

Clearwater Township
Planning Commission
Regular Meeting of November 4, 2019
As approved December 2, 2019

Call to Order, Pledge of Allegiance:

Chair Backers called the meeting to order at 7:01, and opened with the Pledge of Allegiance.

Roll Call of Members and Recognition of Visitors:

Commissioners present: Backers, Cassasa, Eldridge, Fields, Von See.

Township officials: Zoning Administrator Parzych, Deputy Clerk Moore

Public: Attorney Peter Wendling, Carol Backers, Karen McKenzie, Greg Hanlin, Ben Herrick, Attorney Sandra Jasinski, Mike Bieniek, Lynne Buday.

Approval of Agenda:

MOTION by Casassa, second by Von See, to accept the agenda as presented. Motion carried.

Call for Disclosure of Conflicts of Interests:

Chair calls for commissioners to disclose any real or potential conflicts of interests. All Commissioners declared no conflicts of interests.

Approval of Minutes:

MOTION by Casassa, second by Backers, to accept the minutes of October 15, 2019, as presented. Motion carried.

Public Comment for Matters Not on the Agenda:

Karen McKenzie – asked why the public comment period was for matters not on the agenda. Chair Backers explained that this is the opportunity to bring to the Commission’s attention things that are not already on the agenda.

Commissioner Comment for Matters Not on the Agenda:

None.

Correspondence:

Attorney letter pertaining to this matter.

Resumption of Deliberations on Public Hearing: Special Use Permit Application from Mr. Mike Bieniek, AICP, of LCC Telecom Services (Agent for Tillman Infrastructure), to erect a 170’ telecommunications tower in Clearwater Township at 5378 Townline Rd, Williamsburg, MI 49690

[session began at 7:08 p.m.]

Chair Backers – reviewed the history of this matter, beginning with the public hearing of December 28, 2018, at which all the evidence was received. The hearing was recessed to permit

the applicant to seek dimensional variances from the Zoning Board of Appeals. The timeclock for the decision on the special use permit application was “tolled” (suspended), until the ZBA reached its decision. The applicant submitted two variance appeals to the ZBA; 1) the first for a 170’ tower, which they withdrew, and 2) the second for a 120’ tower. The second variance appeal was denied at a special meeting held on September 13, 2019. The township has 88 days following that decision to complete the special use permit application decision process.

Chair Backers, reviewed with Zoning Administrator Parzych, the history of the conversations and emails he had with the applicant. Parzych said he told Tillman Infrastructure that “they had to follow our zoning ordinance.” He further stated “after that, yes I told them there was nothing more that we needed. But he already knew that he had to come in for a special use permit, okay? That was our telephone conversation. After that ... he took Jule’s email over to Kankaska County and got a building permit. Kankaska County knows, and has been following this rule for a long time – without a land usage permit, there’s no building permit. But they gave him one anyway.”

Backers then queried Mike Bieniek. He asked if Mr. Bieniek’s title is Zoning Director. Bieniek affirmed that was true. Backers then asked “and you reviewed the zoning regulations for Clearwater Township prior to?” Bieniek said, “no, we did not have a copy ... I called Mr. Parzych when we were getting ready to file the application. I was going to file a special use permit application, and he said ‘no, you do not need a special use – I can give it to you administratively so long as you provide me with the MDOT, the FAA, and a copy of the drawings,’ which is what I did.” Chair Backers noted that we have no documentation to verify that conversation, but if that was what took place, it was in error because in the recreational land use district, telecommunication towers are allowed by special use permit only [18.03.J].”

Bieniek said that the zoning regulations were not online at the time, so he did not have a copy of them. Backers replied: “the zoning regulations have been online for as long as I’ve been sitting on this seat.”

The Commission then took up the specific review standards that apply to a special use permit application [24.03.A.1-8], site plan approval [28.06.A-F], and the additional standards applicable to telecommunications towers [24.09.A.1-15].

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24.03 BASIS OF DETERMINATIONS

Prior to approval of a Special Use application, the Planning Commission shall insure that the standards specified in this Section as well as applicable standards established elsewhere in this Ordinance, shall be satisfied by the completion and operation of the Special Use under consideration.

A. GENERAL STANDARDS

The Planning Commission shall review the particular circumstances of the Special Use request under consideration in terms of the following standards, and shall recommend a Special Use only upon a finding of compliance with each of the following standards, as well as applicable standards established elsewhere in this Ordinance:

1. The Special Use shall be designed, constructed, operated and maintained in a manner that shall not change the essential character of the surrounding area.

Does this application meet the standard?

Von See – no, it changes the essential character of the area.

Casassa – no, changes the character because it fails to meet the setback requirements.

Eldridge – no, failure to meet setbacks changes the appearance of the area.

Fields – no, because the telecommunications tower and the residential neighborhood are two incompatible uses of the same land, thus changing the character of the area.

Backers – no, because objective 1 of the Master Plan specifically addresses keeping the scenic beauty of the portion of M-72 that runs through the township, this very area – the tower would change its character.

Commission finds the standard is not met

2. The Special Use shall not interfere with the general enjoyment of adjacent property. (Discussion on safety concerns and reminder from Attorney Wendling that engineering evidence presented establishes the safety of the structure, unless competing engineering evidence to the contrary has been presented – and none has been presented.)

Does this application meet the standard?

Eldridge – no, the general enjoyment is spoiled by concerns expressed by the neighboring property owners.

Casassa – no, because it does interfere with the general enjoyment of adjacent property.

Backers – no, because it does interfere with the general enjoyment of adjacent property.

Von See – no, because it does interfere with the general enjoyment of adjacent property.

Fields – no, because it does interfere with the general enjoyment of adjacent property, in spite of evidence concerning the safety of the structure.

Commission finds the standard is not met

3. The Special Use shall represent an improvement to the property under consideration.

Does this application meet the standard?

Backers – yes, any structure represents an improvement to barren property. It represents an investment and improves the value of the property, and the service would be a benefit to the community according to our applicant.

Casassa – no, don't agree that just putting something on barren land is an improvement, and this one doesn't meet the setbacks or improve anything.

Eldridge – yes, because it would be an improvement from the tax perspective, and it would improve telecommunications capability.

Von See – no, this is not an improvement.

(Question put to Attorney Wendling whether we have to use the specific definition of ‘improvement’ that the tax assessor would use. He counseled that we do not have to and the fact that some Commissioners do and some don’t is simply part of the debate.)

Fields – no, even though recognizing the need for improved telecommunications, in this location, it represents an incompatible use with the existing residential neighborhood, and not an improvement.

Commission finds the standard is not met

4. The Special Use shall not be hazardous to adjacent property, or involve uses, activities, materials or equipment which will be detrimental to the health, safety or welfare of persons or property through the excessive production of traffic, noise, smoke, odor, fumes or glare.

Does this application meet the standard?

Von See – no.

Casassa – yes, using the criteria of this standard.

Backers – yes, there is nothing that would violate this standard.

Fields – yes, given the criteria we have.

Eldridge – yes, for reasons given.

Commission finds the standard is met

5. The Special Use shall be adequately served by essential public facilities and services, or it shall be demonstrated that the person responsible for the proposed Special Use shall be able to continually provide adequately for the services and facilities deemed essential to the Special Use under consideration, such as whether the proposed sewage disposal and water supply will be safe and adequate.

Does this application meet the standard?

Backers – yes, because there is no need for any services in addition to what is already in place.

Eldridge – yes, agree.

Casassa – yes, agree.

Von See – yes, agree.

Fields – yes, agree.

Commission finds the standard is met

6. The Special Use shall not place demands on public services and facilities in excess of current capacity.

Does this application meet the standard?

Backers – yes, for the same reasons as for standard 5.

Casassa – yes, agree.

Eldridge – yes, agree.

Von See – yes, agree.

Fields – yes, agree.

Commission finds the standard is met

- 7. The Special Use shall be consistent with the intent and purpose of this Ordinance.

Does this application meet the standard?

Backers – yes, this special use application is an exception to the recreational district permitted only by special use; it is therefore not incompatible with the district.

Von See – no.

Casassa – no.

Eldridge – no, because of the failure to meet the setback requirements.

Fields – no, although it is not incompatible with the district, it is incompatible in this specific location because of the residential neighborhood already there.

Commission finds the standard is not met

- 8. Side and/or rear boundaries abutting a residence or residential property shall be provided with screening from adjacent premises, which screening shall consist of either a solid uniformly finished and maintained wall or fence of durable material or by a well-maintained dense evergreen planting, which screening shall not be less than six (6) feet in height.

Does this application meet the standard?

Backers – yes, if the special use permit were approved, this standard would be met, per the drawings provided.

Von See – yes, agree.

Casassa – yes, agree.

Eldridge – yes, agree.

Fields – yes, agree.

Commission finds the standard is met

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28.06 STANDARDS FOR GRANTING SITE PLAN APPROVAL

Each site plan shall conform to all applicable provisions of this Ordinance and the standards listed below. Compliance with applicable County and State requirements is a prerequisite for site plan approval.

- A. Sites at which hazardous substances are stored, used, or generated, shall be designed to prevent spills and discharges to the air, ground, groundwater, lakes, streams, rivers, or wetlands. Secondary containment for above ground areas where hazardous substances are stored or used shall be provided and shall be sufficient to store the substances for the maximum anticipated period of time necessary for the recovery of any released substances.

Commission finds the standard is not applicable

- B. General purpose floor drains must meet all applicable county building code requirements.

Commission finds the standard is not applicable

- C. State and federal agency requirements for storage, spill prevention, record keeping, emergency response, transport and disposal of hazardous substances shall be met. No discharges to groundwater, including direct and indirect discharges, shall be allowed without required permits and approvals under Michigan law PA 451 of 1994, Part 111 Hazardous Waste Management, MCL 324.11101 et seq. and federal law CFR 49 Parts 171 and 174.

Commission finds the standard is not applicable

- D. Storm water and soil erosion control shall be in compliance with the Natural Resources and Environmental Protection Act, Part 91 Soil Erosion and Sedimentation Control, (Public Act 451 of 1994, as amended), and any necessary permits shall be obtained from the Kalkaska County Soil Erosion officer.

Commission finds the standard is not applicable

- E. All buildings or groups of buildings shall be so arranged as to permit emergency vehicle access by some practical means to all sides.

Does this application meet the standard?

Backers – yes, the only building is the utility building, plenty of access.

Von See – yes, agree.

Casassa – yes, agree.

Eldridge – yes, agree.

Fields – yes, agree.

Commission finds the standard is met

- F. All loading and unloading areas and outside storage areas, including areas for the storage of trash, which face or are visible from residential districts or public thoroughfares, shall be screened by a vertical screen consisting of structural or plant material no less than six feet in height.

Commission finds the standard is not applicable

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The Commission notes in passing that the State and Federal requirements were complied with, and evidence of such compliance was provided with the application.

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24.09 ADDITIONAL STANDARDS APPLICABLE TO PARTICULAR USES

In addition to the standards set forth in a particular zone and the standards set forth in Section ~~24.03~~ of the Ordinance, the uses below must meet the following additional standards:

A. TELECOMMUNICATION TOWER

1. Application. The applicant must indicate that no existing tower, alternative tower structure or alternative technology not requiring the use of towers or alternative tower structures can accommodate the applicant's proposed antenna. An applicant shall submit information requested by the Planning Commission related to the availability of suitable existing towers, other alternative towers or alternative technology. Evidence submitted to demonstrate that no existing tower, alternate tower structure or alternative technology can accommodate the applicant's proposed antenna may consist of any of the following:

- a. No existing towers or alternative tower structures are located within the geographic area which meet applicant's engineering requirements.

Does this application meet the standard?

Fields – yes, we have the report from American Tower to AT&T that the existing wooden pole has failed at the foundation level and would have to be replaced – as it stands, it cannot meet the applicant’s requirements.

Backers – yes, agree.

Eldridge – yes, agree.

Casassa – yes, agree.

Von See – yes, agree.

Commission finds the standard is met

- b. Existing towers or alternative tower structures are not of sufficient height to meet applicant's engineering requirements.

Does this application meet the standard?

Backers – yes, we’ve already established there is no satisfactory existing tower or alternative tower structure.

This is a unanimous yes.

Commission finds the standard is met

- c. Existing towers or alternative tower structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.

Does this application meet the standard?

Backers – yes, we’ve already established there is no satisfactory existing tower or alternative tower structure.

This is a unanimous yes.

Commission finds the standard is met

- d. The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or alternative tower structures, or the antenna on the existing towers or alternative tower

structures would cause interference with the applicant's proposed antenna.

Does this application meet the standard?

Backers – yes, based on the FCC licensing.

This is a unanimous yes.

Commission finds the standard is met

- e. The applicant presents evidence that fair market value offers have been made to co-locate their antennae on any existing tower in the Township that would meet applicant's geographical and engineering requirements, and that such offers have been refused by the owners/operators of such existing towers, after such owners have been advised by the applicant that co-location is the policy of the Township and that the Township, in support of that policy, expects that no offer shall be unreasonably refused by the owner/operator of an existing suitable tower.

Does this application meet the standard?

Backers – based on the absence of any available tower for co-location, this standard is not applicable.

The Commission agrees.

Commission finds the standard is not applicable

- f. The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.

Does this application meet the standard?

Backers – based on the absence of any available tower for co-location, this standard is not applicable.

The Commission agrees.

Commission finds the standard is not applicable

- 2. Setbacks. The following setback requirements shall apply to all towers for which a special use permit is required; provided, however, that the Planning Commission may reduce the standard setback requirements if the goals of this ordinance would be better served thereby.

- a. Towers must be set back a distance equal to at least one hundred percent (100%) of the height of the tower from any adjoining lot line.

Does this application meet the standard?

Von See – no, and we have no reason to reduce the setbacks

Backers – no, agree.

Casassa – no, agree.

Eldridge – no, agree.

Fields – no, agree.

Commission finds the standard is not met

- b. Guys and accessory buildings must satisfy the minimum zoning district setback requirements.

Does this application meet the standard?

Fields – yes, there are no guy wires and the accessory building meets the general setback requirements of the district.

Von See – yes, agree

Backers – yes, agree.

Casassa – yes, agree.

Eldridge – yes, agree.

Commission finds the standard is met

- 3. Security Fencing. Towers and attendant accessory structures shall be enclosed by security fencing not less than six feet (6') in height and shall also be equipped with an appropriate anti-climbing device; provided, however, that the Planning Commission may waive such requirements, as it deems appropriate.

Does this application meet the standard?

Backers – yes, if this special use permit application were approved, this standard would be met.

Von See – yes, agree.

Casassa – yes, agree.

Eldridge – yes, agree.

Fields – yes, agree.

Commission finds the standard is met

- 4. Landscaping. The following requirements shall govern the landscaping surrounding towers for which a special use permit is required; provided, however, that the Planning Commission may waive such requirements if the goals of this ordinance would be better served thereby.
 - a. Tower facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from property used for residences. The standard buffer shall consist of a landscaped strip at least four feet (4') wide outside the perimeter of the compound.

Does this application meet the standard?

Backers – yes, if this special use permit application were approved, this standard would be met.

Von See – yes, agree.

Casassa – yes, agree.

Eldridge – yes, agree.

Fields – yes, agree.

Commission finds the standard is met

- b. In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived.

Does this application meet the standard?

Backers – the visual impact of this tower is definitely not minimal; therefore, this standard is not applicable.

The Commission agrees.

Commission finds the standard is not applicable

- c. Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large, wooded lots, natural growth around the property perimeter may be sufficient buffer.

Does this application meet the standard?

Backers – there is no existing natural growth to provide a buffer; therefore, this standard is not applicable.

The Commission agrees.

Commission finds the standard is not applicable

- 5. State or Federal Requirements. All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this Ordinance shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.

Does this application meet the standard?

Backers – yes, evidence of compliance with State and Federal requirements was submitted with the application.

Von See – yes, agree.

Casassa – yes, agree.

Eldridge – yes, agree.

Fields – yes, agree.

Commission finds the standard is met

- 6. Aesthetics. Towers and antennas shall meet the following requirements:
 - a. At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings.

Does this application meet the standard?

Von See – yes, to the extent possible.

Casassa – yes, it doesn't include the tower, just the building.

Backers – yes, agree.

Eldridge – yes, agree.

Fields – yes, agree.

Commission finds the standard is met

- b. Where a feasible alternative exists, towers, alternative towers structures and supporting structures shall not utilize a power source which generates noise able to be heard by a person of normal aural acuity at adjoining property lines or public property; however, this section shall not be construed as limiting the use of temporary generators or similar devices used to create power during periods of interruption of the primary power source.

Does this application meet the standard?

Backers –this standard is not applicable to this setting.

The Commission agrees.

Commission finds the standard is not applicable

7. Lighting. Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views.

Does this application meet the standard?

Backers – yes, there is no lighting.

Casassa – yes, agree.

Von See – yes, agree.

Eldridge – yes, agree.

Fields – yes, agree.

Commission finds the standard is met

8. Compliance with Codes. Antenna and metal towers shall be grounded for protection against a direct strike by lightning and shall comply as to electrical connections and wiring and as to structural integrity with all applicable state and local building codes and the applicable standards for towers published by the Electronic Industries Association, as amended from time to time.

Does this application meet the standard?

Backers – yes, if this tower is built, these codes will be met; they are not within our regulatory purview, anyway.

Von See – yes, agree.

Casassa – yes, agree.

Eldridge – yes, agree.

Fields – yes, agree.

Commission finds the standard is met

9. Interference with Residential Reception. Towers shall be located so that they do not interfere with television and radio reception to neighboring residential areas.

Does this application meet the standard?

Backers –this standard is regulated already by the FCC, and is not within our purview; it is not applicable.

The Commission agrees.

Commission finds the standard is not applicable

10. Signs. Towers shall bear no signage, other than such small signs as may properly convey information identifying the owners and their emergency maintenance phone numbers, and such warning signs as may be useful to protect the public from contact.

Does this application meet the standard?

Backers – yes, we've been provided with evidence that the required signage will be applied if this tower is built.

Von See – yes, agree.

Casassa – yes, agree.

Eldridge – yes, agree.

Fields – yes, agree.

Commission finds the standard is met

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.

Does this application meet the standard?

Backers – no, documentation provided indicates none of these spacing requirements is met by the plan.

Von See – no, agree.

Casassa – no, agree.

Eldridge – no, agree.

Fields – no, agree.

Commission finds the standard is not met

12. Removal of Abandoned Antennas and Towers. Any antenna or tower that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such antenna or tower shall remove the same within ninety (90) days of receipt of notice from the Township notifying the owner of such abandonment. Along with said removal, said owner shall restore

the site of said antenna or tower to its original condition prior to location of the antenna or tower subject to reasonable wear and tear. Failure to remove an abandoned antenna or tower within said ninety (90) days shall be grounds to remove the tower or antenna at the owner's expense. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower. The Planning Commission may require the applicant to file a bond equal to the reasonable cost of removing the tower, antenna, alternative tower structure or other supporting structure(s) as a condition of a special use permit given pursuant to this section.

Commission finds that this is a standard that must be met if the tower is approved.

13. Collapsibility. Towers shall be designed to internally collapse in the face of natural forces.

Does this application meet the standard?

Backers – yes, we’ve been provided with evidence that the tower is designed to internally collapse in the face of natural forces.

Von See – yes, agree.

Casassa – yes, agree.

Eldridge – yes, agree.

Fields – yes, agree.

Commission finds the standard is met

14. Emergency Access. There shall be access to the tower sufficient to allow service by emergency vehicles.

Does this application meet the standard?

Backers – yes, as already determined in the Site Plan Review standard 28.06.E, there is ample room for emergency access.

Von See – yes, agree.

Casassa – yes, agree.

Eldridge – yes, agree.

Fields – yes, agree.

Commission finds the standard is met

15. Emergency Contact. Special Use Permit applications shall contain addresses and phone numbers sufficient to reach owners and maintenance personnel in the event of emergency, and such phone numbers shall be displayed on signs at the tower site.

Does this application meet the standard?

Backers – yes, as is required by and overseen by the FCC.

Von See – yes, agree.

Casassa – yes, agree.

Eldridge – yes, agree.

Fields – yes, agree.

Commission finds the standard is met

All standards of review having been considered, the following motion was made:

MOTION by Fields, second by Von See, to recommend to the Township Board denial of this special use permit application, based upon the findings of fact, our review of each of the standards of review, and the exhibits presented. Motion carried.

Roll call

Von See - yes

Casassa – yes

Eldridge – yes

Backers – yes

Fields –yes

The business of this hearing completed, Chair Backers declared it closed at 8:46 p.m. He asked for a motion to postpone the remaining agenda to the December meeting.

MOTION by Von See, second by Fields, to postpone the remaining agenda items to the December 2, 2019 meeting of the Planning Commission and to adjourn. Motion carried. Adjournment at 8:46.

Assignments:

- Fields to prepare memo notifying the Township Board of the Planning Commission recommendation re the Tillman telecommunications tower.

Next Meeting: December 2, 2019, at 7:00 p.m., in the Clearwater Township Community Center (a.k.a. the Little Red Schoolhouse).

Respectfully submitted,



Tina Norris Fields
Secretary