, even with me. So, but like there,
4 everybody, like they have a right at the same time to
5 have their own tower, not have to put their stuff on
6 somebody else's tower. There's a tower down the road
7 from me. Every time I go down below the hill my phone
8 gets -- I lose signal.

9 MR. ADAMS: Right.

10 MR. BARNES: And that's right next to the tower.
11 Why? I don't have -- I shouldn't have to. I'm looking
12 to be able to sit there and talk to my brother, my
13 daughter and so on, and have a good conversation and
14 not have to "Can You Hear Me Now?", that deal. I don't
15 need that.

16 MR. ADAMS: Okay. Thank you very much, Mr.
17 Barnes.

18 MR. BARNES: That's why I'm here fighting for it.
19 Thank you.

20 MR. ADAMS: All right. Do we have any other
21 speakers in opposition to the appeal?

22 (No response)

23 MR. ADAMS: All right. We will close the public
24 comment at this time. Is there any discussion amongst
25 the board?

1 MR. SWANK: I got a couple questions for the
2 attorneys from Verizon. One that I brought up
3 previously at a meeting that really wasn't answered to
4 my satisfaction, and that's why Verizon does not use
5 federal land to put their towers on. Is there a
6 specific reason?

7 MR. LABELLE: Our engineer show that those sites
8 within the -- that would be available within the
9 federal lands are too far away to close the gap.

10 MR. SWANK: Really?

11 MR. LABELLE: Really.

12 MR. SWANK: What's the status on the tower by the
13 road commission, is Verizon going to use that tower?

14 MR. LABELLE: That tower also we're already on so
15 obviously --

16 MR. SWANK: Oh, are you?

17 MR. LABELLE: We built it.

18 MR. SWANK: Okay.

19 MR. LABELLE: That tower was unavailable for
20 purposes of trying to close this gap. It too is too
21 far away. We're already broadcasting off of that
22 tower. It's a gap that's at a distance from it that
23 we're trying to close, not the gap that's created by
24 the tower itself.

25 MR. SWANK: Thank you.

1 MR. LABELLE: No problem.

2 MR. ADAMS: Any other board discussion?

3 MR. PREBAY: Yes, I have a question for Mr.
4 Barnes.

5 MR. BARNES: Yeah.

6 MR. PREBAY: Mr. Barnes, you have a Verizon phone?

7 MR. BARNES: Yes, I do.

8 MR. PREBAY: Okay. Can I take it that you live
9 say north of that store there by Meauwataka? Am I
10 correct on assuming that?

11 MR. BARNES: I'm just an eighth of a mile down the
12 road from the store.

13 MR. PREBAY: Okay. That's where you go down the
14 big hill; right?

15 MR. BARNES: Towards where the tower is going to
16 go.

17 MR. PREBAY: The tower, how far are you going to
18 be from the proposed tower?

19 MR. BARNES: Another eighth of a mile.

20 MR. PREBAY: Okay. Thank you. The reason I bring
21 that up is the board member who's not here has a
22 Verizon phone too, and him and I went out there by that
23 store at one time down the road, and he had perfect
24 Verizon, he had nothing the matter with it, and so I'm
25 not doubting you at all. I'm just stating the fact

1 that our other board member, who's not here, he's down
2 in Florida right now, with his Verizon phone he had
3 perfect reception going down towards your house. I'm
4 not sure where you live at, just down to your house.

5 MR. BARNES: Right. What it is, if I'm in one
6 side of the house, like if I'm talking, if I'm sitting
7 in my chair, a normal chair, I lose signal, but I have
8 to get up and go to the west side of the house and walk
9 back and forth to find out to where, and look at my
10 phone to see if I can get it, how good my signal is, or
11 go outside.

12 Outside I can get a good signal, but there's no
13 reason that I should have to go outside, when I should
14 be able to have a good signal anywhere in my house or
15 like there, anywhere in my house.

16 MR. PREBAY: Do you have a dish TV?

17 MR. BARNES: No, I can't afford all that stuff.

18 MR. PREBAY: Okay. I'm just thinking of the
19 frequencies going around there. Okay. I was just
20 stating the fact that our board member, we were down in
21 that area and he had Verizon and his phone worked fine.

22 MR. BARNES: If he's outside walking around and so
23 on there's a good chance that he might get a good
24 signal, but if he's -- I got an old farm house, but if
25 you are on one side of the house you don't get a

1 signal, the other side of the house, and you have to be
2 right to the west towards Boon. My Boon tower is the
3 signal I get it off of. I have to be right to the wall
4 almost to get my signal.

5 MR. PREBAY: Okay. Well, thank you for your
6 comment there.

7 MR. BARNES: You bet.

8 MR. GREEN: Mr. Adams, if I may, I'd like to
9 respond to some of the reports, including the comments
10 that were made before me.

11 MR. ADAMS: Sure. Gentlemen, would it be
12 acceptable for us to open the floor to Michael Green,
13 the zoning administrator?

14 MR. SWANK: Certainly.

15 MR. PREBAY: Sure.

16 MR. ADAMS: Okay. I will let Michael Green to
17 take the floor to address some issues he has concerns
18 with.

19 MR. SWANK: As a concerned citizen or --

20 MR. GREEN: No, no. I do want to respond to the
21 comment about speaking as a public member of the
22 public, but I primarily want to speak as the zoning
23 administrator and address some of these issues. So
24 there's clarity at least I might take on, if you may,
25 if that's okay with the board.

1 MR. ADAMS: All right. I move that we open the
2 floor for Michael Green, zoning administrator.

3 MR. SWANK: Second.

4 MR. ADAMS: All in approval?

5 MR. PREBAY: Approval.

6 MR. SWANK: Aye.

7 MR. PREBAY: Aye.

8 MR. GREEN: Okay. Thank you. First of all, there
9 was a comment made by Mr. Wilson's attorney regarding
10 the taking of property that would be caused by your
11 upholding of the Planning Commission's decision. I
12 want to give you at least my interpretation of the
13 zoning ordinance that would say that it does not mean
14 that.

15 What the Planning Commission did was modify the
16 separation and setback requirement. They did not
17 transfer that setback to the neighboring property.
18 That's not how this ordinance works. If you granted
19 someone a variance to be 5 feet from the property line,
20 say a garage or something, that doesn't mean that other
21 10 feet goes onto the neighbor's property and they have
22 to be an additional 10 feet away from their property
23 line. So that is not true. You are not taking this
24 property if you give a variance or uphold the
25 separation requirement. At least that's my

1 understanding of the ordinance.

2 Also, when you read the wireless communications
3 tower ordinance the separations requirement are
4 prescribed for the tower, not for the house. So if you
5 go in and build a house, your house doesn't have to be
6 300 percent away from a tower. It's the other way
7 around. It's if the tower application comes to us, and
8 there's common-sense logic behind that. The house
9 isn't going to have impact on the tower as much as the
10 tower is going to have impact on the house. So that's,
11 that's, in my opinion, an incorrect application of our
12 ordinance or understanding.

13 Secondly, I want to address the issue of accepting
14 written comments. These are not necessarily evidence.
15 I'll get -- there's another two points I want to make
16 about that. First of all, there was written comments
17 given to you prior -- or subsequent to the filing of
18 the appeal from one party. We simply have a written
19 filing from the other party. Whether you want to call
20 it evidence is up to you, but any written information
21 you could probably consider evidence.

22 So I don't find anything improper about accepting
23 written comments. It's really no different, this is no
24 different than him speaking in writing. He gave you
25 his reasons why he is in favor of the appeal. He

1 simply gave you a written copy of what he spoke, pretty
2 much verbatim of what he said already. So I wouldn't
3 call that evidence.

4 And, thirdly, the written verbiage regarding not
5 accepting new evidence is about appealing site plans.
6 It's not about special land uses. This is a different
7 -- a site plan is only a part of the special land use.
8 There's nothing in the special use section, nothing I
9 see in the Michigan zoning act, that says that you
10 cannot accept any new written evidence.

11 So, but with that being said, you are considering
12 whether the Planning Commission with the evidence that
13 they were given made the correct decision. So I do
14 think there's some merit at least to the site plan part
15 of it in accepting new evidence, but I would consider
16 evidence things that are factual that are supporting
17 the decision, you know. This is just an opinion and
18 reasons why he believes it's not -- why you should not
19 uphold the original decision.

20 And then, finally, I do want to address the fact
21 that I did speak at the last meeting as a member of the
22 public. First of all, I live within 300 feet of the
23 site. I was speaking not in favor or in opposition.
24 Actually, I was telling you what our coverage is out
25 there. I think I have a right. I think whether or not

1 I do it as a member of the public or as the zoning
2 administrator sitting at this table I think is
3 irrelevant.

4 If I come to you and say that I can't get good
5 phone coverage out there, whether I did it for my house
6 or just driving by there, I don't think that I am
7 supporting the cell company or pushing you to make a
8 decision in their favor. I am simply giving you
9 evidence, personal evidence, of what I found out
10 there.

11 And I'll stand -- you know, I'm not saying this
12 personally. I'm saying this as for the county's sake,
13 when I tell you there's little to no coverage out there
14 and even less as you go north of there, and I will tell
15 you there is no coverage, at least on my phone, which
16 is AT&T by the way, if I can drive all the way to the
17 county line, which is 15 miles, and not have any
18 coverage whatsoever, I think that bears some weight in
19 this whole issue.

20 The Federal Telecommunications Act you've read,
21 heard a lot of reference to, does give the cell
22 companies the right to provide coverage in the area
23 where there is none, where there is a demonstrated need
24 for that. As a, not as a private citizen, but as a
25 zoning administrator, as a representative of the

1 county, I think it's important you understand that.

2 I think it's important that you understand the
3 county has been sued over another decision already, and
4 they have settled with Verizon, because they, at least
5 the county in their negotiations with them, felt that
6 they had a case. Otherwise, they wouldn't have
7 settled.

8 So, you know, I just think it's important to
9 understand the facts. I'm not steering you to vote
10 either way here, but I think it's important to make
11 sure the county is not in court again, that we do do
12 our due diligence and make a sound decision here.

13 So that's all I had to say. I just wanted to make
14 sure that I could respond to the information brought in
15 from both sides. I think there's an element of truth
16 presented from each side, but there are some things
17 that you do have to weigh out on your own. So that is
18 all I have to say.

19 MR. ADAMS: All right. Thank you very much,
20 Michael Green.

21 MR. WILSON: Can I ask a question?

22 MR. ADAMS: Certainly.

23 MR. WILSON: Just driving back there, and I have
24 both Verizon and AT&T at that location and everything
25 is fine, but I happened to notice a for-sale sign. Are

1 you selling your house?

2 MR. GREEN: Mm-hmm.

3 MR. WILSON: Okay. So being part of that
4 community and speaking as part of that community and
5 you're leaving where I'm retiring and coming up to this
6 community, you're weighting things the same. So that's
7 all I have to say.

8 MR. GREEN: Well, okay. Can I make one more
9 comment too? I wanted to bring up too is --

10 MR. LABELLE: You are not opening the public.

11 MR. ADAMS: No, let's close that part.

12 MR. SWANK: Yeah.

13 MR. ADAMS: Is there any more board discussion?

14 MR. SWANK: I don't believe so.

15 MR. ADAMS: All right. Closing the board
16 discussion at this time. Does any board member wish to
17 suggest a motion?

18 MR. PREBAY: Well, I make a motion that we vote on
19 this decision to deny it or approve it, and this should
20 be our final thing that we should go through here. I
21 think if it's denied the next thing will probably be in
22 court, and we probably won't get a chance to be over
23 there. So let's vote on this decision to either
24 approve it or deny it.

25 MR. ADAMS: All right.

1 MR. GREEN: You are aware that you can approve,
2 deny, or approve with conditions and modifications?

3 MR. PREBAY: Pardon?

4 MR. GREEN: You can approve it, you can deny it,
5 or approve it with conditions or modifications.

6 MR. PREBAY: Well, I was hoping when the Verizon
7 people came they would have a different plan, they
8 moved something or did something different, to
9 accommodate the people here, you know. I was hoping to
10 see something along those kind of lines, but it seems
11 like we're voting on the same thing we voted on before
12 and nothing has changed.

13 This Telecommunications Act, I dealt with that
14 beforehand, I read the whole thing, and it gives you
15 permission to put in towers, but it doesn't give you
16 permission to go against the zoning ordinances. So
17 nothing has changed as far as in that regard.

18 MR. ADAMS: Do we hear a motion?

19 MR. PREBAY: Okay. I make a motion we vote on
20 either deny it or --

21 MR. SWANK: You've got to make a motion one way or
22 the other.

23 MR. PREBAY: Okay. I make a motion we vote on
24 this proposition here. Well --

25 MR. ADAMS: At this time we can make a motion to

1 approve the appeal, thus stopping the Verizon tower.

2 MR. PREBAY: Okay.

3 MR. ADAMS: We can make a motion to deny the
4 appeal, or we can continue the discussion, and we can
5 have some more time to --

6 MR. PREBAY: Okay. I make a motion we deny the
7 appeal for stopping the Verizon tower.

8 MR. ADAMS: All right.

9 MR. JOHNSON: Did you say that right?

10 MR. LABELLE: Yeah, I'm not sure. You'd better
11 ask.

12 MR. ADAMS: Yeah. When you make the motion to, if
13 you want --

14 MR. GREEN: Here, let me help you here.

15 MR. ADAMS: Yeah.

16 MR. PREBAY: Well, it said in the
17 Telecommunications Act, do I have to say denied or
18 approved?

19 MR. ADAMS: If you move to approve the appeal,
20 that would block the special use permit.

21 MR. PREBAY: Yeah. So I make a motion that we
22 deny the permit.

23 MR. ADAMS: All right.

24 MR. LABELLE: Which is a motion to uphold the
25 appeal.

1 MR. PREBAY: A motion to uphold the appeal.

2 MR. GREEN: Yeah. I have language here. Do you
3 want me to read it for you?

4 MR. PREBAY: Yes, why don't you, Mike, I guess.

5 MR. GREEN: You can motion, this is what I'm
6 suggesting anyways, by motion affirm the Planning
7 Commission's decision to approve special use request
8 number 14-002 upon finding and based upon review of the
9 record, including any new information gathered or
10 presented to the board, the Planning Commission's
11 decision to approve the special use was supported by
12 competent, material and substantial evidence, and upon
13 the following findings of fact, and you would give some
14 findings of fact or I would strongly recommend that you
15 do anyways.

16 MR. JOHNSON: That's not his motion though.

17 MR. GREEN: I am suggesting that he can take that
18 or not.

19 MR. PREBAY: You make the motion and I'll just
20 support.

21 MR. SWANK: No. You are not going to like my
22 motion.

23 MR. PREBAY: Okay. Well, whatever. We'll both --

24 MR. SWANK: I make the motion we reject the
25 appeal.

1 MR. ADAMS: Based on what findings?

2 MR. SWANK: I believe that in this instance the
3 area does need the tower. They are -- Verizon has met
4 the required setbacks, according to the Planning
5 Commission, and I see no justification in denying it.

6 Can I add something to that? Nothing to do with
7 the motion.

8 MR. ADAMS: You can say whatever you want.

9 MR. SWANK: Okay. The last time I voted in favor
10 of Verizon on this site, I voted against the site down
11 across from Woodward Lake, because I felt that you
12 didn't answer my questions and my concerns properly.
13 That's the main reason I voted against it down there.
14 If you could have come up with better answers for me I
15 probably would have backed you down there, but I just
16 wasn't comfortable with what you had proposed down
17 there. But I voted for this before on 24 Road.

18 MR. ADAMS: Okay.

19 MR. SWANK: That's my justification.

20 MR. ADAMS: All right. We have a motion on the
21 floor. Do we have a second?

22 MR. PREBAY: I'll second it.

23 MR. ADAMS: Okay. Can we have a roll call vote?

24 MR. GREEN: Okay. Motion by Swank, supported by
25 Prebay. Okay. Roll call. Swank?

1 MR. SWANK: Yes.

2 MR. GREEN: Prebay?

3 MR. PREBAY: No.

4 MR. GREEN: Okay. And Adams?

5 MR. ADAMS: Yes.

6 MR. GREEN: Okay. The motion failed because it
7 wasn't a unanimous vote or wasn't a majority of the
8 members. So you're kind of stuck. You have to have
9 some motion passed.

10 MR. ADAMS: Would you like a motion to continue
11 until next month?

12 MR. PREBAY: Well, like I stated the first part of
13 my deal, I would like to have seen Verizon do a little
14 more for the area here. I mean, they -- I'm not happy
15 with the setbacks on this. I'm not happy with the
16 setbacks. And I guess, Mr. Esty, I asked you a
17 question. You don't live in Cadillac, do you?

18 MR. ESTY: I don't.

19 MR. PREBAY: Where do you live at?

20 MR. ESTY: Ann Arbor.

21 MR. PREBAY: Okay. Do you have a tower across
22 from your house?

23 MR. ESTY: Not across from my house, but they are
24 certainly visible in the area.

25 MR. PREBAY: So how far down from your house, the

1 tower?

2 MR. ESTY: They are all over the place. I live in
3 an urban area. They are everywhere.

4 MR. PREBAY: Well, I'm just wondering how close it
5 is to your house.

6 MR. ESTY: I have no idea.

7 MR. PREBAY: About a mile away?

8 MR. ESTY: I haven't measured it.

9 MR. PREBAY: Okay.

10 MR. LABELLE: Ask me the same question.

11 MR. ADAMS: At this time you just need to be
12 considering motions.

13 MR. PREBAY: Well, since we're off the board here
14 a little bit, we're just talking in general here I
15 guess. I'm the only one who voted against it. If I
16 would have voted for it we wouldn't be talking now,
17 would we?

18 MR. ADAMS: Well, I would like to motion that we
19 deny the appeal based on the fact that the Planning
20 Commission did consider all of the setbacks. The
21 setback as a record would show is adequate in this type
22 of tower in that it's designed, that if it does come
23 down, it's designed to fall within the footprint of the
24 tower. So the appellant is stating that it's going to
25 interfere with his land use. Even in the worst case

1 scenario the tower is never going to come anywhere near
2 his land, even if it goes straight over, which it is
3 simply designed not to do.

4 That Verizon has adequately demonstrated to the
5 Planning Commission in their transcripts that there is
6 a need for this tower, that this wasn't their first
7 site selected, and this alternate site is the one that
8 they wanted to go with, and that the Planning
9 Commission did act correctly.

10 MR. PREBAY: Well, everybody has got their own
11 opinion I guess. I guess my opinion is that I have
12 talked to some members on the Planning Commission and
13 they were so afraid of this lawsuit that Verizon has
14 threatened them with that they would have voted for
15 anything.

16 MR. ADAMS: Lawsuits are a natural position of
17 government, they have been.

18 MR. PREBAY: Yeah. In fact, I got on the internet
19 today and I got on Verizon, and I was surprised how
20 many lawsuits you guys have pending, holy mackerel.

21 MR. ESTY: Well, for the record, we never
22 threatened any lawsuit, sir, and we haven't in this
23 case, and we certainly haven't threatened a lawsuit to
24 the Planning Commission. The Planning Commission
25 approved our site after a full hearing. The reason we

1 filed the prior lawsuit on the other site was because
2 this board acted in error, and the county acknowledged
3 that error in a judgment. So let the record be clearly
4 reflected as to what happened. We never threatened a
5 lawsuit.

6 MR. PREBAY: Okay.

7 MR. ESTY: We filed a lawsuit because this board
8 acted illegally. That is what happened, and the court
9 entered a judgment to that effect. That is what
10 happened, and we have the right to pursue justice and
11 to make sure that the law is upheld, and I'm defending
12 Verizon in that regard. There has been no lawsuit
13 threatened, period.

14 MR. PREBAY: Mr. Barnes, you've got a comment?

15 MR. BARNES: Yeah.

16 MR. ADAMS: I'm sorry, no. We're -- no, no, the
17 floor is closed. Right now we are -- we're simply
18 deciding on whether or not this motion has a second.
19 Can I get a second on the motion that's on the floor?

20 MR. SWANK: I second.

21 MR. ADAMS: Can I get a roll call vote?

22 MR. GREEN: Sure, one second. Okay. Sorry.

23 Swank?

24 MR. SWANK: Yes.

25 MR. GREEN: Prebay?

1 MR. PREBAY: No.

2 MR. GREEN: Okay. Adams?

3 MR. ADAMS: Yes.

4 MR. GREEN: Okay. Okay. You guys are deadlocked.

5 MR. LABELLE: Could you revisit the portion of
6 your ordinance that talks about how many votes you
7 need? When you started this you talked about the
8 possibility that it required a majority of those
9 sitting, not a majority of those of the board itself.

10 MR. GREEN: Well, it's not in the zoning
11 ordinance. Let me go back to the Michigan Zoning
12 Enabling Act.

13 MR. LABELLE: Okay.

14 MS. MONROE: It's in the bylaws, zoning boards of
15 appeal.

16 MR. GREEN: Well, I believe it's also in the
17 zoning act. I just read it. Yes. The Zoning Board of
18 Appeals, Michigan MCL 125.3603, says it's concurring
19 vote of the majority of the members of the zoning board
20 of appeals is necessary to reverse an order requirement
21 decision or determination of an administrative official
22 or body to decide in favor of the applicant on a matter
23 upon which the zoning board of appeals is required to
24 pass under the zoning ordinance in order to grant a
25 variance.

1 And I believe there are some other things. Now,
2 to grant a variance --

3 MR. LABELLE: I would suggest --

4 MR. GREEN: That says in favor of the applicant.
5 Excuse me one second.

6 MR. LABELLE: No problem. I'm sorry.

7 MR. GREEN: Thank you. If you want to adjourn you
8 are welcome to. Otherwise, it will take me just a
9 minute to review this here.

10 MR. ADAMS: All right. We don't need a
11 continuance?

12 MR. ESTY: Well, for the record, Mr. Green, it's
13 Verizon's position --

14 MR. JOHNSON: Is this public comment?

15 MR. ESTY: -- that the appeal has been denied
16 twice now, and the vote has been made and rendered and
17 voted on by the members, and that vote is enforceable.

18 MR. ADAMS: All right. At this time with the
19 board being deadlocked --

20 MR. SWANK: Not really deadlocked. I mean --

21 MR. GREEN: Well, we need to determine -- we just
22 need to make sure procedurally we're allowed to accept
23 a motion.

24 MS. MONROE: If I could, Mike, I researched that
25 pretty thoroughly, and it's in the bylaws, it's in the

1 Zoning Enabling Act, and it's also in that training
2 manual that we have.

3 MR. GREEN: Well, show me in the bylaws where you
4 are talking about or tell me the section you mean.

5 MS. MONROE: I didn't bring my bylaws.

6 MR. GREEN: I have them right here. They are
7 right here. You can show me where they are in here.
8 Why don't we recess the meeting?

9 MR. ADAMS: All right. I motion to recess the
10 meeting at this time.

11 MR. SWANK: Motion.

12 MR. ADAMS: All those in favor?

13 BOARD MEMBERS: Ayes.

14 MR. ADAMS: All those in opposition?

15 (No response)

16 MR. ADAMS: All right. It's 8:03. We're now in a
17 15-minute recess.

18 (From 8:03 to 8:16 p.m. in recess)

19 MR. ADAMS: All right. Gentlemen, at this time we
20 would like to bring the matter back from recess. I
21 move we re-open the meeting. Is there a second?

22 MR. SWANK: Second.

23 MR. ADAMS: All those in favor?

24 BOARD MEMBERS: Ayes.

25 MR. ADAMS: At this time I make a motion to close

1 the issue of PZBA14-005 while the Zoning Board of
2 Appeals seeks counsel in the matter of voting
3 majorities.

4 MR. SWANK: I second that motion.

5 MR. ADAMS: All those in favor?

6 BOARD MEMBERS: Ayes.

7 MR. ADAMS: All right. The matter of PZBA14-005
8 is closed. Do we have any old business?

9 MR. GREEN: No.

10 MR. ADAMS: Do we have any other business?

11 MR. GREEN: No.

12 MR. ADAMS: Do we have any public comment at this
13 time?

14 (No response)

15 MR. ADAMS: No public comment at this time. I
16 move that we adjourn.

17 MR. SWANK: Second.

18 MR. ADAMS: All those in favor?

19 BOARD MEMBERS: Ayes.

20 MR. ADAMS: All those opposed?

21 (No response)

22 MR. ADAMS: All right. This meeting is now
23 adjourned.

24

25 (At 8:17 p.m. meeting adjourned)

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STATE OF MICHIGAN)
COUNTY OF WEXFORD)

I certify that this transcript, consisting of 50 pages, is a complete, true, and correct transcript of the proceedings and testimony taken in this case on November 24, 2014.

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

December 2, 2014