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October 16, 2023

VIA EMAIL ONLY

Thomas Koernke
Planning Commission Chair
Suttons Bay Township
c/o Steve Patmore Zoning Admin
zoningadmin@suttonsbaytwp.com

Re: Legal Opinion Regarding Cell Tower

Dear Commissioners:

This letter is intended to assist the Planning Commission in its review of the above-referenced application seeking to permit a new cell tower in Suttons Bay Township.

Suttons Bay Township Zoning Ordinance

The Suttons Bay Township Zoning Ordinance provides the criteria for review of new wireless towers:

Section 15.2.8 General Special Land Use Standards for Wireless Towers

A new wireless tower shall not be approved unless it can be demonstrated by the applicant that there is a need for the new wireless tower which cannot be met by placing an antenna on an existing wireless tower, or on another structure, or through the replacement of an existing wireless tower. Information concerning the following factors shall be considered in determining that such need exists:

- A. *Insufficient structural capacity of existing wireless towers or other suitable structures and infeasibility of reinforcing or replacing an existing wireless tower.*
- B. *Unavailability of suitable locations to accommodate system design or engineering on an existing wireless tower or other structures.*
- C. *Radio frequency or other signal interference problems at existing wireless towers or other structures.*
- D. *The refusal of owners or parties who control wireless towers or other structures to permit an antenna to be attached to such wireless towers or structures.*
- E. *Other factors which demonstrate the reasonable need for the new wireless tower.*

Because these factors relate to the availability of nearby towers, you will hear information from the applicant as well as the Township's consultants regarding the relative strengths of the proposed tower as compared to the nearby tower which has been constructed by the County. Rather than deciding which tower location is superior, you must determine whether the applicant has established a need which cannot be met by placing their antenna on the County tower.

In making your decision, the question for you to answer is: **has the applicant demonstrated that there is a need for the new tower that cannot be met by placing an antenna on an existing tower?** If not, the application should be denied. If yes, the application may be approved provided that the applicant has complied with the other requirements of the zoning ordinance.

Consideration Factors

In order to determine whether the applicant has demonstrated a need for the new tower, your review should follow the relevant factors provided in Section 15.2.8:

- A. *Insufficient structural capacity of existing wireless towers or other suitable structures and infeasibility of reinforcing or replacing an existing wireless tower.*

Given anecdotal information from the applicant and from the County, the Leelanau County Tower is not over-equipped and appears to have sufficient structural capacity to accommodate collocation.

Suggested Finding: No insufficient structural capacity.

- B. *Unavailability of suitable locations to accommodate system design or engineering on an existing wireless tower or other structures.*

The report provided by township consultant Marc Daneman provides a comprehensive review of the availability of the nearby tower. Mr. Daneman recommends that the Planning Commission consider the RF impacts, area coverage, and market considerations (such as the 7% rate escalator that Verizon claims is demanded by the County) that may have led to Verizon's decision to propose building elsewhere. Further, Mr. Daneman points out that a new Verizon tower would provide future cell network development opportunities as other providers would be allowed to collocate to the new tower. Mr. Daneman further makes the point that having two nearby towers (instead of one) would provide better the township and county with better coverage options in the future.

Suggested Finding: The County Tower is an available location, but could be unsuitable for collocation depending on your determination of community need.

C. Radio frequency or other signal interference problems at existing wireless towers or other structures.

The Township's RF Engineer Andrew consultant's report indicates that the Bahle site would be "of greater benefit to all carriers, first responders, residents and visitors".

Suggested Finding: The proposed tower location would provide coverage over a wider area than the existing County tower.

D. The refusal of owners or parties who control wireless towers or other structures to permit an antenna to be attached to such wireless towers or structures.

Verizon asserts that the County has effectively refused to allow Verizon to collocate on their tower because the price of the County tower is too high. I recommend *against* a finding that the County has effectively refused to permit collocation due to price demands for the following reasons:

- By all information available, the County would permit an antenna to be attached to their Tower.
- The applicant has acknowledged that it has not negotiated with the County on pricing since the County Tower was built and has not shown that it has been refused access to the County Tower.
- It is not appropriate for the Township to opine on whether the County is offering fair rates for collocation, particularly when there appears to have been no negotiation with regard to the rate.

Suggested finding: There has been no refusal to allow collocation on nearby tower(s).

E. Other factors which demonstrate the reasonable need for the new wireless tower.

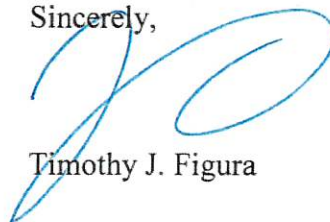
Verizon has provided maps with a “target area” identified which is located south of the County Tower. They then make the argument that the proposed tower will cover the target area better than the County Tower. The “target area” is centered on the proposed tower location. While it is helpful to know the area that is targeted by Verizon, the placement of this target area does not appear to be based on the needs of the community. That being said, the RF maps produced by the Applicant and the Township’s consultants all indicate that higher elevation and beneficial topography of the proposed tower location would offer superior coverage than the tower built by the County.

Suggested Finding: The proposed tower would cover a greater area than the existing County tower.

Conclusion

In making your decision, I recommend that you focus on the **overall needs of the Township and the County**, and whether these needs can be met by utilizing the existing tower.

Sincerely,



Timothy J. Figura