

**Clearwater Township**  
Zoning Board of Appeals  
Variance Hearing of February 19, 2019  
As approved April 8, 2019

**Call to Order, Pledge of Allegiance:**

Chair Snyder opened the meeting at 7:02 p.m. and began by explaining that the purpose of the meeting was to hear the variance request by Mike Bieniek, agent for Tillman Infrastructure. Property located at 5378 Townline Road, Williamsburg. Variance request to erect a 170' self-support lattice telecommunications tower in a 100' x 100' lease area.

Following the introductory explanation, Chair Snyder invited the gathering to join him in the Pledge of Allegiance.

**Roll Call of Members and Recognition of Visitors:**

ZBA members present: Lawicki, Bergmann, Snyder, Fields.

Absent: Gerlach

Public: Lori Cope (court reporter), Mike Bieniek, Sandra Jazinski, Ben Herrick, Andrew Schlagel, Gianine Casassa, Dan Dalton, Greg Hanlin, Kimberly Hanlin, Lynne Buday, Marsha Cooke, Melvin Cooke, Carol Backers, Tom Backers, Peter Wendling (township attorney).

**Approval of Agenda:**

The agenda was amended to include the minutes of both January meetings:

January 7, 2019 – the annual joint meeting with the Planning Commission;

January 14, 2019 – the setback variance hearing for property located at 7953 Wahbasee Lane).

**Call for Disclosure of Conflicts of Interests:**

Each member of the ZBA indicated no conflicts.

**Approval of Minutes:**

**MOTION** by Lawicki, second by Snyder to approve the minutes of January 7, 2019 as presented.

Motion carried.

**MOTION** by Bergmann, second by Fields to approve the minutes of January 14, 2019 as presented.

Motion carried.

**Scheduled Variance Hearing: setback variance request by Mike Bieniek, agent for Tillman Infrastructure, to erect a 170' tall self-support lattice telecommunications tower in a 100' x 100' lease area on property located at 5378 Townline Road, Williamsburg, having parcel tax ID# 40-004-033007-15.**

Chair Snyder summarized the procedures to be followed during this hearing. He noted that the Township Zoning Administrator was not present. He explained that a time limit may be imposed on individual speakers so that everyone has an opportunity to speak. He stated that comments were to be addressed to the Chair, not to the applicant, or to other members of the public present. The sequence

is 1) the applicant presents his case; 2) the Zoning Administrator presents his report; 3) those in support of the project speak; 4) those in opposition to the project speak.

Before the hearing continued, the secretary telephoned the Township Zoning Administrator, and learned that he was unable to attend this hearing.

**The applicant presents his case:**

Mike Bieniek – his company, LCC Telecom Services, is located at 100700 W. Higgins Road – Suite 240, Rosemont, Illinois. He is here on behalf of Tillman Infrastructure and AT&T Mobility. With him are Ben Herrick, Attorney representing Tillman Infrastructure, and Sandra Jazinski, Attorney representing LCC. Before presenting his case, Mr. Bieniek requested the ability to make rebuttal comments at the end since there were several people present who would be speaking in opposition and whom he would like the opportunity to rebut. Chair Snyder assured Mr. Bieniek he would have that opportunity.

Here follows the summary of proceedings. A full transcript of the applicant's presentation, the ZBA members' questions, the applicant's responses, the comments from the public, and all rebuttals, is contained in a separate document (Transcript\_evidence\_comments\_rebuttals\_20190219.pdf).

Mr. Bieniek stated his intention to introduce and explain each one of the documents contained in the packet supplied this evening to the members of the Zoning Board of Appeals. He stated that the proposal is to erect a 170' tall self-support lattice tower, located in a 100' by 100' lease parcel. He stated that AT&T hired Tillman Infrastructure to build a tower to replace the existing 60' tall wood pole located across the street (M-72). Bieniek stated that the existing wood pole is not structurally capable for AT&T to upgrade its equipment.

Mr. Bieniek recapped the history of the proposed tower, to-date. In June 2018, he was told by the Zoning Administrator that the project would be administratively approved, that it did not have to go through a hearing process. Following up via email, on June 7 he received an email from the Deputy Clerk, stating that "so long as we provided the FAA, the MDoT approval and the drawings, he administratively approved it." Bieniek also stated that the Zoning Administrator sent an email to the County telling them to proceed with the building permit, which they did. The tower was under construction, essentially built, when they got a call, he believes in late November 2018, telling them that they needed to go through the process. They went to the Planning Commission on December 28, 2018 for a public hearing on their special land use permit application. But, they also need two dimensional variances in order to proceed, which brings them to this evening's hearing with the Zoning Board of Appeals.

**Item 1** –Exhibit Book. It's a narrative overview of the proposal. It includes responses to the standards of review for a dimensional variance; a copy of AT&T's license; and propagation maps modeling current cell coverage and proposed coverage with the new tower in place. The existing coverage map indicates marginal to fair coverage in the area; the proposed coverage map shows improved coverage in the area.

*[Editor's note: there are also FAA and MDoT approvals in the Exhibit Book, but the ones mentioned above are the ones he spoke of.]*

**Item 2** – Site Plans. Mr. Bieniek specifically referred to the overall site plan, sheet C-1, which shows the distance from the lease parcel to M-72 is approximately 100 feet, and the distance to the nearest

residence, on the north, is approximately 380 feet. Per the Clearwater Township Zoning Ordinance, Section 24.09.A.11 "Spacing – Residences. A tower shall not be located within two hundred feet (200') or three hundred percent (300%) of the height of the tower, whichever is greater, of a park or public right of way, or of a single-family or multiple family dwelling unit, church, school, or other structure normally used and actually used for the congregation of persons. Distance for the purpose of this section shall be measured from the base of the tower structure to the lot line of the park, right of way, single-family or multiple family dwelling unit, church, school, or other structure normally used and actually used for the congregation of persons." These are the two dimensional variances being requested.

ZBA member Bergman inquired about drawing LE-2 that is mentioned on drawing C-1. Bieniek explained that it is a detailed drawing of the area within the compound, part of the lease exhibit, a separate set of drawings not included in the site plans document.

**Item 3** – Affidavit from Syed Hussain, Radio Frequency Engineer for AT&T. This affidavit states that he has detailed knowledge of the needs of AT&T's network in the area of Clearwater Township specifically and Kalkaska County generally. It has an image of the area of the intersection of M-72 and Townline Road, with a red circle drawn on the image. It states that "Upgrading the existing facility in this area is not possible. The height of the wood pole is too short to provide adequate service in the area." It continues "Locating a new tower outside of the red circle (shown above) would not provide adequate service in the area." And it further says "A new tower inside the circle (shown above) at a height of 170' above ground level is needed to provide adequate service in the area."

A ZBA member asked what the ground level was of the existing pole. Bieniek replied that he didn't know exactly, but it was a little bit lower, and that in addition, the wood pole was not structurally capable for AT&T to upgrade its equipment to today's standards.

**Item 4** – Alternative Analysis. This document shows the same image as is on the Affidavit, with the red circle Search Ring, and portions of the image lettered A, B, C, and D. **A** is the parcel on which the tower is proposed. **B** is land owned by the State of Michigan DNR. **C** is land owned by Clearwater Township. **D** is the land where the neighbors live. Bieniek indicated that the company had reached out to all property owners, including the State and Township, and only the owners of parcel A showed any interest in hosting a tower.

**Item 5** – Separation Requirements. This document shows the Search Ring in yellow. There are red circles representing circles 510 feet wide, centered on the dwelling in the area. There is a white circle of the same width that includes the location of the proposed tower. From this document it is clear that the only land within the Search Ring that does not have a problem with the Zoning Ordinance separation from dwellings requirement, is the land owned by the State of Michigan.

**Item 6** – ZBA Notice of Appeal. Application submitted to request this variance hearing.

ZBA Chair Snyder noted that the appeal was for Section 24.09.A.11 of the Zoning Ordinance, but it did not appeal Section 24.09.A.2. Bieniek responded that because the Planning Commission has the authority, if it so chooses, to waive the requirement of 24.09.A.2, that matter could stay with the Special Use Permit process and didn't need to come to the ZBA.

**Item 7** – Structural Analysis by American Tower. This report was done by American Tower for AT&T in February 2017. AT&T was trying to upgrade its equipment. The analysis indicates that the foundation has failed. The conclusion states: “Based on the analysis results, the structure does not meet the requirements per the applicable codes listed above. The tower and foundation can support the equipment as described in this report after the modifications listed below are completed.” The modification listed is: “replace tower.”

**Item 8** – Fall Zone Letter. This letter is provided by Sabre Industries, the builder of the tower. It speaks to the manner of failure should the built-in safety features be exceeded. The tower is designed to collapse onto itself, buckling down on the structure. “Therefore,” Mr. Bieniek said, “it would not cause any danger to anyone in the area, as well as the right of way.”

**Item 9** – Appraisal by Judeh & Associates. This document is provided in response to claims by a resident who attended the December 28, 2018, Planning Commission hearing, that they would lose 30-50% of the value of their property if the tower was allowed to stay. This analysis studied various other areas in and around residential locations and contacted other appraisers throughout the state. Their conclusion was that there was no net negative impact.

ZBA member Fields asked whether there was a residence on the subject property. James Bargy stated that he is the property owner, and he declared there is no residence on the property – there is a shed and a power pole.

Bieniek requested of Chair Snyder that all the exhibits he presented be introduced into the record. Chair Snyder assured him that they would all be in the record.

ZBA member Bergmann asked about the property land contract – who was the seller and who the buyer. Bargy responded that he is buying the property from the original owner on a deeded land contract that is two years old.

Attorney Wendling encouraged Chair Snyder to ask if there were any additional materials the applicant wished to present, or if the members of the ZBA had questions for the applicant.

Chair Snyder asked if electrical inspections had been done. Bieniek responded that the project had not reached that point yet. The tower was “stacked” (built), but the stop work order was received and complied with before getting to the electrical part of the project.

Snyder asked whether there were special inspections of the footing and assembly. Bieniek responded that he did not know.

Snyder asked when the concrete was placed. Bieniek responded that it was sometime after August, and he thought it was in November.

Snyder asked whether the project had permits from the county. Bieniek responded “Yes.”

Snyder then commented that it’s supposed to be inspected as it goes through the process. Bieniek then explained that he is not the contractor. Once the site acquisition phase is completed, the contractors take over and are responsible for taking care of the permits and compliance.

ZBA member Bergmann asked about the six meter boxes on the drawings. Did that mean there would be six different parties transmitting from that tower? Bieniek responded that towers are typically built for multiple carriers, and there could be as many as six. Different carriers have different requirements,

some with heavier equipment than others. He also pointed out that whenever a carrier plans to co-locate on a tower, that carrier will run a structural analysis to determine appropriateness and capacity.

Bergmann asked about the likelihood of RF interference increasing with more carriers on the tower. Bieniek responded that the FCC allocates specific frequencies to the individual carriers after determining that the frequency will not interfere with other forms of communication.

Bergmann asked about the RF interference effect on the residents in the area. Bieniek indicated there would be a positive effect in terms of increased Wi-Fi capability and better cell phone signals. But, no interference with television. He posited that the frequencies are allocated by the FCC and governed by them.

Snyder commented that he didn't see on the drawings a lot of information on load design or bearing capacities. Bieniek responded that information is on a separate set of drawings that would have been provided to the county for the building permit.

Snyder noted that the drawing on C-1 shows "basically 100' from the center of the cell tower to the ... right of way of State Highway 72." Bieniek replied that was correct.

Snyder referred to the notes on the drawing stating that there was a field survey on December 19, 2017, with the text "this plan was prepared with the benefit of a title report prepared by COMPANY dated DATE file no. ####. Title comments are shown on survey." He said that looked incomplete. Bieniek said that is just saying "that the survey was done after the title was provided, certifying that this was the lot that we're supposed to go on."

Snyder asked if the accuracy of the measurement indicated as 100' – 0" was to the nearest foot. Bieniek said it was, and he noted that the drawing is sealed by the engineer.

Snyder said he didn't see a boundary survey on this page. Bieniek said that this was just the site plan. Snyder asked if the boundary survey had been provided to the Kaskaska codes. Bieniek said that, again, he didn't know. It would have been done in July or August. If it was something required, yes, it would have been provided.

Snyder asked the name of the contractor. Bieniek responded that he did not know off-hand, but he thought it was Michigan Towers.

Snyder asked if Sabre Towers did the design. Bieniek said "yes."

Snyder looked for any further comment. Wendling assisted by asking if there were any more questions from the ZBA for the applicant, or any further presenters on behalf of the applicant.

Ben Herrick - stepped forward to make further presentation. Herrick is an attorney representing Tillman Infrastructure. He stated: "What our package is designed to show you is that there's a need for upgraded service in this area. And the need is in a very specific area of the township. We couldn't go outside the specific area without degrading the service. So we were limited in where we could search for a space for a new tower in the ring, that's called the Search Ring. We looked at every parcel in the ring and contacted landowners. One person was willing to host a tower site. It met most of the requirements of the ordinance except for the distance between the right-of-way and the distance from the residential dwellings." He described his construction of the document in the packet entitled "Separation Requirements," (Item 5). That document shows that the spacing of the homes on the

north side of M-72 would cause the same dimensional issues if the American Tower wood pole were to be upgraded to the same level as the proposed Tillman tower. The wood pole is located about 100' from M-72. The same variance request would be needed, just for a different parcel. He stated "So, I think we've shown that we have a practical difficulty in locating a new tower with sufficient height in this area, and we didn't created the hardship." He concluded: "We attempted – every attempt was made to find a parcel that met all of the ordinance requirements and would not require a variance, but as you can see from our packet there isn't a parcel like that in this – in this area."

Chair Snyder inquired about the size of the subject parcel. It is 5.06 acres in size.

Herrick commented that although the parcel meets the acreage requirements its shape is such that there is no spot on it that could meet the setback requirements from the M-72 right of way and the neighboring residential dwellings. The only land that could provide such a spot is the State-owned land.

ZBA member Fields inquired why the State was not interested in hosting the tower. Herrick responded that if the DNR used federal funds to acquire the land, it would be restricted. He did not know whether that was the case. Materially, the State of Michigan has an exclusive contract with SBA Towers, which is the only tower company allowed on State property. SBA Towers is on a lot of MDoT right of way land and DNR land, but even SBA cannot go onto restricted land. Tillman is not permitted on State land. Herrick also said SBA Towers used to be AAT Communications; they paid a lot of money for the exclusive contract.

ZBA member Bergmann asked if AT&T did not want to go with SBA. Herrick responded that SBA had not been friendly with many of the carriers, but AT&T had hired Tillman.

Bergmann inquired if a more attractive design of tower could be used, that would preserve the beauty and pristine look of the area. Herrick responded that alternative designs were entertained, but the company doesn't feel that the lattice tower detracts materially from the view. He also pointed out that such considerations were more appropriate to the Planning Commission and the Special Use Permit application process, not to the ZBA dimensional variance request.

Chair Snyder asked whether some form of camouflage could be added to the tower – something more than just landscaping around it. Bieniek responded that adding material to the tower itself would not only call more attention to it, but would also interfere with the structural design and increase the risk from wind loading and ice loading.

Attorney Wendling addressed the Chair, saying that if there were no more questions for the applicant dealing with the setback variance request itself, it would be time to open the public hearing, which action should be noted in the minutes including the time of opening and the time of closing.

**Zoning Administrator Report:**

The Zoning Administrator was unable to attend. There is no report.

**Public hearing:**

The public hearing is opened at 7:52 p.m. Each person wishing to speak is asked to identify him- or herself, and will be limited to three minutes for comment.

Dan Dalton – I am an attorney, I represent American Tower. I sent a letter on February 11 with regard to this variance request. Do you have it?

Secretary *pro tempore* Fields responded that the ZBA members had received Attorney Dalton's letter.

Dalton – noted, for the record, that we had spent 55 minutes for the applicants, going through their application. He requested a grace period of a few extra minutes in order to highlight a few of his points, and because he maintained that the applicants had failed to respond to the applicable standards of the Zoning Ordinance. He further noted that there were fine things presented tonight that had not been included in the original application: the affidavit, the separation report, the structural analysis, the fall-zone letter, and the appraisal. He asked that these items be struck from the record because they weren't part of the original application.

With regard to the request for a dimensional variance, the applicant must show a practical difficulty, which is defined in the ordinance. The property in question is not subject to any exceptional or extraordinary circumstances that are required to show a practical difficulty.

The tower was constructed illegally, put up without consultation with the township with respect to the cell communication towers ordinance, and in violation of the Zoning Ordinance regarding setbacks. Moreover, the language of the telecommunication ordinance itself seeks to "minimize the total number of towers throughout the community" and "encourage the joint use of new and existing tower sites rather than the construction of additional towers." This proposed tower is going to increase the number of towers in the township.

With respect to the existing tower, it is an older tower that American Tower could "drop and swap" if so requested by AT&T. AT&T has not made that request. If they did, the 60' tower could be replaced with another tower that could be up to 80' tall. Herrick said there was a federal law passed during the downturn of the national economy that allows telecommunication towers to go up an additional 20' without local approval.

Dalton declared "There's no exceptional or extraordinary circumstances that are conditions of the land. The requested variance is not necessary to alleviate a situation that qualifies as a practical difficulty."

At this point, ZBA member Bergmann, acting as timekeeper, called time. It was agreed to allow Mr. Dalton to have one more minute, following Mr. Bieniek's rebuttal.

Greg Hanlin – lives at 5205 M-72. He read from his prepared statement.

I am here tonight in protest of this project in its entirety and to see that this board holds this applicant accountable for taking advantage of the township and adjacent parcels. The applicant is here tonight because he chose – they chose to not do his job as the zoning coordinator and the company he represents chose to bypass our zoning requirements and build exactly what they want where they want it and then ask for permission later. This project fails to meet most if not all five zoning standards for review, which are intended to insure that variances are granted to only those circumstances where truly unusual conditions are present on a property.

*Variance condition A* – there are no exceptional or extraordinary circumstances on this parcel. I would know this because I live right next door and have been all over this parcel before it was sold to the current owners. The applicant and his excavating company had no problem moving trees around for their illegal tower, and the land contract buyers had no problem clearing trees to make sites for their illegal campground, which they operated for the entire 2018 spring, summer, and fall.

*Variance condition B* – these conditions do not apply to the applicant at all. For starters, the parcel is owned by Frank and Sheryl Vanderputte who sold it via land contract deeded to James and Denise Bargy. The Bargys are able to use this parcel for its intended purpose, which is residential and recreational use, which they are not being denied. They are not being denied a legal and practical use. The applicant and the land contract owners are solely utilizing this parcel for the purposes of profit.

*Variance condition C* – the practical difficulty does not exist, due to the unique character of the land, and the applicant should not be allowed to establish their own practical use for the purpose of financial gain. They chose to build this without permission.

*Variance condition D* – the property owner did not create the practical difficulty. Mike Bieniek and the land contract buyer did, by illegally constructing the tower. Our Zoning ordinance is clearly written, and they chose not to follow the rules governing our township.

*Variance condition E* – as an appraiser, which I am, and a Realtor of this state, I can tell you first-hand that this tower will have a significant negative impact on the values of the adjacent properties. This tower has already made an inverse visual impact that everyone here tonight can see for themselves because it's illegally constructed, by visiting the site if they have not already.

This project meets none of the variance conditions, and from the clear definitions in our ordinance that apply to telecommunication towers, it violates almost all of them. This illegally constructed tower is a nuisance *per se*, and the township should be forcing Mike Bieniek and his group of opportunists to remove this illegal project, and begin to issue fines until it's gone. I am asking this board to unanimously decline the applicant's request for variance.

A proud taxpayer and resident of this township.

Thank you very much for your time.

Lynne Buday – lives at 5300 M-72 NW. She is one of the neighboring property owners. She stated she is very concerned about the tower's likely negative impact on the value of her property, which she has recently had assessed at \$377,000. The area is residential and none of the property owners want the tower in the neighborhood. She stated that it is an eyesore, built right near the highway, whereas other towers she has seen are sited far off the highway. She's distressed because the tower was built illegally without following the rules. It violates the setback rules and it violates the Master Plan. Reading from the Master Plan: "the scenic features of Clearwater Township are, in large part, a reason for the significant increase in both residential and vacation population over recent years" in this area. "It is important, both from the standpoint of quality of life for our residents and visitors, and from the economic benefit that these people bring to our community, that we preserve the woodland, waterland, wetland, and farmland nature of the township. There are lengthy stretches of roadway that present our best features to the public, and that we believe should be faithfully preserved. These include the portion of M-72 that runs through the township," which is exactly where we live, "Rapid City Road between the DNR Skegemog Swamp trailhead and Townline Road, and Valley Road between Dundas and Wilhelm Roads." I think this board should deny the request for the variance, and I support all the other arguments that were being made in opposition to it

Kimberly Hanlin – lives at 5205 M-72. She stated that her home is next door to the illegally constructed tower. She said she is terrified by the tower. She asked why any responsible business would put this tower on this site so close to the road and the surrounding residents. She reminded the gathering of the 100-mph winds we experienced in 2015 that did significant damage in our region, and asked how the tower and its antennas would hold up to that. She concluded “This is just simply a bad idea, so I’m asking to please vote No on the variance. Thank you.”

Mel Cooke – lives directly across from the tower on M-72. He stated that he objects to having to see the tower every day as he drives out of his driveway. He stated that no one in the neighborhood was asked about willingness to have a tower. He doesn’t see any reason to grant a variance to two people and a tower company that are going to make money from the tower.

Greg Hanlin – stated that Mr. Herrick’s claim to have petitioned all residences within the radius [of the Search Ring] was not true. He said he never received an email or letter notifying him of the search for parcels. From his perspective, he said, the company had targeted the lowest taxable value parcel for the project. He also said that if the company had read the ordinances clearly, in the first place, we would not be here.

#### **Rebuttal:**

Ben Herrick – said “we admit there was a mistake made. We had an approval from the township and we used that approval from the township to obtain a building permit before constructing the tower. Once it was determined that the approval was not accurate, or shouldn’t have been given in the manner it was, we stopped work and we started the process as if the tower had not been there at all. And that’s why we started with a Special Land Use. We started an application, we had a public hearing.” He noted that the accusation of illegally constructing the tower was heard at the Planning Commission Special Land Use Permit application hearing. He said the applicant was here to try and fix that, to go through the legal process.

During the Special Land Use Permit application hearing, Mr. Herrick determined that dimensional variances were also required. There’s a federal law that requires the township to act within a certain amount of time (90 days from receipt of an administratively complete Special Land Use Permit application). Because a variance was going to be needed, he wrote to Attorney Graham, agreeing to “toll” (put on hold) the time on that Special Use Permit decision process to allow for coming to the ZBA for the necessary dimensional variances.

He stated that the company had acted in good faith on the approval from the Zoning Administrator, and was acting in good faith now, attempting to correct the mistake.

Herrick further stated that there is no rule that all the materials submitted to the board are to be contained in the original application. Therefore, we should keep intact all the written materials submitted by the applicant.

Herrick concluded by stating that the ZBA is supposed to act on facts, not on feelings and opinions. He said: “We feel we’ve shown the practical difficulty of locating a tower in the area. We’ve supplied an affidavit from a radio frequency engineer, saying that we have to be in this certain area at a certain level. An 80’ tower is not gonna do it.”

Dan Dalton – read from the Zoning Ordinance, portions of the definition of a Practical Difficulty: “situations occurring due to the owner’s desire to establish a use greater than the ‘minimum practical’ standard,” which is a residential home, “or to enhance economic gain greater than associated with the ‘minimum practical’ standard, or created by the owner subsequent to the effective date of this Ordinance, are not” – ARE NOT – “considered to meet the definition of Practical Difficulty.” So, he said, the desire to build a tower here for economic gain isn’t a practical difficulty. Furthermore, he said, AT&T has not indicated to American Tower a need to improve coverage. He concluded by asking the ZBA to deny the variance request.

At this point, Mike Bieniek asked the Chair if he could rebut and the Chair asked him to wait.

There was some back and forth between the Chair and the Tillman team about the size of the lot. It turned out that Chair Snyder was asking about the size of the lot on which the existing American Tower 60’ wood pole is located, and whether they had been contacted about having another tower on that location. Herrick reiterated that no variance is needed for the size of the lot on which the proposed tower is to go; dimensional variances are needed for the distance from the tower compound and the M-72 right of way, and for the distance from the tower compound to the nearby residential dwellings. Within the Search Ring only the DNR property would meet all requirements, but that property is not available to Tillman. Bieniek also responded saying that even if American Tower were approached to build a new tower where the existing 60’ wood pole is, they also could not meet the Zoning Ordinance setbacks and residential spacing requirements. Bieniek concluded that the matter was hypothetical, anyway, because American Tower was not here seeking the variance, Tillman Infrastructure was.

Chair Snyder asked if the required emergency contact signage would be place. Herrick responded that, of course, if the project goes forward, all the requirements for the Special Land Use Permit would be carried out. He pointed out that this board is not charged with the details of the Special Use Permit, but only with the question of the setback dimensional variances requested. For that, he indicated, they needed to show a practical difficulty that was not self-created, and he believed they had done that.

Dalton – addressed the Chair and stated that he disagreed with the analysis provided by Mr. Bieniek. He said if AT&T wanted the 60’ tower replaced, they could ask for it to be dropped and swapped and to rise another 20’ to a height of 80’. He said AT&T has not said that coverage is deficient as it is. He further challenged the Tillman claim that they couldn’t find another spot, or that they actually contacted the other property owners.

Greg Hanlin – interjected that he has AT&T service that is impeccable. He doesn’t need any stronger service.

Bieniek – responded to the Chair, saying he had provided the propagation maps that clearly show the existing coverage as well as what is proposed.

Buday – stated for the record that she was never contacted.

There being no additional speakers, the Chair closed the public hearing at 8:18 pm.

At this point Attorney Wendling made the recommendation that the ZBA receive the materials thus far submitted, set a two-week period during which additional materials could be received for consideration, and table the deliberations on the matter until the next regular ZBA meeting, or to an earlier special meeting if the applicant requests it and pays for it. The reason for this is to make sure

that the record is closed and completed with adequate time for the ZBA to review the materials and for legal counsel Bryan Graham to assist in drafting findings of fact for the ZBA. He reinforced the correct statement on the part of the applicant's attorney that the issue involves the 5.06 acre parcel and the fall-zones as they impact surrounding structures that are occupied by people as stated in the Ordinance. The standards apply to: a) the variance request; b) as applied to the 5.06 acre parcel, not to whether another site is better.

Discussion ensued regarding when the next ZBA meeting is scheduled, and that Tillman would provide copies of all materials as requested, at their cost and not impose that cost on the township. After discussion, the following motions were made:

**MOTION** by Bergmann, second by Fields, to establish a two-week period from the date of this hearing in which new materials may be submitted, at which time the record will be closed. Motion carried.

**MOTION** by Fields, second by Lawicki, to table the matter until the next regular meeting, or special meeting, if one is called. Motion carried.

**Adjournment:**

**MOTION** by Fields, second by Lawicki, to adjourn. Adjournment at 8:25 p.m.

**Next Meeting:** April 8, 2019

Respectfully submitted,



Tina Norris Fields  
Secretary pro tempore - ZBA