

**Vergennes Township
Zoning Board of Appeals
April 26, 2017**

The meeting was called to order at 7:00 pm by Chairperson Pete Gustafson

Roll Call – Gustafson, Odell, Schreur, Wester, and Jernberg were present. None absent.

Election of Officers – Odell motioned to re-elect officers currently in place. Wester supports. Motion carried.

The matter of Richard Perry was adjourned and will be rescheduled between May 16 and May 25. Vandersloot will email members to set date.

Approval of Minutes from April 25, 2016 meeting – Odell motioned to accept the minutes as presented, Jernberg supports. Motion carried.

1. Appeal Application from Sandi Miles regarding 13645 Beckwith Drive/Township Board decision of Special Exception Use Permit for Verizon cell tower

Gustafson requested each attorney present what they understand the scope and standard of review is for the Zoning Board of Appeals as they state their case.

Applicant Presentation: Sean Fitzgerald, attorney for Sandi Miles. The standard of review is that there is no basis except to determine if procedures were followed. Can the Township Board's decision be overturned or revised? 201.432, Wireless communications. Did the zoning administrator and the planning commission follow the regulations? The Board's decision to allow monopole is tainted and should be overturned. It should not be based solely on what the ordinance allows, but also what was not done by planning commission or Jeanne Vandersloot. There were missing pieces in the application by Verizon. Co-location information is missing. The property owner cleared the land before he moved in and made it easy for Verizon to put the cell tower there.

There was no landscaping plan included with the application. There is no buffering around the tower itself, only from neighboring properties. The generator will sound like a small plane taking off several times a week. The fall zone is inadequate. Engineering reports say the tower can withstand a 40 mph wind and ice. Assume the pole breaks. It is going to fall on his client's property. The tower is to be erected toward the back of his property, close to Miles' house.

FAA granted permits, but planes don't always fly like they should. It is a 199' tower. It is too close to the airport. The proper permits were not submitted when the permit was applied for.

Photos attached to permit looked like the Garden of Eden. Verizon claims the tower will be hidden. This is a typical bait and switch. Photos from the Fallasburg Bridge will have the tower in the background. People don't want to look at a tower on the horizon while enjoying the park.

It seems this application was pushed through. There are towers going up all over in a township zoned mostly residential agriculture. They want to show where the planning commission failed and where the zoning administrator failed.

Township attorney – Jim Doezema – It appears there are two procedural matters in question. The application was not complete when initially submitted and the planning commission did not follow procedures. The site plan did not show houses on it. He is happy to answer any questions.

Jonathan Crane – Verizon attorney

The Township Board approved the application with conditions. Verizon was to submit FAA and Tall Structure permit, which they did shortly after the meeting. The location of the tower is 180' from Ms. Miles' property, not 80 feet. Two structural letters were submitted, one from manufacturer and one from an independent source. Both approved the tower design. There has never been a fall with a Verizon tower. They have a 200% safety factor which means the tower can withstand 90 mph winds. They did look into other towers or locations. None were available.

Mr. Crane showed the Board several aerial views of what the tower would look like from different locations in the area, including the Fallasburg Bridge, the park, historic schoolhouse. A balloon was raised by a drone to 200'. They superimposed a tower onto the pictures based on where the balloon showed up. The balloon was not visible in most of the pictures. The shots were taken in March before most of the foliage was out.

Similar towers have been placed on school grounds, etc., without issue. The balloon study was in March, 2017. Verizon will not begin work on site until all approvals have been given. Tribal notice, Indian grounds, and other criteria are checked before a shovel is put to ground.

Alger was not contacted for co-location since it was outside the coverage grid. It will not work. They believe they have gone above and beyond their duty to get the tower up.

Mr. Crane is a civil engineer and attorney from Rochester, MI. He is also a member of several historical societies.

Gustafson asked if pictures were furnished to Kent County Parks Commission. They were just received Monday the 24th. Mr. Crane will email them to Vandersloot Thursday.

Gustafson reminded everyone again that this was not a court of law. The ZBA is an appointed body. It is not a function of the ZBA to hear this type of issue. They usually hear appeals of decisions by zoning administrator on either granting or denying special exception use permits.

Doezema said this was a hybrid case. The ZBA looks at what the Township Board saw in making their decision. They can also consider new evidence in making the decision tonight.

Federal Telecommunications Act allows the Township to review cases like this but cannot deny it unless there is real evidence to do so. Unfounded hearsay cannot be used. They cannot regulate or prohibit this use where there is a demonstrated need.

Public Hearing was opened at 7:47 pm.

Ken Tamke – President of Fallasburg Historical Society.

Relieved the Society will not lose their designation because of this tower. Vergennes Township created the district and has been a constant supporter through the years. Is there really no other place to locate this tower and not be at the edge of the historic district?

Noel Seif – she lives at 13684 Beckwith across from the proposed tower site.

Their land surrounds the Goodsell Cemetery. They should have been notified since the tower is within 700 feet of cemetery. The township is aware of the cemetery, it is on the township maps, etc...Local descendant, Roger Timmer, lives in Ada. They ask the ZBA to rescind the Board's decision and have Verizon find a more suitable location.

Alan Rumbaugh – Lives on Bedaki Road in Lowell.

Tower at this location is unacceptable. They should have been notified. He was at one of three past meetings and was allowed public comment time then.

Kathy Chase – 13400 Beckwith

Lived in area for 40 years. Everyone wants good cell service but this is wrong spot. There will be fencing, a generator, an access road. It is basically establishing a business on a residential road. The residents don't want lights or noise. Pilots fly along river and swoop up to see scenery. The tower needs to be lit to protect them.

Ken Kapcia -13238 Beckwith

Tower needs to be stopped. Township acted in fear of being sued by Verizon if they did not approve it. The Township is being overrun and pushed by big corporations and greed.

Bob Seif – 13684 Beckwith

He agrees with previous speakers. He asked Mr. Crane if the tower goes up and ultimately requires lighting later, is Verizon willing to take it down since lights are not allowed on towers in Vergennes Township? Per Mr. Crane, they would work with township if it comes to that. Mr. Seif said the generator will be louder than a lawn mower. It will be like Chinese water torture every week. It will impact wildlife. Lighting at bottom of tower will put off glow, especially in fog. Verizon should put up two smaller towers in several areas. Let them put it on state game area.

Crane – no lights are required.

Pat Gilbert -13155 Beckwith

Ordinance states that everything should be submitted with application. They were not presented. Only after the Board approved the tower were the requested items supplied. It is shown in the history that Ms. Miles submitted.

Sharon Vanderwarf – 13676 Beckwith

She is one of the longest living residents on Beckwith. She has seen a lot of changes through the years. It is a wonderful, safe community. Now there will be a metal structure so close. It is very disheartening. She has Verizon service but does not want tower there.

Stephanie Swint –13475 Beckwith

She lives four lots to the west of proposed tower. She has been to all the meetings. The lot was completely cleared of trees years ago. She can see straight through when riding bikes down the road. Concerns are migratory birds running into tower, low flying aircraft. The same information has been requested at every meeting. They weren't even allowed public comment at the last meeting until after the decision was made. She could see fear of lawsuit if it didn't pass.

Lisa Gilbert – 13155 Beckwith

She has been to all meetings. The Township did not take its own master plan into consideration when approving this tower. This is all based on fear of a lawsuit by Verizon. No evidence Verizon tried to find different location or to co-locate on another tower. She believes the trees were removed from that

property in preparation for this tower. She is chairperson of Lowell Trail. The natural beauty will be hampered by this tower.

Jeff Miles –13675 Beckwith

Review and approval of plan was inadequate in many ways. All board members were invited to come to the site and see it from his property. No one came. Any screening on Mr. Miles' property is lessened now because of recent wind storm. Overall handling and disregard for public comment by the Board causes them to believe decision was made prior to public comment. Convinced Board had its mind made up before public comment.

Rick Ricksgger

Location of tower in relation to airport and the low flying aircraft is going to result in a plane hitting the tower.

Linda Rexford -13547 Beckwith

She takes a lot of pictures. Verizon should have notified residents they were taking pictures. It is easy to edit the pictures to look like the tower will be hidden.

Cara Debbaudt - 13735 Beckwith

With special exception use permit, if Verizon meets the ordinance standards, it must be approved. She disagrees. She read the first page of Vergennes' Master Plan. Verizon had no intention of looking elsewhere. Several residents offered to have tower placed on their property instead. They were never contacted. Compelling testimony from resident with no phone service at last meeting. Her issue is not just cell service. She does not have landline either. The Township should be helping her get landline. It is an essential service. Also, Vergennes Broadband installed fiber to her house today. She is excited and grateful for the service. Township needs to take residents' opinions into consideration.

Gustafson – Members of the ZBA have lived in the area for many years and are very familiar with the site in question. They do not go onto private property but have been out to see it from the public right of way.

Sandi Miles-13675 Beckwith

Zoning Administrator's letter to ZBA on April 20 is appalling. Screening around tower base should be considered year round. The mature tree growth she saw is now gone due to Mother Nature. The Alger tower will cover this area. She personally spoke to Mr. Alger and was told it would cover this area. She has listened to so many inappropriate interpretations of ordinance regarding co-location on other towers. Also, she saw 5 airplanes before noon today, all at 250 – 300 feet above ground. There are also hot air balloons and gliders that come down to see view. A lesser fall zone should be done via a variance. No one can guarantee that the tower will stay on site. Mr. Crane's expert reviews come from the manufacturer and the designer. Of course they will say it won't fall. It is her mindset that it's no one's business what someone does with their land, except when it comes to government intervention. The only option is to reverse the Board's decision. She submitted letters from neighbors and an Indian Tribe that were in her mailbox today. The ZBA will review them.

Mr. Crane response

The generator is similar to one used in homes. It will only be run once a week for approximately 20 minutes during daylight hours. It is only to be used to provide service in the event of a power outage.

Maps show existing towers, the closest being 4 miles away from this site. That will not cover this area.

The tower will not be lit. The lighting at the base consists of 6 18watt LED bulbs built into the equipment. They automatically go off in case one of the technicians forgets to turn them off. There are no night lights at all. Landscaping was added to the plan which will be submitted with building permit. There will be a technician at the site approximately twice a month to check it out and do routine maintenance. Other sites

were looked at but ruled out mostly due to location of airport. Clearing of this land was done long before Verizon ever considered it for the tower.

The coverage was ideal, height was ideal. The location to airport was acceptable.

Jim Doezema – asked Mr. Crane if in the future lighting was required, and given the ordinance does not allow it, would the tower come down? Yes, if it comes to that, it would come down.

Odell – regarding landscaping, instead of a chain link fence, could other materials be considered? Cedar fencing, arborvitaes?

Why wasn't the Fallasburg Historical Society notified? Mr. Crane indicated he went to the Michigan Historical Society listings. Nothing in there for Fallasburg. There was a Vergennes Historic District which is now defunct.

Public hearing was closed at 8:58 pm.

Gustafson – Zoning Board of Appeals is not the Planning Commission or the Township Board. Their function is not to redo the entire process. It is to determine if the decision of Township Board was supported by evidence. The Board can consider additional information submitted after Township Board made their decision. Their options are to overrule the Board's decision, affirm the Board's decision or send it back to the Township Board for further review.

Several items of concern to the residents have been answered since the decision to approve the tower was made. The visual effect on the landscape is minimal per the photos Mr. Crane submitted. Lighting is minimal. The photos may be relevant to the Kent County Parks Department and should be forwarded to them for review.

Cell towers are in places where 20 years ago there were none. Most people have stopped using landlines and only use cell phones now. This boils down to a location question. There is a federal statute that in order to deny the tower, the reason has to be substantial. Just because we don't want to see the tower is not a good reason. The township ordinance has discretion to regulate cell towers. ZBA is not the proper body to make the decision.

Odell – Did we trust the Township Board to do their work? Was it done in a responsible manner? Yes. Not all the information was there initially, but it was at decision time. The proper steps were taken based on everything Doezema has seen.

Wester – family in area back to 1831. He is a member of the Fallasburg Historical Society. He has listened and agrees with Odell. Believes everything has been done with the Board that should have been done. The pictures shown tonight help clarify some of the issues. Agrees with the Township Board's decision.

Jernberg – if the equipment were in a different shape or form, could that be discussed? There is a tower in Rivertown Mall area that looks like a giant pine tree. Could that be done here? Mr. Crane indicated no. It doesn't fit in the area. Doesn't think they look like a tree at all. The tower could not hold the extra weight of "branches".

Bill Fowler – structural engineer for Verizon handling Kent County

Rivertown tree pole here would not support the load. Never looked at the two site option. They would have to go south and cannot do that because of airport. Population is growing rapidly. This tower needs capacity to handle growth. Grattan site does not work due to terrain. If a site is not presented to him by the real estate team, he does not look at it for coverage, etc. This tower will cover the area. If you move the tower one mile north, there will be another group with the same complaint.

Schreur – The airport seems to be a major factor but there is no representative present tonight. The comments about flying low to see terrain concern him. Planes need to be 500’ up unless in landing approach. Seaplanes come from bridge down river and land in widest part of backwater. If planes are flying that low, they are probably doing it illegally.

Gustafson – it is not appropriate to sit here tonight and write out opinion. Need assistance from attorney and zoning administrator.

Doezema – take a vote subject to review at a future meeting.

Gustafson -Is there sentiment among the ZBA members to send it back to the Township Board? If not, indicate by vote to affirm/deny appeal.

Jernberg – there have been many instances where information is requested and temporary approval is given until it is received. In his many years on the Planning Commission, that is how it usually works. You mark it off the list as the information comes in.

Schreur – needs to hear comments from other members. A lot to review and consider.

Odell – There is a lot of information. Sometimes you don’t have everything in order right away but by the time the Board made their decision, it was there. Due diligence was done. As a pilot he would prefer to have a light on the tower but it is not required. He is satisfied that the tower is not visible based on pictures.

Gustafson – not their place to come to a different decision.

Wester – looked at everything and had more information than Board. Would not go against Board.

Schreur – moving the tower may solve this issue but will bring in others with same concern.

Odell – Public consensus is “not in my backyard”. But we have to go with what the ordinance is, not what we want it to be.

Odell moves to approve/affirm the decision of the Township Board, subject to review of written opinion. Wester supports. Motion carries.

Doezema will assist Chairman Gustafson on a written decision/opinion. It will be reviewed at the next ZBA meeting which will be sometime between May 16 and 25.

Jernberg made a motion to adjourn the meeting at 9:42. Wester supports.