

AREA BOARD OF ZONING APPEALS OF TIPPECANOE COUNTY

MINUTES OF A PUBLIC HEARING

DATE..... MAY 23, 2018
 TIME..... 6:00 P.M.
 PLACE..... CO. OFFICE BLDG.
 20 N. 3RD STREET
 LAFAYETTE, IN 47901

MEMBERS PRESENT

Tom Andrew
 Steve Clevenger
 Steve Schreckengast
 Carl Griffin
 Gary Schroeder
 Ed Butz
 Frank Donaldson

MEMBERS ABSENT

STAFF PRESENT

Ryan O’Gara
 Rabita Foley
 Linda Underwood
 Zach Williams, Atty.

The Area Board of Zoning Appeals of Tippecanoe County public hearing was held on the 23rd day of May 2018 at 6:00 P.M., pursuant to notice given and agenda posted as provided by law.

President Steve Clevenger called the meeting to order.

I. APPROVAL OF MINUTES

Steve Schreckengast moved to approve the minutes from the April 25, 2018 BZA public hearing. Carl Griffin seconded and the minutes were approved by unanimous voice vote.

II. NEW BUSINESS

Ryan O’Gara said all cases on the agenda are ready to be heard. Counsel for **BZA-1982—WEST LAFAYETTE JUNIOR-SENIOR HIGH SCHOOL BUILDING CORPORATION** has withdrawn Variance #1 (height). The petitioner for **BZA-1979—HORVATH TOWERS V, LLC** has asked that the case be moved to the end of the agenda because several people from his group have not arrived.

III. PUBLIC HEARING

Steve Clevenger read the meeting procedures.

Steve Schreckengast moved that there be incorporated into the public hearing portion of each application to be heard this evening and to become part of the evidence at such hearing, the Unified Zoning Ordinance, the Unified Subdivision Ordinance, the Comprehensive Plan, the By-laws of the Area Board of Zoning Appeals, the application and all documents filed therewith, the staff report and recommendation on the applications to be heard this evening and responses from the checkpoint agencies. Carl Griffin seconded and the motion carried by voice vote.

Steve Schreckengast moved to hear **BZA- 1979—HORVATH TOWERS V, LLC** at the end of the meeting. Carl Griffin seconded and the motion was approved by unanimous voice vote.

1. BZA-1982--WEST LAFAYETTE JUNIOR-SENIOR HIGH SCHOOL BUILDING CORPORATION:

Petitioner is requesting the following variances to construct an aquatic center addition to the existing R1-zoned West Lafayette Junior-Senior High School:

1. *To increase the building height to 50 feet from the maximum allowed 35 feet; (UZO 2-1-10)*
2. To reduce the number of onsite parking spaces to 218 from the minimum requirement of 692 spaces; (UZO 2-1-11)
3. To decrease vegetative coverage to 36% from the minimum requirement of 40%; (UZO 2-1-6) and
4. To increase the building coverage to 32% from the maximum allowed 30% (UZO 2-1-6) on property located at 1105 N. Grant Street, West Lafayette, Wabash 18 (SE) 23-4. *Continued from the April 25th ABZA meeting at petitioner's request.*

Steve Schreckengast moved to hear and vote on **BZA-1982—WEST LAFAYETTE JUNIOR-SENIOR HIGH SCHOOL BUILDING CORPORATION.** Carl Griffin seconded.

Ryan O'Gara presented the zoning map, aerial photos, photos of the site, and site plan. He said staff determined Variance #1 was not needed and petitioner withdrew the request earlier today. He said our historic zoning maps showed this property as one large lot for the school and track but it was actually 36 platted lots with two platted streets with alleys, and a large unplatted area. He explained that petitioner has started the process to vacate these public streets and alleys and also filed a replat so the entire property will be on one large lot. The subdivision process will require additional property to be dedicated to the public right-of-way and Variance requests #3 and #4 have been calculated using the post-dedication acreage. He said this is the third-time variances have been requested at the school. A variance for signs and sign area were approved but the sign setback variance was denied. A height variance was also granted but a parking variance was withdrawn prior to the hearing because the existing parking on site was considered legally nonconforming and no parking variance was needed. Once construction is completed there will be a net loss of 10 parking spaces. When staff visited the site it was clear that onsite parking is at a premium but the school has addressed this by issuing student parking passes, reserving parking for staff and working with the city to provide some on-street student parking. Staff realizes this is a unique situation as this is the only secondary school in West Lafayette and without the variances a state-of-the-art aquatic center could not be built on site. The property is land-locked and there is no adjacent land available. He summarized the ballot items and concluded with a recommendation of approval for Variances #2, #3, and #4.

Kevin Riley, PO Box 280, Lafayette, IN 47906, attorney representing the petitioner, concurred with the staff report and said this is all part of an effort to clean-up existing issues to be able to build a new aquatic center.

Gary Schroeder asked why the height variance was dropped.

Kevin Riley explained that the need for a height variance was what started this whole process. The UZO (4-5-1c) requirements are met with the various setbacks so that eliminated the need for the height variance. He thinks there also was a variance granted a few years ago that satisfied the aquatic center height issue. The aquatic center will be over 50' in height to accommodate the diving platforms.

The Board voted by ballot 7 yes to 0 no to approve **BZA-1982—WEST LAFAYETTE JUNIOR-SENIOR HIGH SCHOOL BUILDING CORPORATION, Variance #2.**

The Board voted by ballot 7 yes to 0 no to approve **BZA-1982—WEST LAFAYETTE JUNIOR-SENIOR HIGH SCHOOL BUILDING CORPORATION, Variance #3.**

The Board voted by ballot 7 yes to 0 no to approve **BZA-1982—WEST LAFAYETTE JUNIOR-SENIOR HIGH SCHOOL BUILDING CORPORATION, Variance #4.**

2. BZA-1983--GARY RATCLIFF:

Petitioner is requesting a special exception to allow an agricultural rental hall (SIC 799) on 12.231 acres in the Agricultural Wooded zone. The hours of operation proposed are 11am to 11pm, seven days a week. The property is located on the west side of US 231, specifically at 9950 US 231 South, Randolph 18 (NE) 21-4. (UZO 3-2) ***WITH CONDITIONS***

Steve Schreckengast moved to hear and vote on **BZA-1983—GARY RATCLIFF WITH CONDITIONS.** Carl Griffin seconded.

Rabita Foley presented the zoning map, aerial photos of the site, photos of the site, original site plan, and the site plan petitioner submitted today with the locations of the four outdoor event centers indicated by a star. She said the petitioner obtained a permit for the existing pole barn for personal use (his daughter's wedding) in 2013 and has made the barn available for others to use since then. A complaint was made to the Building Commissioner last summer and the petitioner was permitted to have the weddings for the remainder of the summer of 2017. Petitioner waited until April of 2018 to file for the special exception and has bookings for the summer of 2018. The May weddings were cancelled and closing the operation was discussed but the County Commissioners decided to let the use operate through the summer while working through the approvals. The Commissioners did not want to inconvenience the families that had made wedding plans a year in advance and that is the reason this use has been allowed to continue. She referred to the site plan to show the bathroom expansion area and delineated parking spaces. She highlighted the two possible access locations and said petitioner will need to record an access easement to the site through his land. She said the site can accommodate 299 guests and the site plans show more than the 75 required parking spaces. The site is zoned A and eating and/or drinking establishments (restaurants) are not permitted. The zoning ordinance also places a limit on food service. There cannot be any preparation of food on site and all food must be brought to the site by a licensed caterer. She said the petition does not specify any outdoor activities even though he has indicated he plans to allow them. She summarized the ballot items and concluded with a recommendation of approval with the following commitment and conditions:

1. Approval from INDOT for a change of use driveway permit;
2. Approval from the Indiana State Department of Health and the Tippecanoe County Health Department for an on-site sewage disposal system;
3. Approval from the Indiana State Building Commissioner and the Tippecanoe County Building Commissioner;
4. Approval from the Tippecanoe County Surveyor's Office for onsite drainage;
5. A recorded driveway easement shall be filed before a permit for the use is issued;
6. Amend the site plan to show the extent of outdoor areas.

Daniel Teder, PO Box 280, Lafayette, IN 47906, attorney representing the petitioner, said his client has worked diligently with the County Building Commissioner, ARCOR Engineering, and Starr & Associates to get all the required approvals. His client built the barn himself using wood from the farm. The barn is surrounded by 140 acres of farmland that is owned by the petitioner. Most of the neighboring homes are over 1000' away from the barn. He added that a lot of trees buffer the site. The events will be by reservation or invitation only. The staff report states that the site is secluded and ideal for this use. Four public events per year are allowed and that is something his client may choose to host in the future.

Steve Clevenger asked why a recorded driveway easement is a condition of approval.

Daniel Teder said right now the building is accessed by a residential drive owned by Mr. Ratcliff and his wife. INDOT has to okay a change of use for the driveway and may require a commercial drive.

The Board voted by ballot 7 yes to 0 no to approve **BZA-1983—GARY RATCLIFF WITH CONDITIONS.**

3. BZA-1984--VERLYN AND LISA FAST:

Petitioner is requesting a special exception to allow an agricultural rental hall (SIC 799) on 10.8865 acres in the Agricultural zone. The proposed hours of operation are 9am to 5pm

(office hours), five days a week *and 2pm to midnight (event hours), seven days a week* with event hours 2pm to 10pm Sunday through Thursday and 2:00pm to midnight Friday & Saturday. The property is located on the north side of CR 550 S, specifically at 5074 E 550 S, Sheffield 19 (NW) 22-3. (UZO 3-2) **WITH COMMITMENTS & CONDITIONS**

Steve Schreckengast moved to hear and vote on BZA-1984—VERLYN AND LISA FAST WITH COMMITMENTS & CONDITIONS. Carl Griffin seconded.

Rabita Foley presented the zoning map, aerial photos, photos of the site, and the site plan. She summarized the area zoning patterns and added that this site, along with petitioners' home, supports a permitted by-right child care home. She referred to the aerial to point out the evergreen trees located along the south and east property lines and the agricultural fields that surround the site. The building is designed to hold 297 occupants and the ordinance requires 75 parking spaces. The site plan shows 79 spaces with overflow parking in the grassy area immediately south of the parking lot. She then explained the lighting plans. She

went on to say the office for the rental hall must be the house because only one primary use building is permitted on a lot or tract. As previously stated, the site is zoned A and eating and/or drinking establishments (restaurants) are not permitted and the zoning ordinance also places a limit on food service. There cannot be any preparation of food on site and all food must be brought to the site by a licensed caterer. She summarized the ballot items and concluded with a recommendation of approval, if the hours of operation are changed to 2:00pm to 10:00pm, Sunday through Thursday, 2:00pm to midnight, Friday and Saturday AND subject to the following recorded commitments and conditions:

Commitments

1. The office for both the agricultural rental hall and the child care home shall be located inside the residence.
2. There shall be no amplified music or other sound system outside of the agricultural rental hall.

Conditions

1. Approval from the County Highway Department for a commercial driveway;
2. Approval from the Indiana State Department of Health and the Tippecanoe County Health Department for an on-site sewage disposal system;
3. Approval from the Tippecanoe County Surveyor's Office for onsite drainage.

Lisa Fast, 5074 East CR 550 South, Lafayette, IN 47909, petitioner, said she and her husband have been married over 32 years and have always owned a business. She concurred with the staff report and agreed to change the hours of operation as staff requested. She said her architect turned in the plans for the barn to the state on May 10th and the state is in the process of reviewing the plans. The soil samples were turned into the county on May 17th and are in the process of drawing up the plans for the commercial septic system. She added that mature trees surround the site and the barn will only be 150' away from her master bedroom. She will be the most impacted by noise but as indicated, all events will be held indoors. She said she spoke to all nine of her neighbors and explained the plans in detail. Six of the nine neighbors they were required to send notices to support this request.

Verlyn Fast, 5074 East CR 550 South, Lafayette, IN 47909, petitioner, assured the Board that he will keep up the property and the venue will always look nice.

Zach Williams asked Mr. & Mrs. Fast if they have amended their petition to change the hours of operation.

Lisa Fast said they have not amended their petition but plan to do so before leaving tonight.

Steve Clevenger suggested amending the petition now so the Board can vote on the amended version.

Verlyn and Lisa Fast amended the petition per staff's recommendation.

Mark Rathburn, 8049 Newcastle Road, Lafayette, IN 47905, said he owns approximately 40 acres directly behind the petitioners' site and the acreage is divided into 10-acre tracts. He also owns the three,

1.5 acre lots on CR 500 East and that leaves him about 45 acres with seven buildable lots. He plans to build a home for himself and his wife near the pond. A rental facility like this can be anything like a VFW or a Moose. He thinks no one will want to buy a lot to build a house near a rental facility. He is concerned about personal liability because there is no fence between his property with the pond and the Fast property.

Tim & Cathy Lewis, 5227 East CR 550 South, Lafayette, IN 47905, said they own the home directly across the street from this site. The trees on the site are not mature enough to provide a visual and noise buffer.

Lisa Fast asked staff to display the close-up aerial and said she and her husband purchased their land from Mark Rathburn seven years ago. The Rathburn property was for sale seven years ago and it is still for sale with no buyers. She and her husband tried to buy the pond from Mr. Rathburn but he will not give them a price. She is planning to continue the fence all along the rear lot line. There are also plans to install a pond on her property for drainage. She referred to the aerial to point out that the Lewis home is across the street from her property but their front door is over 600' from the proposed rental facility. She spoke with the County Building Commissioner about the proposed lighting and was told the lights she plans to use do not cause glare and the poles will be at the rear of the property and point straight down.

Tom Andrew asked what if any liability will Mark Rathburn will have if someone trespassed onto his property and drowned in the pond.

Zach Williams said unfortunately that is a question he cannot answer.

The Board voted by ballot 5 yes to 2 no to approve **BZA-1984—VERLYN AND LISA FAST WITH COMMITMENTS & CONDITIONS.**

| <u>Yes Votes</u> | <u>No Votes</u> |
|---------------------|-----------------|
| Steve Schreckengast | Gary Schroeder |
| Ed Butz | Frank Donaldson |
| Carl Griffin | |
| Steve Clevenger | |
| Tom Andrew | |

4. **BZA-1979--HORVATH TOWERS V, LLC:**

Petitioner is requesting a special exception to allow a primary communications tower (SIC 48) in the A zone. The unmanned monopole cell tower will operate 24 hours per day, 7 days per week at 3805 S. 18th Street in Wea 09 (SW) 22-4. (UZO 3-2) *CONTINUED FROM THE APRIL BZA MEETING AT PETITIONER'S REQUEST*

Steve Schreckengast moved to hear and vote on **BZA-1979—HORVATH TOWERS V, LLC.** Carl Griffin seconded.

Ryan O'Gara presented the zoning map, aerial photos of the site, and site plan, showing this site as part of a larger 12-acre tract. He explained that a special exception for this tract of land was granted in 1989 for a golf driving range and recently a landscaping business and accessory pole barn were added. He referred to the zoning map to highlight the seven acres of GB zoning just south of this site that has two, legally non-conforming, primary communications towers and a television station office. One tower was an accessory tower used by the radio station that the television station does not use and the second tower was built in the 1960's prior to zoning in the county. He explained that the first tower is no longer on the same lot at the radio/tv station and cannot be considered an accessory use. Both towers are non-conforming and neither tower can be expanded for additional carriers without bringing them into conformance by rezoning the property to an industrial zone where the use is permitted by right. Petitioner has started the process to legitimize the existing towers. Last week the APC recommended approval of two I3 rezone requests and the case will be heard by the Lafayette Common Council at its June 4th meeting. If approved, the existing towers can be improved and expanded. He referred to the site plan to highlight the area where the tower will be located and the four utility sheds to service four carriers. He

said this is a case of a cellular carrier needing to provide service for this area of the county. He concluded with a recommendation of approval.

Russell Brown, 320 North Meridian, Suite 1100, Indianapolis, IN 46204-1722, attorney representing the petitioner, said he realizes all speakers have a 5-minute limit but he asked to be allowed to speak for 10 minutes. He added that there will be no other speakers in support of this request. He also hopes to avoid rebuttal evidence at the end.

Zach Williams informed the Board that petitioner's representative is asking permission to speak for an additional five minutes so he does not have to keep switching speakers.

Carl Griffin moved to allow Russell Brown to speak for 10 minutes instead of the Bylaw allowed five minutes. Steve Schreckengast seconded and the motion was approved by unanimous voice vote.

Russell Brown distributed a handout outlining his presentation. He said his client plans to construct a 184' monopole communications tower for Verizon Wireless and added that Horvath has a relationship with all Indiana wireless carriers. A monopole tower has less of a visual impact than a lattice/guyed tower and can support three co-locators. The site will be surrounded by a 6' high fence with 1' of barbed wire at the top. Access to the site will be through an existing curb cut and the low traffic generated by this use will not affect traffic on South 18th Street. The site design meets all the development standards of the ordinance and the handout includes a letter signed by an Indiana engineer stating that monopole towers are designed to fall within a 0-radius fall zone at the base of the tower. Any catastrophic failure of the tower would fall within the lease area and not impact the balance of the parent or adjoining properties. The Verizon equipment back-up generator is tested on a weekly basis and only runs in emergency situations. The handout also includes a letter from Verizon Wireless explaining some of the reasons Verizon did not co-locate on the existing towers. That statement is offered to meet obligations of Indiana Code 8-1-32-3-20A -3C regarding why co-location was not pursued by Verizon Wireless on the existing towers. The staff report explains the other challenges expanding the use of the existing towers for Verizon Wireless needs. Efforts have been initiated to remove the challenges associated with expanding those sites but none of them occurred until after Horvath began the expense of pursuing the entitlement of this site. Horvath believes it has an invested property right in having this matter considered as if the co-locatability of those towers has not changed. The owners of the existing towers are attempting to retroactively apply changed zoning to those sites in contradiction to applicable Indiana case law. The remonstrators may feel a tower is not needed in this location because their phones work just fine. He stated a sworn statement of need from a Verizon Wireless RF engineer is included in the handout. He referred to the site as a "capacity site" which has the goal of enhancing 4-G capacity for Verizon Wireless customers in Tippecanoe County. The site is designed to off-load other sites, especially those to the west, and enhance user speed. Capacity matters because providers must provide adequate service to customers as it is an FCC licensing requirement and having adequate wireless networks is an economic development and public safety need. Increased capacity is needed in residential neighborhoods because of the increase in wireless only households. Wireless infrastructure is a necessary public utility. Included in the handout is a 2016 summary from the American Bar Association of a Delaware court case where the court accepted testimony and founded the matter of law that the presence of wireless communication facilities is part of the backdrop of organized communities and does not negatively impact future property values for the future developability of land. He pointed out that most homeowners in the area bought their properties even though the two existing tower structures were already in place.

Ryan O'Gara read letters of opposition from:

Dean Fredette, Purdue Sports Properties, 1305 Cumberland Avenue, Suite 225, West Lafayette, IN 47906,
Edmond Trombley, MUNN-REESE, Coldwater, MI 49036-0220, and
R. Stuart Graham, Jr., 5971 Jesup Highway, Brunswick, GA 31523

Martin Brown, 248 Stonehenge Drive, Louisville, KY 40207, said he has been in the real estate industry since 1980 and in 1998 he was approached by attorneys representing wireless communication carriers to determine whether or not an existing cell tower causes property values to diminish. He conducted a series of neighborhood impact studies in Indiana, Kentucky, West Virginia, and Ohio by going to an area where there were existing towers and where towers were being proposed to locate on properties within

500' of an existing tower. He then identified properties in the same neighborhood that were not in sight of the tower. Sales histories of all those properties were run and he was able to track whether properties increased, decreased, or stayed flat in value after a tower was constructed. Other studies show that properties that do not have access to Wi-Fi may have a diminished property value. The Appraisal Institute recognizes that Wi-Fi is a public utility.

Kyle Dietrich, PO Box 280, Lafayette, IN 47902, attorney representing the owners of the land where the existing cell towers are located, agrees that better cell coverage is a good thing. The two existing towers will become conforming when the land the towers are located on is rezoned to I3 by the Lafayette Council on June 4th. That means the tower owner can make improvements to the towers and allow other carriers to co-locate and being able to do that will eliminate the need for a new tower. He agrees with staff that the new tower will not have an impact or be injurious to neighboring uses but it will have an impact on the radio stations' broadcasts. *UZO 4-11-11q* talks about building wind energy conservation systems (wind towers) within an area that would interfere or impact the broadcast of existing primary communication towers. The community should not have to suffer because Verizon was unable to get the prices they want. He concluded by saying co-location on the two existing towers will result in increased coverage and eliminate the need for a new tower.

Jerry Reynolds, 978 Southernview Drive South, Lafayette, IN 47909, Lafayette District 1 Councilman, said the existing towers were in place when he built his home in 1974 and have been part of the landscape for as long as he can remember. Over 50 neighborhood residents met with him, the mayor, APC staff, and Horvath Communications to discuss the plans for the new tower and almost all present were against the new tower. Lafayette plans to construct a 2,000,000 gallon water tower on CR 430 South and the tower can be used for co-location. He is a retired Lafayette Firefighter and the City of Lafayette is a Verizon user and the basement of the two old hospitals are the only two places they could not get service. The mayor believes this new tower will not provide a benefit to the city.

Steve Schreckengast wanted to be sure Jerry Reynolds is representing the mayor and the Lafayette City Council. He then asked when the water tower will be built.

Jerry Reynolds said he is representing the Council and the mayor. He thinks the water tower will be constructed next year but he is not sure. He does know the water tower was included in the city budget that was passed. He knows the water tower will increase the water pressure out there and that the tower is needed to keep the water rates down.

Eric Nice, 1659 Stonegate Circle, Lafayette, IN 47909, said currently there is a driving range in the middle of five subdivisions that is an eyesore. Petitioner now wants to add a tower to the landscape. He, along with several of his neighbors, have health concerns and he wants to be able to use his yard. It is a pride of ownership issue with him and his neighbors and no one wants anything to adversely affect his property values.

Steve Anderson, 3512 Roundrock Circle, Lafayette, IN 47909, said he has been a broadcaster at the radio station on South 18th Street since 1995 and knows that being on the air is an important thing. At the site there is an AM radio station and three other radio stations that have satellites to transmitter link broadcasts that emanate from the radio station to the existing towers to stations in Green Hill and in Brookston. He is concerned that the proposed tower will affect those transmissions. The owners of Call, LLC previously owned the radio station and there was an agreement that nothing went on the towers until we knew that nothing would affect the broadcasts. He has no idea how long it would take to make repairs to the new tower and that could affect broadcasts. He can't justify the fact that the existing towers are being used as an excuse for construction of a 3rd tower. The status of the existing towers was never looked at or an issue until recently. Horvath believes that they have a right to construct the tower because of the money they have spent the past few months but the radio stations have contributed thousands of dollars to our community through public service announcements for charities and events. The radio station has to be on the air to serve the Lafayette area.

Tom Andrew asked if co-locating cell towers on the water tower will affect the radio station.

Steve Anderson said that is a possibility but there is no way of knowing until it happens.

Sean Henady, 1315 Stone Ripple Circle, Lafayette, IN 47909, said he is a concerned owner because his property is attached to the driving range. He is knowledgeable regarding communication towers because he worked as a contractor to a large telecommunication company providing exact line-of-sight tower mapping at elevation for existing and future communication towers. He then presented a PowerPoint presentation showing the existing Horvath tower on US 231 that has a coverage range of about 1.5 miles. He then displayed imagery of the proposed tower showing line of sight projections of the tower using Google Earth views in Sterling Heights, Valley Forge, Waterstone, and The Commons using the proposed tower height. He also highlighted the location of the driving range, new water tower, and new library with respect to the proposed tower. He said the existing towers are over 190' and the proposed tower is 180' but the proposed towers are at a lower sea level making the Horvath tower 25' lower than the existing towers. Petitioner has said the Horvath Tower is being put in an ideal location for a tower of this height but he disagrees. He then presented a zoning map showing the driving range and the Flood Plain zone. He said a lot of property was lost when the Kirkpatrick Ditch was cut in the center and it had to moved toward his subdivision so the driving range would not be affected.

Russell Brown explained that in 2014 the FCC issued guidelines relating to how detuning is required to occur for potential interference between communication towers and radio frequencies. He added that detuning is an obligation and a condition of license. When any new tower goes up there is a procedure and process that must be followed. The two towers can coexist. He said there is a wireless communication antenna on the west tower and that shows that detuning is possible. He is sure there will be co-location on the new water tower to be constructed and Verizon already has co-located on the water tower near the fairgrounds. He is not sure Verizon can wait one year for an opportunity like this. It was stated that Horvath has been working on this project for the last 90 days but that is not accurate because the search ring was conducted over 24 months ago. He said this Board cannot consider the health impact of any installation of a wireless facility that is 30' off the ground. Even though homeowners must abide by their HOA regulations, the restrictive covenants cannot be applied to properties not within the subdivision.

The Board gave Russell Brown an additional time for his rebuttal.

Russell Brown said rarely a new tower is proposed when there are existing towers in the area because usually there is an opportunity for co-location. Indiana Code says requiring a wireless communication carrier to go on an existing tower and allowing that tower owner to potentially hold the co-locator hostage by any means necessary if certain criteria are met. The co-locator has to show the requiring co-location would be an economic burden to the wireless carrier. He said the remonstrator's presentation was very professional but he disagrees with how the look of the tower was presented. He thinks it is unfortunate that they could not come to business terms with the owners of the existing towers and that requiring Horvath to go back now after the existing towers are now fixed many years after they were constructed.

Steve Schreckengast asked if the Board can consider whether this issue complies with FCC regulations and the impact of the proposed tower on the radio station.

Zach Williams replied that the Board has heard both sides of that issue with both sides providing detailed explanations. He said the BZA ballots are very specific on what the Board is deciding tonight and that decision is based on how our ordinance handles special exceptions. A Board Member cannot consider a piece of evidence unless the Member thinks it applies to a ballot item. Staff presented its interpretation of our ordinance with regard to the ballot items and it is included in the staff report. To staff, "subverting the general purposes of our ordinance" (ballot item #3) means whether or not the request will prevent adjacent land from being used for its existing use. Ballot item #4 addresses the specific items the Board is considering.

Steve Schreckengast asked staff if it considered the issue of FCC distortion of the radio when it made its recommendation.

Ryan O'Gara said that was not considered because staff is not knowledgeable about these issues. Public hearings give everyone the opportunity to hear from people in the know from both sides of an issue.

Carl Griffin asked for an explanation of the detuning process. He wonders if the carrier has to demonstrate to the FCC that the tower and those located on it will not interfere with the adjacent towers.

Russell Brown said the FCC rule states that action is required and the following must be completed:

- The AM station must be notified of the action;
- Comment period;
- Analysis conducted to determine whether or not that would have a significant impact on the site;
- Proposal of how detuning will be done if it is determined there will be an impact.

He went on to say Horvath has a consultant to guide them through the process and ensure they meet FCC requirements.

Carl Griffin asked if a similar process had to be gone through for the Horvath tower in Kokomo.

Jessica Geers, 312 West Colfax, South Bend, IN 46601, petitioner, said Horvath hires a consultant to do AM studies on all of its towers as part of due diligence. The standard for every tower is to ensure that radio broadcasts are not affected, interfered with, or stopped.

Jerry Reynolds pointed out that cell providers have to follow FCC regulations but they do not have to follow utility regulations. At one time cell carriers chose not to be associated with the utility regulators so they have their own set of rules while cities have to follow the rules governing utilities.

Steve Schreckengast asked why the Mayor of Lafayette and the Lafayette City Council are opposed to this request.

Jerry Reynolds replied that this tower will provide no benefit to the community. Lafayette officials feel the two existing towers are adequate and there is also the option of locating on the new water tower or the new library. The mayor made it clear to Horvath that he is not interested in having the tower in the middle of our neighborhoods. This special exception request was mailed to the zoning board and not presented as a package to the city officials. Often things are being proposed and the neighbors do not find out about it until the signs go up or they receive a letter in the mail. He thanked Horvath for continuing the case for two months to consult with city officials and the neighborhoods. Even after meeting with Horvath, the residents are not interested in having another tower.

Steve Clevenger asked when the water tower might be finished.

Jerry Reynolds said the budget was passed to have the tower built but he is not sure of the timeline.

Jessica Geers said Horvath abided by all county and city rules when filing this special exception request. She added that she called Bob Foley in the Lafayette City Engineer's Office and he did not return any of her calls.

Steve Schreckengast knows a tower has to have a road for access and electricity. He asked Jessica Geers if Horvath looked at land by Wea School or the ground where the library will be built because the ground there is much higher.

Jessica Geers replied that a Radio Frequency Engineer identifies a specific search for the ring that the tower should be within to meet the coverage needs. A search for the best possible location commences once that ring is identified.

Russell Brown said the remonstrators showed a 150' coverage circle and pointed out the location of another Horvath tower Verizon is already on just outside that 150' circle on US 231. Verizon is already located on a lot of towers throughout the county. The goal is to find a willing land owner, the right location, and adequate sized property. Co-location is always the first option looked at. Verizon approached the owners of the radio tower first but they were unable to reach a deal. No one knew if the radio tower could accommodate another carrier because there are already two carriers on the tower.

Steve Schreckengast asked if the radio station would have allowed Verizon to locate on its tower if the right price had been negotiated without going through the detuning.

Russell Brown said no one was sure if the towers were structurally sound enough to allow any additional wireless communication facility to go up there. He added that two carriers are already co-located on the existing tower.

Jessica Geers added that when this project started in 2016 the existing towers were not in compliance. She went on to say that it was cost prohibitive to co-locate on one of the existing towers. Verizon would much rather co-locate than build a tower.

Jerry Reynolds said the owners of the towers are in the process of making the towers compliant. Jessica Geers is correct when she said the towers could not be upgraded or expanded because they were noncompliant.

The Board voted by ballot 1 yes to 6 no to deny **BZA-1979—HORVATH TOWERS V, LLC.**

| <u>Yes Vote</u> | <u>No Votes</u> |
|-----------------|---------------------|
| Gary Schroeder | Steve Schreckengast |
| | Ed Butz |
| | Carl Griffin |
| | Steve Clevenger |
| | Tom Andrew |
| | Frank Donaldson |

V. ADMINISTRATIVE MATTERS


Steve Clevenger stated that unless any member has an objection the chair will order the findings of each member casting a vote for the majority decision of the Board to be the collective findings of the Board in support of the decision of the Board. Hearing none, it is so ordered.

VI. ADJOURNMENT

Steve Schreckengast moved for adjournment. Carl Griffin seconded.

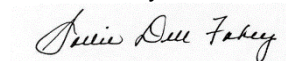
The meeting adjourned at 8:30 p.m.

Respectfully submitted,



Linda Underwood
Recording Secretary

Reviewed by,



Sallie Dell Fahey
Executive Director