

**BIG RAPIDS CHARTER TOWNSHIP BOARD**  
**SPECIAL MEETING – MONDAY JULY 23, 2018 AT 7:00 P.M.**  
**BIG RAPIDS TOWNSHIP OFFICES, 14212 NORTHLAND DR.**  
**BIG RAPIDS, MI 49307**

**AGENDA**

**CALL TO ORDER: 7:00 p.m. ROLL CALL: \_\_ Stanek,\_\_ Fountain,\_\_ Currie,  
\_\_ Bean,\_\_ Everett,\_\_ Geib,\_\_ Williams. Pledge of Allegiance.**

**Special meeting requested by Trustee Bean and Trustee Everett.**

**THE PURPOSE OF THIS SPECIAL MEETING IS TO DISCUSS THE  
TOWNSHIP ORDINANCE FOR SPECIAL USE PERMIT APPEALS.**

**PUBLIC COMMENT:**

- 1. Review the township ordinance for special use appeals, the process, and how it is supposed to work.**
- 2. Brent describes his actions and what happened from the moment he received the appeal requests to where we are now.**
- 3. Review of Communications, both internal and external, regarding SUP-18-001 appeal filings.**
- 4. SUP 18-001 appeal filings status and notification or communication with appellants.**

**PUBLIC COMMENT:**

**ADJOURNMENT:**

**Big Rapids Charter Township will provide necessary and reasonable auxiliary aids and services, such as signers for the hearing impaired and audiotapes of printed material, if individuals with disabilities, upon five business days notice to the township. Individuals requiring auxiliary aids or services should contact Rene Fountain, Big Rapids Charter Township Clerk, 14212 Northland Drive, Big Rapids, Mi 49307- call 231 796 3603 or fax request to 231 796 2533.**

## Zoning 59

### SPECIAL USE PERMITS

#### 153.130 USES BY SPECIAL PERMIT.

(A) Uses requiring special permits are those uses of land which are not essentially incompatible with the uses permitted in a zoning district, but possess characteristics or locational qualities which require individual review and restriction in order to avoid incompatibility with the character of the surrounding area, public services and facilities, and adjacent uses of land. Proposed uses will be evaluated according to

their compatibility with the nature, extent and density of the surrounding area.

(B) Special permit uses may be permitted only in those zoning districts where they are designated by this chapter, and only when specifically approved by the Township Planning Commission in accordance with the provisions of this chapter.

(C) Prior to approval of a special use permit, the Planning Commission shall ensure that the standards specified in this section, as well as standards established elsewhere in this chapter shall be satisfied. All uses by special permit shall comply with each of the following standards and requirements as listed in this

division (C).

(1) The nature, location and size of the special use shall not change the essential character of the surroundings area, nor disrupt the orderly and proper development of the district as a whole. The use shall

not be in conflict with, or discourage the adjacent or neighboring use of lands or buildings.

(2) The special use shall not diminish the value of the land, buildings or structures in the neighborhood.

(3) The special use shall not increase traffic hazards or cause congestion on the public highways or streets of the area. Adequate access to the parcel shall be furnished.

(4) The water supply and sewage disposal system shall be adequate for the proposed special use by conforming to State and County Health Department requirements, and the special use shall not overburden

any existing services or facilities.

(5) Uses by special permit shall not be significantly more objectionable to nearby properties by

reason of traffic, noise, vibrations, dust, fumes, odor, smoke, glare, lights or disposal of waste than the operation of any principal permitted use, nor shall the special use increase hazards from fire or other dangers to either the property or adjacent property.

(6) The Planning Commission may require that the premises be permanently screened from adjoining or contiguous properties by a wall, fence, plant screen and/or other approved enclosure when deemed necessary to buffer the surrounding uses from objectionable noise, light and the like created by the special use.

(7) The special use shall be consistent with the intent and purpose of this chapter and with the intent of the land use plan for the township. The special use shall be compatible with the natural environment and shall not inimical to the public health, safety and general welfare.

#### 60 Big Rapids Charter Township - Land Usage

(D) Application for a special use permit shall be made to the Township Planning Commission.

(E) The Planning Commission shall hold a public hearing on each request for a special use permit following proper notice of said public hearing in the same manner as provided for 153.278.

(F) (1) Where the Planning Commission determines that a special use is consistent with the standards outlined in this section and all other ordinances and regulations of the township, it shall issue a special use

permit modified as the Zoning Board may require and containing any conditions or restrictions which the

Zoning Board may consider necessary to carry out the purpose of this chapter.

(2) Where the conditions set forth under the permit anticipate a future compliance, the failure of which would impart jeopardy, injury or aggravation to adjoining permitted land uses, the Planning Commission shall have the authority to require such guarantees (in form of performance bonds or escrow

funds) as may be deemed necessary to remove, alleviate or remedy the conflicting use.

(3) A denial of the special use permit shall be in writing, setting forth the reason for denial.

(4) The applicant may appeal a denial to the Planning Commission.

(Ord. 2, passed 8-12-1971; Ord. 3, passed 8-8-1974; Ord. 3.08, passed 3-7-1978; Ord. 3.13, passed 8-7-1979)

## PLANNED UNIT DEVELOPMENT

### 153.145 INTENT.

To permit through the special use permit procedure, planned unit development, which includes flexibility in the use and design of structures and land in situations where modifications of specific provisions of the township zoning regulations will not be contrary to its intent and purpose or significantly inconsistent with the planning on which it is based, and which will not be harmful to the neighborhood in which they occur.

(Ord. 3.09, passed 6-6-1978; Ord. 3.31, passed 12-3-2002)

### 153.146 MODIFICATION POWERS.

In acting upon the PUD application, the Planning Commission may alter setback requirements, height, lot and building size limits, off-street parking regulations, landscaping rules, and the intensity of the permitted density limits of the district where the lot is located, providing such uses are desirable or convenient for the users of the PUD as developed, or for the immediate neighborhood, and provided that such uses are planned so as to assure that they will not material alter the existing character of the neighborhood, as provided in 153.130. Further, no PUD shall create demands on other existing public services in excess of current capacity, not provide for uses that will be detrimental to the health, safety or welfare of persons or property through excessive production of traffic, noise, smoke, odor, fumes or glare.

However, uses not otherwise permitted in the district where the lot is located shall not be permitted to occupy more than 15% of the lot area nor more than 15% of the total floor area of all s

Zoning 61

### 153.147 APPLICATION PROCEDURE.

(A) The provisions of this section shall be applied to the existing zoning district, as defined on the zoning map where the PUD is to be located.

(B) Applications may be made for any lot exceeding two acres in size, the application procedure is as follows.

(1) Preliminary conference. Prior to preparing formal application, the applicant shall meet with the Zoning Administrator to discuss the proposed development.

(2) Preliminary applications. The applicant shall prepare and submit seven copies of preliminary development plan which shall include a description of the PUD and its intended uses; a detailed site plan, drawn to a scale not smaller than 40 feet to the inch, certified by a licensed architect, a registered land surveyor or professional engineer; location of and restriction on open space within the PUD including all maintenance agreements; a development schedule; a list of covenants or deed restrictions for the development; and the type of financial guarantees to be utilized to assure development of the site in accordance with plan. In addition, the applicant shall furnish such other information as the Zoning Board may reasonably require. The Zoning Board, after a hearing, shall approve or deny said application.

(3) Final application.

(a) The applicant shall prepare and submit eight copies of the final development plan which shall include a detailed site plan, drawn to a scale not smaller than 40 feet to the inch, certified by a licensed architect, a registered land surveyor or professional engineer. Final development plan shall also include detailed plans for all buildings and structure certified by an architect; detailed evaluations or perspective drawings of all buildings and improvements, sufficient to show the developers intent; a development schedule; deed restrictions and covenant; any other plans, documentation or specification, which the Zoning Board may require, that may be necessary for final engineering review and approval of drainage, street design and other facilities, by township and county officials; and a sufficient financial guarantee or letter of credit to insure completion of any required public facilities or improvements in conformance with the stated development schedule.

(b) Upon receipt of the final development plan, the Planning Commission shall hold a second hearing and shall determine whether or not the final plans substantially conform to the approved preliminary plan and to the other provisions of this section.

(Ord. 3.09, passed 6-6-1978; Ord. 3.31, passed 12-3-2002)

**153.148 REVIEW PROCEDURE.**

In making its review of any portion of the PUD application, the Planning Commission shall first determine that the PUD is consistent with the standards outlined in 153.130 and this subchapter, and all other ordinances and regulations of the township. Where the Zoning Board determines that this application

is consistent with this section and with the other requirements hereof, it shall issue a special planned unit

permit authorizing development and use in accordance with the final development plan contained in this

application, modified as the Planning Commission may require to carry out the intent and purpose of this

section and containing any conditions or restrictions which the Zoning Board may consider necessary to carry out the purposes of this chapter and to protect the public health, safety and welfare. A denial of the

PUD, at any stage, shall be in writing, setting forth in detail the reasons for denial. The applicant may appeal any denial to the Zoning Board of Appeals.

(Ord. 3.09, passed 6-6-1978; Ord. 3.31, passed 12-3-2002)

**62 Big Rapids Charter Township - Land Usage**

**153.149 OPEN SPACE PRESERVATION.**

(A) Residential uses in land zoned for residential development may be developed, at the option of the applicant, with the same number of dwelling units on a portion of the land specified in this chapter, but not

more than 50%, that, was determined by the Board could otherwise be developed, under this chapter if all

of the following apply.

(1) The land is zoned at a density equivalent to two or fewer single- or two-family dwelling units per acre, or, if the land is served by a public sewer system, three or fewer single- or two-family dwelling units per acre.

(2) A percentage of the land specified in this chapter, but not less than 50%, will remain perpetually in an undeveloped state by means of a conservation easement, plat dedication, restrictive covenant or other legal means, as approved by the Board, that runs with the land.

(3) The development does not depend on the extension of a public sewer or public water supply system, unless development of the land without the exercise of the option provided by this division (A) would also depend upon such an extension.

(4) The option provided pursuant to this division (A) has not previously been exercised with respect to that land.

(B) This section shall not apply for permitted uses other than single-family dwellings and/or twofamily dwellings as set forth together with such permitted accessory uses as permitted in this chapter.

(Ord. 3.09, passed 6-6-1978; Ord. 3.31, passed 12-3-2002)

**MICHIGAN ZONING ENABLING ACT (EXCERPT)**  
**Act 110 of 2006**

**125.3604 Zoning board of appeals; procedures.**

Sec. 604. (1) An appeal to the zoning board of appeals may be taken by a person aggrieved or by an officer, department, board, or bureau of this state or the local unit of government. In addition, a variance in the zoning ordinance may be applied for and granted under section 4 of the uniform condemnation procedures act, 1980 PA 87, MCL 213.54, and as provided under this act. The zoning board of appeals shall state the grounds of any determination made by the board.

(2) An appeal under this section shall be taken within such time as prescribed by the zoning board of appeals by general rule, by filing with the body or officer from whom the appeal is taken and with the zoning board of appeals a notice of appeal specifying the grounds for the appeal. The body or officer from whom the appeal is taken shall immediately transmit to the zoning board of appeals all of the papers constituting the record upon which the action appealed from was taken.

(3) An appeal to the zoning board of appeals stays all proceedings in furtherance of the action appealed. However, if the body or officer from whom the appeal is taken certifies to the zoning board of appeals after the notice of appeal is filed that, by reason of facts stated in the certificate, a stay would in the opinion of the body or officer cause imminent peril to life or property, proceedings may be stayed only by a restraining order issued by the zoning board of appeals or a circuit court.

(4) Following receipt of a written request for a variance, the zoning board of appeals shall fix a reasonable time for the hearing of the request and give notice as provided in section 103.

(5) If the zoning board of appeals receives a written request seeking an interpretation of the zoning ordinance or an appeal of an administrative decision, the zoning board of appeals shall conduct a public hearing on the request. Notice shall be given as required under section 103. However, if the request does not involve a specific parcel of property, notice need only be published as provided in section 103(1) and given to the person making the request as provided in section 103(3).

(6) At a hearing under subsection (5), a party may appear personally or by agent or attorney. The zoning board of appeals may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination and may issue or direct the issuance of a permit.

(7) If there are practical difficulties for nonuse variances as provided in subsection (8) or unnecessary hardship for use variances as provided in subsection (9) in the way of carrying out the strict letter of the zoning ordinance, the zoning board of appeals may grant a variance in accordance with this section, so that the spirit of the zoning ordinance is observed, public safety secured, and substantial justice done. The ordinance shall establish procedures for the review and standards for approval of all types of variances. The zoning board of appeals may impose conditions as otherwise allowed under this act.

(8) The zoning board of appeals of all local units of government shall have the authority to grant nonuse variances relating to the construction, structural changes, or alteration of buildings or structures related to dimensional requirements of the zoning ordinance or to any other nonuse-related standard in the ordinance.

(9) The authority to grant variances from uses of land is limited to the following:

(a) Cities and villages.

(b) Townships and counties that as of February 15, 2006 had an ordinance that uses the phrase "use variance" or "variances from uses of land" to expressly authorize the granting of use variances by the zoning board of appeals.

(c) Townships and counties that granted a use variance before February 15, 2006.

(10) The authority granted under subsection (9) is subject to the zoning ordinance of the local unit of government otherwise being in compliance with subsection (7) and having an ordinance provision that requires a vote of 2/3 of the members of the zoning board of appeals to approve a use variance.

(11) The authority to grant use variances under subsection (9) is permissive, and this section does not require a local unit of government to adopt ordinance provisions to allow for the granting of use variances.

*History: 2006, Act 110, Iff. July 1, 2006;— Am. 2008, Act 12, Imd. Eff. Feb. 29, 2008.*



Time frame for SUP 18-001.

Public Hearing for SUP 18-001 held at Planning Commission Regular Meeting on March 13, 2018. Planning Commission delayed action on SUP 18-001 until their next meeting.

On April 10, 2018 the Planning Commission voted to approve SUP18-001 - 4 ayes, 2 nays, 1 absent.

Minutes of the meetings were approved at the May 8, 2018 Planning Commission meeting.

Bill Jackson inquired into appeal of decision by email to Rene Fountain. Bill Stanek was out of town at this time, so I consulted with Rene, and we agreed that our attorney should review the response. I replied by email with language prepared by Mark Van Allsberg of Mika Meyers. This occurred on May 16, 2018.

On May 18, 2018, Jane Williams presented an application to the ZBA for appeal of the SUP 18-001 decision. She was advised that she did not have an appeal per the zoning ordinance, based on the information obtained from our attorney, but she was adamant that I accept her application until I spoke with the ZBA.

I contacted Kevin Defever, Chairman of the ZBA, on May 23<sup>rd</sup> to discuss the ordinance language, and we both agreed that the only allowable appeal request for a Special Use Permit would have to come from the applicant based on a denial, therefore the appeal application from Jane Williams could not be heard.

On May 30, 2018, Patrick Klarecki presented an application for appeal. I advised him that they were not eligible for an appeal and gave him a copy of the email response that was given to Bill Jackson. I also advised him of the discussion I had with Kevin Defever.

I was very concerned about the response to the applications, and discussed the circumstances with Rene Fountain, Township Clerk on May 31, 2018, as Mr. Stanek was out of the office. Rene Fountain gave me permission to contact Mark Van Allsberg for the purpose of formulating a response to Mrs. Williams and Mr. Klarecki.

On June 4, 2018 I emailed Mark Van Allsberg from Mika Meyers, providing copies of both the Williams and Klarecki requests for appeal, and I asked for assistance in preparing denial letters based on the zoning ordinance language.

I did advise Bill Stanek of the discussion I had with Rene Fountain and the decisions made when he returned to the office on Tuesday, June 5, 2018.

I made contact with Mark Van Allsberg on June 8, 2018 after we had attempted to contact each other several times that day to follow up on the status of the denial letters. I finished our conversation under the impression that he would be preparing responses and forwarding copies to me.

On July 9, 2018, Jane Williams and Patrick Klarecki sent separate emails to me, and Mr. Klarecki emailed the board of trustee members stating he has heard no response from the Zoning Board or the Township.

I contacted Mark Van Allsberg by email and forwarded the emails of July 9, 2018 from Jane Williams and Patrick Klarecki. Mr. Van Allsberg left a voice mail for me, and I returned his call later in the afternoon. Mr. Van Allsberg advised that he has prepared the letters of response, and they will be mailed either today or tomorrow.

On July 9, 2018 at 5:06 pm, Mr. Van Allsberg emailed me with the PDF copies of the denial letters he sent to Mrs. Williams and Mr. Klarecki.

**Brent Mason**

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**From:** Brent Mason <zoning@bigrapidstownship.net>  
**Sent:** Wednesday, May 16, 2018 4:56 PM  
**To:** 'biljackson@aol.com'  
**Subject:** ZBA Appeal.

Mr. Jackson,

Based on the Michigan Zoning Enabling Act (Section 603(1)) appeals of special land uses and planned unit development decisions can only be heard by the ZBA if the zoning ordinance specifically allows for an appeal. Our zoning ordinance only allows for the applicant to appeal a denial of a Special Use Permit. The appeal has to be undertaken within 30 days of the decision, which was finalized on May 8, 2018 with the approval of the minutes of the April 10, 2018 meeting.

If there is no appeal to the ZBA, the next step in the appeal process would ordinarily be to file a lawsuit in the Mecosta County Circuit Court. You may wish to obtain legal counsel to verify this procedure and assist you if you intend to take further steps to challenge the special land use.

Sincerely,  
Brent Mason  
Zoning Administrator  
Building and Zoning Departments

Big Rapids Charter Township  
14212 Northland Drive  
Big Rapids, MI 49307  
Office: (231) 796-3603  
Cell: (231) 679-0692  
FAX : (231) 796-2533

When you view the world from your own vantage point,  
you can't possibly see it the way God intended!

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**Brent Mason**

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**From:** Brent Mason <zoning@bigrapidstowship.net>  
**Sent:** Wednesday, May 23, 2018 9:34 AM  
**To:** 'kdefever@hotmail.com'  
**Subject:** ZBA Appeal

Good Morning Kevin,

We have received a request for appeal of the Planning Commission decision to approve the Cellular Communications Tower on Madison Avenue. I need to discuss this appeal with you to determine what our response will be. Please contact me at your convenience.

**Brent Mason**  
Zoning Administrator  
Building and Zoning Departments

Big Rapids Charter Township  
14212 Northland Drive  
Big Rapids, MI 49307  
Office: (231) 796-3603  
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**Brent Mason**

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**From:** Brent Mason <zoning@bigrapidstowship.net>  
**Sent:** Monday, June 4, 2018 9:01 AM  
**To:** 'Mark A. Van Allsburg'; 'Mark E. Nettleton'  
**Subject:** RE: Big Rapids - Cell Tower Special Land Use - Verizon  
**Attachments:** ZBA Application Klarecki.pdf; ZBA Application Williams.pdf

Good Morning Mr. Van Allsburg and Mr. Nettleton,

Big Rapids Township has had two applications to the ZBA (see attachments) regarding the Verizon Cell Tower SUP Approval. Both applicants believe that their appeal should be heard by the ZBA, based on the premise that the ZBA is the venue for appeal of administrative decisions, even though I have explained that our ordinance only allows for a Special Use Permit appeal by the SUP applicant on a denial. I am requesting verification of this position, and assistance in drafting letters to the ZBA applicants explaining why the ZBA cannot hear their appeal (if applicable). Thank you for your consideration.

Sincerely,  
Brent Mason  
Zoning Administrator  
Building and Zoning Departments

Big Rapids Charter Township  
14212 Northland Drive  
Big Rapids, MI 49307  
Office: (231) 796-3603  
Cell: (231) 679-0692  
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**From:** Mark A. Van Allsburg <MVanAllsburg@mikameyers.com>  
**Sent:** Wednesday, May 16, 2018 4:20 PM  
**To:** Brent Mason <zoning@bigrapidstowship.net>  
**Subject:** FW: Big Rapids - Cell Tower Special Land Use - Verizon

Brent,

I am one of Mark Nettleton's law partners. Mark asked me to review and comment on your proposed response concerning appeal of the cell tower special land use.

You are correct in your conclusion that the appeal is not a matter for the ZBA. I would suggest that we remove some of the additional information (particularly about the scope and procedures for a ZBA review, inasmuch as a ZBA review does not apply here). A red-lined version is below (in your original email) showing my changes, but here is the clean version of my suggestion for a reply:

Based on the Michigan Zoning Enabling Act (Section 603(1)) appeals of special land uses and planned unit development decisions can only be heard by the ZBA if the zoning ordinance specifically allows for an appeal. Our zoning ordinance only allows for the applicant to appeal a denial of a Special Use Permit. The

appeal has to be undertaken within 30 days of the decision, which was finalized on May 8, 2018 with the approval of the minutes of the April 10, 2018 meeting.

If there is no appeal to the ZBA, the next step in the appeal process would ordinarily be to file a lawsuit in the Mecosta County Circuit Court. You may wish to obtain legal counsel to verify this procedure and assist you if you intend to take further steps to challenge the special land use.

Brent

Brent – let me know if this is acceptable or if you would like to discuss further.

Mark

**Mika Meyers**

**Mark A. Van Allsburg**

**Mika Meyers PLC**

900 Monroe Avenue NW

Grand Rapids, MI 49503

General Phone: 616-832-8000

Direct Phone & Fax: 616-632-8039

E-mail: [mvanallsburg@mikameyers.com](mailto:mvanallsburg@mikameyers.com)

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**From:** Brent Mason [<mailto:zoning@bigrapidstownship.net>]

**Sent:** Wednesday, May 16, 2018 9:57 AM

**To:** Mark E. Nettleton <[MNettleton@mikameyers.com](mailto:MNettleton@mikameyers.com)>

**Subject:** RE: Big Rapids - Cell Tower Special Land Use - Verizon

Good morning Mark,

I have received an inquiry from the son-in-law of a neighboring property owner regarding a request to appeal the decision approving the SUP for the Verizon Cell Tower. Our ordinance states that the only appeal of special land use decisions are for the applicant in the case of a denial. I have prepared an email response to this request, and want to make sure it is legal. Please review the following response and advise if it is appropriate for the circumstance.

~~The ZBA cannot hear two types of zoning decisions. The first is an amendment to the zoning ordinance (rezoning or text change)—this is reserved for the legislative body (Board of Trustees). The second type of decision is for Based on the Michigan Zoning Enabling Act (section 603(1)), appeals of special land uses and planned unit development decisions, which can only be heard by the ZBA if the zoning ordinance specifically allows for an appeal. Our zoning ordinance only allows for the applicant to appeal a denial of a Special Use Permit. The appeal has to be undertaken within 30 days of the decision, which was finalized on May 8, 2018 with the approval of the minutes of the April 10, 2018 meeting.~~

If there is no appeal to the ZBA, the next step in the appeal process would ordinarily be to file a lawsuit in the Mecosta County Circuit Court. You may wish to obtain legal counsel to verify this procedure and assist you if you intend to take further steps to challenge the special land use.

~~Although the ZBA may reverse or affirm, wholly or partly, or may modify a prior decision, its powers are generally limited to determining whether or not the official or body making the administrative decision acted properly. The ZBA must recognize that the zoning administrator or planning commission has already made a decision regarding the issue as part of its delegated duties. The role of the ZBA is to determine whether the decision was authorized or supported by the zoning ordinance.~~

~~In addition, the ZBA should not treat the appeal as a new decision. Rather, review of the decision should be limited to the information that was available to the body or person who made the decision initially. Allowing testimony or evidence in addition to that previously submitted is inappropriate, unless the zoning ordinance directs otherwise.~~

Thank you for your time.

Sincerely,  
Brent Mason  
Zoning Administrator  
Building and Zoning Departments

Big Rapids Charter Township  
14212 Northland Drive  
Big Rapids, MI 49307  
Office: (231) 796-3603  
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## Rene Fountain

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**From:** Patrick Klarecki <PatrickKlarecki@ferris.edu>  
**Sent:** Monday, July 9, 2018 10:58 AM  
**To:** tinkerveete@gmail.com; travisw0160@yahoo.com;  
supervisorstanek@bigrapidstowship.net; clerk@bigrapidstowship.net;  
clerk@bigrapidstowship.net; treasurer@bigrapidstowship.net;  
cbbtownship@gmail.com; TrusteeEverett@gmail.com; zoning@bigrapidstowship.net  
**Cc:** rynjean@hotmail.com; ever1der\_2000@yahoo.com; sbeanmi@yahoo.com; 'Bob and  
Jane'; 'Jane Williams'; 'Rebecca Williams Jackson'  
**Subject:** Petition for zoning appeal by listed residents of Madison Ave - Under file name of  
Patrick Klarecki

Greetings,

Approximately five weeks ago I, (on behalf of eight other listed property owners) filed an appeal of the zoning board's decision to allow special use of property owned by Stephen J. and Kyu-Hui Perialas at 21050 Madison Avenue, #54-05-009-021-500.

I have heard no response from the Zoning Board, or the Township of Big Rapids about my request.

I would like to remind all of you that there are time frames established by the State of Michigan to allow for decisions to me made and for citizens to respond. To violate these time frames, or to fail to notify appeal applicants of decisions do stand in the way of our legal rights to have a fair and open process of government.

Please send to my mailing address the date, time and location of our appeal hearing or the status of the appeal request.

Respectfully,

Patrick Klarecki – Professor  
Graphic Media Management – Marketing Department  
College of Business  
Ferris State University  
119 South St – BUS 120C  
Big Rapids, MI 49307  
231-591-2848

**Brent Mason**

---

**From:** Patrick Klarecki <PatrickKlarecki@ferris.edu>  
**Sent:** Monday, July 9, 2018 10:58 AM  
**To:** tinkrpeete@gmail.com; travisw0160@yahoo.com; supervisorstaneke@bigrapidstowship.net; clerk@bigrapidstowship.net; clerk@bigrapidstowship.net; treasurer@bigrapidstowship.net; cbbtownship@gmail.com; TrusteeEverett@gmail.com; zoning@bigrapidstowship.net  
**Cc:** rynjean@hotmail.com; ever1der\_2000@yahoo.com; sbeanmi@yahoo.com; 'Bob and Jane'; 'Jane Williams'; 'Rebecca Williams Jackson'  
**Subject:** Petition for zoning appeal by listed residents of Madison Ave - Under file name of Patrick Klarecki

Greetings,

Approximately five weeks ago I, (on behalf of eight other listed property owners) filed an appeal of the zoning board's decision to allow special use of property owned by Stephen J. and Kyu-Hui Perialas at 21050 Madison Avenue, #54-05-009-021-500.

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Please send to my mailing address the date, time and location of our appeal hearing or the status of the appeal request.

Respectfully,

Patrick Klarecki – Professor  
Graphic Media Management – Marketing Department  
College of Business  
Ferris State University  
119 South St – BUS 120C  
Big Rapids, MI 49307  
231-591-2848



**Brent Mason**

---

**From:** Jane Williams <janethemom@yahoo.com>  
**Sent:** Friday, July 6, 2018 4:43 PM  
**To:** zoning@bigrapidstownship.net  
**Subject:** RE: application for appeal

Dear Brent:

I haven't heard anything regarding the application to appeal the Planning Commission's decision to allow Mr. Perailas to erect the cell tower. Please let me know if the application has been approved, rejected or is still in the hands of your attorney. If it is more convenient to call, my cell hone number is 231-349-5569. Looking forward to hearing from you.

Sincerely,  
Jane Williams

# Mika Meyers PLC

900 Monroe Ave NW Grand Rapids, MI 49503  
Tel (616) 632-8000 Fax (616) 632-8002  
Web [mikameyers.com](http://mikameyers.com)

## Attorneys at Law

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Michael J. Huff  
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Fredric N. Goldberg  
John H. Gretzinger  
Philip M. Idema  
Stephen J. Mulder

Scott S. Brinkmeyer  
Daniel J. Kozera, Jr.

## Also Admitted In

<sup>1</sup>Delaware  
<sup>2</sup>Illinois  
<sup>3</sup>New York  
<sup>4</sup>Ohio  
<sup>5</sup>Wisconsin

July 9, 2018

Ms. Jane M. Williams  
423 Marion Avenue  
Big Rapids, Michigan 49307

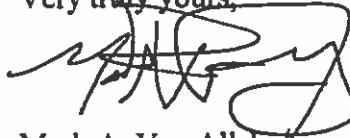
Re: Special Use Permit for Telecommunications Tower

Dear Ms. Williams:

I am writing this letter to you as the attorney for Big Rapids Charter Township. You have submitted a Petition for Appeal concerning the special use permit granted to applicant Judd Chaille for a telecommunications tower. This special use permit was granted at the April 10, 2018 meeting of the Planning Commission. You have requested the opportunity to appeal this matter to the Township Zoning Board of Appeals.

As has been explained to you by Zoning Administrator Mason, the Zoning Board of Appeals does not have authority to review this decision, and accordingly, your application has not been scheduled for a Zoning Board of Appeals public hearing or meeting.

Very truly yours,



Mark A. Van Allsburg

Direct Dial/Fax: (616) 632-8039  
E-Mail: [mvanallsburg@mikameyers.com](mailto:mvanallsburg@mikameyers.com)

dlo

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<sup>2</sup>Illinois  
<sup>3</sup>New York  
<sup>4</sup>Ohio  
<sup>5</sup>Wisconsin

July 9, 2018

Ms. Susan Bean  
21021 Madison Avenue  
Big Rapids, Michigan 49307

Mr. and Mrs. Robert Carter  
20936 Madison Avenue  
Big Rapids, Michigan 49307

Ms. Susan Glatz  
17810 205th Avenue  
Big Rapids, Michigan 49307

Mr. Patrick Robison  
Ms. Tiffany Soller  
21195 Madison Avenue  
Big Rapids, Michigan 49307

Mr. and Mrs. Harvey Bailey, Jr.  
21187 Madison Avenue  
Big Rapids, Michigan 49307

Mr. and Mrs. Patrick Klarecki  
20936 Madison Avenue  
Big Rapids, Michigan 49307

Mr. and Mrs. Mark Morningstar  
21259 Madison Avenue  
Big Rapids, Michigan 49307

Re: Special Use Permit for Telecommunications Tower

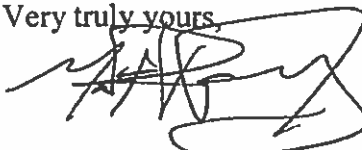
Dear Applicants:

I am writing this letter to each of you as the attorney for Big Rapids Charter Township. You have submitted a Petition for Appeal concerning the special use permit granted to applicant Judd Chaille for a telecommunications tower. This special use permit was granted at the April 10, 2018 meeting of the Planning Commission. You have requested the opportunity to appeal this matter to the Township Zoning Board of Appeals.

Ms. Susan Bean, et al.  
July 9, 2018  
Page 2

As has been explained to you by Zoning Administrator Mason, the Zoning Board of Appeals does not have authority to review this decision, and accordingly, your application has not been scheduled for a Zoning Board of Appeals public hearing or meeting.

Very truly yours,



Mark A. Van Allsburg

Direct Dial/Fax: (616) 632-8039  
E-Mail: [mvanallsburg@mikameyers.com](mailto:mvanallsburg@mikameyers.com)

dlo

**RECEIVED**  
05/18/2018

**BIG RAPIDS**

\$200.00 Fee

TOWNSHIP

**PETITION FOR APPEAL**

14212 Northland Drive • Big Rapids, Michigan 49307 • (231) 796-3603 • www.bigrapidstowship.net

#54-05-009-021-000

Date	05/18/2018
ZBA No	
Parcel ID #	54-05- 009-021-500

Property Owner	Jane M. Williams	Applicant(s) Name	Jane M. Williams
Mailing Address	423 Marion Avenue	Mailing Address	423 Marion Avenue
City, State, Zip	Big Rapids, MI 49307	City, State, Zip	Big Rapids, MI 49307
Phone	231-796-7250; 231-349-5569	Phone	231-796-7250; 231-349-5569

This application must be signed by the property owner(s). In lieu of a signature on this application, the owner may provide a letter authorizing the applicant to act on his/her behalf.

Current Zoning of Property	Agricultural	Location of Property (Address)	21050 Madison Avenue
Proposed Use	Communications tower or pole	Total Acreage of Site	5 - 6

**Legal Property Description**

SUP granted on #54-05-009-021-500 to Applicant Judd Chaille for Verizon  
I own #54-05-009-021-000, N1/2 SE1/4 except the SE 680 ft by 728 ft

**Briefly describe the reason(s) for seeking this review.**

I am appealing the Planning Commission decision to grant a Special Use Permit for a communications tower on the Perialas property at 21050 Madison; PC minutes of April 10, 2018, approved May 8, 2018.

SEE ATTACHED

The appellant respectfully requests that a special exception be made to the provisions of Article \_\_\_\_\_ Section \_\_\_\_\_ of the Big Rapids Township Zoning Ordinance to enable him to use his property in the following manner.

**Data Required With this Application**

- 1 Site plan, plot plan or development plan, drawn to a readable scale of the property involved showing all information required in a Class "A" Site Plan as specified in Section 4.3 A of the Zoning Ordinance.
- 2 Preliminary plans and outline specifications for proposed development of land and for all construction.
- 3 Such other information or supporting evidence that this request shall not be in conflict with the intent and purpose of this ordinance, shall not alter the character of the surrounding area, and shall not impair adjacent property or property values.

I hereby certify and agree that all use for which this application is made will conform to the data and information submitted with this application, and with all ordinances affecting Big Rapids Township. It is further agreed that any deviation from the data submitted, or the breach of any additional safeguards, conditions or requirements the Big Rapids Township Zoning Appeals Board may impose in granting this appeal shall constitute a violation of the Ordinance and invalidate the request granted.

I hereby grant permission for members of the Zoning Board of Appeals and Zoning Administrator to enter the above described property for purposes of gathering information related to this application.

Signed Jane M. Williams Date May 18, 2018

DO NOT WRITE BELOW THIS LINE - TOWNSHIP USE ONLY

Date Received	Application Fee	Receipt No	Approved <input checked="" type="checkbox"/> Denied <input type="checkbox"/>
05/18/2018	\$200.00 Paid.	15116	Conditions Per Z.O.
Hearing Date	Notices Mailed	Notice Published	SUP Appeals allowed for Applicant on denial only.
N/A - Request denied	N/A	N/A	

BIG RAPIDS TOWNSHIP  
PETITION FOR APPEAL

Property Owner: Jane M. Williams, #54-05-009-021-000

RE: Property owned by Stephen J. and Kyu-Hui Perialas at 21050 Madison Avenue,  
#54-05-009-021-500

Briefly describe the reason(s) for seeking this review:

The Planning Commission erroneously approved a Special Use Permit #18-001 for a communications tower on the parcel by Stephen and Kyu-Hui Perialas, and the Planning Commission's approval should be reversed by the ZBA because:

1. The cell tower use is contrary to the essential residential character of the surrounding neighborhood consisting of small acreage parcels with homes constructed on them (Klarecki, Carter, Bean, Bailey) and an adjoining small lot residential subdivision (Glatz), and the Special Use Permit should not have been granted according to §153.130(C)(1) of the Big Rapids Township Zoning Ordinance.
2. There was substantial evidence of a decline in property values because of the cell tower presented to the Planning Commission and acknowledged and stated by member Amanda Wethington, but the Planning Commission failed to recognize

and apply Section 153.130(C)(2) of the Big Rapids Township Zoning Ordinance to deny the Special Use Permit.

3. The Planning Commission chairperson improperly told the Planning Commission that he solicited and obtained expert opinions from unidentified appraisers or real estate agents indicating property values in surrounding nearby parcels would not go down because of the cell tower, but those unidentified experts did not testify before the Planning Commission, did not submit a written report or opinion and their opinions were not properly before the Planning Commission for consideration, and those opinions did not constitute substantial evidence to support the Planning Commission's grant of the Special Use Permit.
  
4. The Planning Commission decision was based on the improper procedure of refusing to accept additional comments, proposed findings of fact, argument, or evidence from adjacent property owner Pat Klarecki at the meeting of April 10, 2018, when the Planning Commission chairperson injected extra record references to unidentified expert witnesses and opinions by those unidentified expert witnesses.
  
5. The Planning Commission was improperly advised or counseled not to apply Big Rapids Township ordinance Section 153.130(C)(1) because a decision by the Planning Commission based on that Section "might not hold up," effectively

disregarding that section of the Big Rapids Township Zoning ordinance. Mr. Keating thought the area would be affected, but disregarded that conclusion and section of the ordinance when voting to approve the Special Use Permit. The Planning Commission was discouraged from considering, finding, and analyzing the facts by the attorney's opinion: "At this point, the materials submitted by the application confirm our preliminary conclusion. The application meets the zoning ordinance requirements and should be permitted as a special land use. I have not identified any specific basis upon which the Planning Commission could reasonably say the application should be denied."

6. The Planning Commission failed to make findings of fact on §153.130(C)(1) regarding "the essential [residential] character of the surrounding area" and whether or not the proposed communications tower would "not be in conflict with, or discourage the adjacent or neighboring use of lands or buildings."
7. The Planning Commission failed to make findings of fact on §153.130(C)(2), which says "The special use shall not diminish the value of the land, buildings or structures in the neighborhood." Sue Glatz submitted written comments about how the cell tower would inhibit or prevent the sale of residential lots in the nearby subdivision.



8. The Planning Commission split 3-3 during fact finding on the question of whether or not the application for a Special Use Permit complied with the ordinance, which should have resulted in a 3-3 split on the vote to grant the Special Use Permit.
  
9. The parcel on which the Special Use Permit was granted is nonconforming, and the proposal to make the site more conforming will result in poor planning and development of the parcel.

**RELIEF**

I request that the ZBA reverse the decision of the Planning Commission and deny the application for the Special Use Permit for a communications tower, OR reverse the decision of the Planning Commission and remand the case to the Planning Commission to receive additional evidence and make factual findings on §153.130(C)(1) and (2) and vote again on the application for the Special Use Permit.

DATE: 05/18/2018

RECEIPT #: 15116

RECEIVED OF: JANE WILLIAMS

CASHIER: brent

TOTAL RECEIVED: 200.00

COMMENTS:

Fee for ZBA Appeal of SUP 18-001 - Verizon D

	DESCRIPTION	AMOUNT
101-607	FEEs - ZONING	200.00
	Tendered: Cash	200.00

Signed: \_\_\_\_\_

# Michigan Legislature - Section 125.3603

## MICHIGAN ZONING ENABLING ACT (EXCERPT)

Act 110 of 2006

### **125.3603 Zoning board of appeals; powers; concurring vote of majority of members.**

Sec. 603.

(1) The zoning board of appeals shall hear and decide questions that arise in the administration of the zoning ordinance, including the interpretation of the zoning maps, and may adopt rules to govern its procedures sitting as a zoning board of appeals. The zoning board of appeals shall also hear and decide on matters referred to the zoning board of appeals or upon which the zoning board of appeals is required to pass under a zoning ordinance adopted under this act. It shall hear and decide appeals from and review any administrative order, requirement, decision, or determination made by an administrative official or body charged with enforcement of a zoning ordinance adopted under this act. For special land use and planned unit development decisions, an appeal may be taken to the zoning board of appeals only if provided for in the zoning ordinance.

(2) The concurring vote of a majority of the members of the zoning board of appeals is necessary to reverse an order, requirement, decision, or determination of the administrative official or body, to decide in favor of the applicant on a matter upon which the zoning board of appeals is required to pass under the zoning ordinance, or to grant a variance in the zoning ordinance.

**History:** 2006, Act 110, Eff. July 1, 2006

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# BIG RAPIDS

\$200.00 Fee

TOWNSHIP

## PETITION FOR APPEAL

14212 Northland Drive • Big Rapids, Michigan 49307 • (231) 796-3603 • www.bigrapidstowship.net

Date	05/23/2018
ZBA No.	
Parcel ID #	54-05-009-021-500 54-05-009-021-000

Property Owner <u>See attached</u>	Applicant(s) Name <u>See attached</u>
Mailing Address	Mailing Address
City, State, Zip	City, State Zip
Phone	Phone

This application must be signed by the property owner(s). In lieu of a signature on this application, the owner may provide a letter authorizing the applicant to act on his/her behalf.

Current Zoning of Property <u>Agricultural</u>	Location of Property (Address) <u>21050 Madison Ave.</u>
Proposed Use <u>Communications tower or pole</u>	Total Acreage of Site <u>5-6</u>

Legal Property Description  
SUP granted on #54-05-009-021-500 to Applicant Judd Chaille for Verizon

Briefly describe the reason(s) for seeking this review:  
We are appealing the Planning Commission decision to grant a Special Use Permit for a communications tower on the Perialas property at 21050 Madison Ave; PC minutes of April 10th, 2018, approved on May 8, 2018.

The appellant respectfully requests that a special exception be made to the provisions of Article \_\_\_\_ Section \_\_\_\_ of the Big Rapids Township Zoning Ordinance to enable him to use his property in the following manner.

- Data Required With this Application**
- 1 Site plan, plot plan or development plan, drawn to a readable scale of the property involved showing all information required in a Class "A" Site Plan as specified in Section 4.3 A of the Zoning Ordinance.
  - 2 Preliminary plans and outline specifications for proposed development of land and for all construction.
  - 3 Such other information or supporting evidence that this request shall not be in conflict with the intent and purpose of this ordinance, shall not alter the character of the surrounding area, and shall not impair adjacent property or property values.

*I hereby certify and agree that all use for which this application is made will conform to the data and information submitted with this application, and will be in accordance with the Big Rapids Township Zoning Ordinance and any applicable laws or regulations. I understand and agree that any violation of the data submitted, or the breach of any additional safeguards, conditions or stipulations of the Big Rapids Township Zoning Ordinance Board may result in the denial of this appeal and constitute a violation of the Ordinance and invalidate the request granted.*

*I hereby grant permission for members of the Zoning Board of Appeals and Zoning Administrator to enter the above described property for purposes of gathering information related to this application.*

Signed See Attached Date \_\_\_\_\_

**DO NOT WRITE BELOW THIS LINE - TOWNSHIP USE ONLY**

Date Received <u>05/30/2018</u>	Application Fee <u>\$200.00 by Clerk 6/2/2</u>	Receipt No.	<input type="checkbox"/> Approved <input type="checkbox"/> Denied
Hearing Date	Notices Mailed	Notice Published	Conditions:

Owner	Address	Parcel Codes	Telephone Number	Signature	Date
Bean, Susan	21021 Madison Ave., BR 49307	54 05 009 023 600	231-580-9546	<i>Susan Bean</i>	5-23-18
Bailey, Harvey, Jr. and Susan	21187 Madison Ave., BR 49307	54 05 009 023 500 54 05 016 023 000	231-796-5855	<i>Harvey Bailey</i> <i>Susan Bailey</i>	5-29-18 5-29-18
Carter, Robert and Jane	20936 Madison Ave., BR 49307	54 05 101 007 000	231-796-4738	<i>Robert Carter</i> <i>Jane H Carter</i>	
Klarecki, Patrick and Kathryn	21030 Madison Ave., BR 49307	54 05 009 021 700 54-05 101 001 500		<i>Patrick Klarecki</i> <i>Kathryn Klarecki</i>	
Glatz, Susan	Hills of Mitchell Creek - multiple parcels 17810 205 <sup>th</sup> Ave., BR 49307			<i>Susan Glatz</i>	
Morningstar, Tracy and Mark	21259 Madison Ave., BR 49307	54 05 009 022 000 54 05 009 022 800	231-580-4221 231-527-8888	<i>Tracy Morningstar</i> <i>Mark Morningstar</i>	
Robison, Patrick Tiffany Solter	21195 Madison Ave., BR 49307	54 05 009 023 000	231-679-3305	<i>Patrick Robison</i>	

**BIG RAPIDS TOWNSHIP**

**PETITION FOR APPEAL**

**Property Owner(s):** Susan and Carman Bean #54-05-009-023-600; Harvey and Susan Bailey #05-009-023-500; Robert and Jane Carter #54-05-101-007-000; Patrick and Katherine Klarecki #54-05-009-021-700 & 54-05-101-001-500; Susan Glatz and Terry Weaver, Hills of Mitchell Creek Complex (multiple parcels); Mark and Tracy Morningstar # 54-05-009-000 & 54-05-009-022-800; Patrick Robison/Tiffany Soller # 54-05-009-023-000

**RE:** Property owned by Stephen J. and Kyu-Hui Perialas at 21050 Madison Avenue, #54-05-009-021-500

**Michigan Zoning Enabling Act 110 of 2006, Article V**

**Section 125.3604(1):** An appeal to the zoning board of appeals may be taken by a person aggrieved or by an officer, department, board, or bureau of this state or the local unit of government.

**Section 125.3604(5):** If the zoning board of appeals receives a written request seeking an interpretation of the zoning ordinance or an appeal of an administrative decisions, the zoning board of appeals shall conduct a public hearing on the request.

**Section 125.3604(6):** At a hearing under subsection (5), a party may appear personally or by agent or attorney. The zoning board of appeals may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination and may issue or direct the issuance of a permit.

Briefly describe the reason(s) for seeking this review:

The Planning Commission erroneously approved a Special Use Permit #18-001 for a communications tower on the parcel by Stephen and Kyu-Hui Perialas, and the Planning Commission's approval should be reversed by the ZBA because:

1. The cell tower use is contrary to the essential residential character of the surrounding neighborhood consisting of small acreage parcels with homes constructed on them (Klarecki, Carter, Bean, Bailey) and an adjoining small lot residential subdivision (Glatz), and the Special Use Permit should not have been granted according to §153.130(C)(1) of the Big Rapids Township Zoning Ordinance.
  
2. There was substantial evidence of a decline in property values because of the cell tower presented to the Planning Commission and acknowledged and stated by member Amanda Wethington, but the Planning Commission failed to recognize and apply Section 153.130(C)(2) of the Big Rapids Township Zoning Ordinance to deny the Special Use Permit.
  
3. The Planning Commission chairperson improperly told the Planning Commission that he solicited and obtained expert opinions from unidentified appraisers or real estate agents indicating property values in surrounding nearby parcels would not go down because of the cell tower, but those unidentified experts did not testify before the Planning Commission, did not submit a written report or opinion and their opinions were not properly before the Planning Commission for consideration, and those opinions did not constitute substantial evidence to support the Planning Commission's grant of the Special Use Permit.

4. The Planning Commission decision was based on the improper procedure of refusing to accept additional comments, proposed findings of fact, argument, or evidence from adjacent property owner Pat Klarecki at the meeting of April 10, 2018, when the Planning Commission chairperson injected extra record references to unidentified expert witnesses and opinions by those unidentified expert witnesses.
  
5. The Planning Commission was improperly advised or counseled not to apply Big Rapids Township ordinance Section 153.130(C)(1) because a decision by the Planning Commission based on that Section “might not hold up,” effectively disregarding that section of the Big Rapids Township Zoning ordinance. Mr. Keating thought the area would be affected, but disregarded that conclusion and section of the ordinance when voting to approve the Special Use Permit. The Planning Commission was discouraged from considering, finding, and analyzing the facts by the attorney’s opinion: “At this point, the materials submitted by the application confirm our preliminary conclusion. The application meets the zoning ordinance requirements and should be permitted as a special land use. I have not identified any specific basis upon which the Planning Commission could reasonably say the application should be denied.”
  
6. The Planning Commission failed to make findings of fact on §153.130(C)(1) regarding “the essential [residential] character of the surrounding area” and



whether or not the proposed communications tower would “not be in conflict with, or discourage the adjacent or neighboring use of lands or buildings.”

7. The Planning Commission failed to make findings of fact on §153.130(C)(2), which says, “The special use shall not diminish the value of the land, buildings or structures in the neighborhood.” Sue Glatz submitted written comments about how the cell tower would inhibit or prevent the sale of residential lots in the nearby subdivision.
  
8. The Planning Commission failed to make findings of fact on §152.246(B)(4), which says, “No new tower shall be approved unless the applicant can document that the co-utilization of an existing tower or utilization of an existing structure is not available.” Planning Commission member, Mark Sweppenheiser, testified that Verizon failed to comply with §152.246(B)(4), but the Planning Commission was improperly directed to ignore findings of fact by a Commission member that the application by Judd Chaille failed to comply with statutory requirements, rendering the application invalid. The Planning Commission should have evaluated findings of fact on §152.246(B)(4) and required said application to be in compliance before allowing the proposal to proceed.

9. The Big Rapids Township Supervisor improperly participated, provided comment, and directed the Planning Commission in both the Public Hearing conducted on March 13, 2018, and the April 10, 2018 meeting during which the SUP was discussed and ultimately approved. The Big Rapids Township Supervisor unduly influenced the Planning Commission and the vote to affirm the Special Use Permit, in conflict with the Township's governing regulations listed in the "The Township Guide to Planning and Zoning," which states:

Planning commission and zoning board of appeals members are either appointed or confirmed by the township board. Once the appointments are made, individual township board members, including the supervisor, should not be involved or attempt to influence the decisions of the planning commission or zoning board of appeals... (p 83)

The Big Rapids Township Supervisor's direction to the Commission and undue influence on the vote for the Special Use Permit impermissibly interfered with Commission's ability for an impartial and complete investigation and findings of fact with regards to the suitability of the site, as evidenced by the inattention to proper procedural standards and uniformity of review in the particular request. The Big Rapids Township Supervisor and Planning Commission failed to protect the impartiality of the proceedings, which resulted in procedural and voting errors, a situation delineated specifically in "The Township Guide to Planning and Zoning" (p.87), which cautions against the township supervisor's "undue influence on the decision making process":

A number of townships permit the township supervisor to act as the zoning administrator as an extra duty. While not prohibited by statute, the township should consider some of the implications: the supervisor may not be viewed by the public as a neutral or unbiased individual assisting someone through the zoning process, particularly if the supervisor will have to vote on the proposal if it comes before the township board. The supervisor appoints the planning commission members with township board approval, and as a township board member, appoints the zoning commission and ZBA members. As a result, the supervisor may appear to have undue influence on the decision-making process of those bodies.

(p.87)

10. No public comment allowed during Public Comment session during the April 10, 2018 meeting to clarify information presented at the previous hearing.
11. Mr. Keating, acting as Chair of the Commission, committed an ethics violation when he testified to meeting with one of the contesting property owners, Mr. Harvey Bailey, in an ex-parte meeting. Mr. Keating then provided a summary of his alleged findings, even stating he was quoting his conversation with Mr. Harvey Bailey from this ex-parte meeting, which was used to influence the Commission's vote in favor of the Special Use Permit. The Michigan Township Association's guidelines specifically designate Mr. Keating's ex-parte meeting with Harvey Bailey and subsequent testimony regarding the ex-parte meeting as an ethics violation. The Michigan Township Association's *Township Planning & Zoning*

*Decision-making: A Handbook for Township Planning Commissions and Zoning Board of Appeals Guide's* chapter on *"Ethics, Ex-Parte Communications*, explains:

Once appointed, a township planning commissioner or ZBA member becomes a public official and his or her name is then available to the public. But, unlike elected officials, who must have a greater degree of accessibility to their constituents, interaction with the public for a planning commissioner or ZBA member should only occur at a public meeting. The reason for this is simple. Each appointed official must have the same information on which to base his or her decisions as all of the other members of the board. This is only fair to those who are affected by these decisions. Contacts that are ex parte (or "by or for one party" or "by one side") occur when discussions with an appointed decision-maker take place outside of a public meeting."

Accordingly, Mr. Keating should have followed the Michigan Township Associations procedures for ex-parte meetings, which state "the rules of the board do not permit discussion of an application outside of a public meeting..."

12. The Commission failed to comply with Michigan law when it failed to address findings of fact in relation to the Special Use Permit according to Section 125.3502(4):

The decision on a special land use shall be incorporated in a statement of findings and conclusions relative to the special land use which specifies the bases for the decision and any conditions imposed.

The Commission should not have proposed and passed a motion to approve without evaluating the statement of findings of fact and conclusions relating to the motion and approval of special land use according to the Michigan Zoning Enabling Act 110 of 2006, regarding 153.130(C )(1) & (2) and 152.246(B)(4); the passage of such motion constitutes an error on the part of the Planning Commission by the resulting Planning Commission's officers' violation of statutory regulations in order to approve the proposal by Judd Chaille.

13. The Planning Commission violated the Open Meetings Act by failing to make the minutes of the following meetings available:

- A. Preliminary minutes of the March 13, 2018 meeting within eight business days subsequent to the meeting
- B. Approved minutes of the March 13, 2018 meeting within five business days of the April 10, 2018 meeting
- C. Preliminary minutes of the April 10 meeting within eight business days subsequent to the meeting

14. The Planning Commission split 3-3 during fact finding on the question of whether or not the application for a Special Use Permit complied with the ordinance, which should have resulted in a 3-3 split on the vote to grant the Special Use Permit.
  
15. The parcel on which the Special Use Permit was granted is nonconforming. It is part of a FEMA-designated Flood Zone A, which is a "high risk flood zone," and the proposal to make the site more conforming will result in poor planning and development of the parcel, as well as endanger all Big Rapids Township residents' access to federal disaster relief and federal flood insurance programs.
  
16. The parcel on which the Special Use Permit was granted is nonconforming, and the proposal to alter the site to grant an easement is in conflict with the Michigan Zoning Enabling Act, Section 125.3201(2), requiring "uniformity of regulations" "Except as provided under this act, the regulations shall be uniform for each class of land or buildings, dwellings or structures within a district." The Planning Commission was in error when it allowed the nonconforming parcel to be redistributed outside the "uniform for each class of land or buildings or structures," particularly since the adjoining parcels in the district are residential.
  
17. Placing a monopole in a residential use neighborhood, and on a property currently being used as residential, constitutes spot zoning and is not consistent with current adjacent residences and residential developments, not compatible with nearby residences or the essential character of the neighborhood, nor capable of being

used for the proposed special use as a non-conforming parcel without a zoning allowance that requires an absurd variance. This requirement that the easement was granted redistribute the parcel in a ridiculous fashion in order to even make the property available for the Special Use Permit conflicts with the Michigan Zoning Act's Section 125.3201(2) requiring "uniformity of regulations": "...the regulations shall be uniform for each class of land or buildings, dwellings or structures within a district." Granting an easement on a non-conforming parcel to try to make it fit into a Special Use Permit is granting special zoning favors, not following uniform regulations.

#### RELIEF

We request that the ZBA reverse the decision of the Planning Commission and deny the application for the Special Use Permit for a communications tower, OR reverse the decision of the Planning Commission and remand the case to the Planning Commission to receive additional evidence and make factual findings on §153.130(C)(1) and (2) and vote again on the application for the Special Use Permit.