

IN RE: PAR
TOWNSHIP MEETING

February 11, 2009

Prepared for you by



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TOWNSHIP MEETING
February 11, 2009

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DEXTER TOWNSHIP ZONING BOARD OF APPEALS

Wednesday, February 11, 2009

7:00 p.m.

IN RE: PAR d/b/a VERIZON WIRELESS C/O TELESITE, INC.

1. To allow the cable/ice bridge to be less than 15 feet from the ground.
 2. To allow the applicant to lease an area for a wireless communication facility and tower without obtaining a land division for the leased area.
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Excerpt of The Dexter Township Zoning Board of Appeals
Meeting,

Taken at 6880 Dexter-Pinckney Road,

Dexter, Michigan,

Commencing at 7:00 p.m.,

Wednesday, February 11, 2009,

Before Dora L. Doletzky, CSR-6110.

1 APPEARANCES:

2

3 JONATHAN R. CRANE

4 Jonathan R. Crane, P.C.

5 1126 North Main

6 Rochester, Michigan 48307

7 (248) 650-8000

8 Co-Counsel appearing on behalf of Verizon Wireless.

9

10 JONATHAN R. CRANE

11 Jonathan R. Crane, P.C.

12 1126 North Main

13 Rochester, Michigan 48307

14 (248) 650-8000

15 Co-Counsel appearing on behalf of Verizon Wireless.

16

17 PETER FLINTOFT

18 Keusch, Flintoft & Conlin

19 119 South Main Street

20 Chelsea, Michigan 48118

21 (734) 475-8671

22 Appearing on behalf of The Dexter Township Zoning

23 Board of Appeals Commission.

24

25

1 ZONING BOARD MEMBERS:

2 Steve Burch, Chairman

3 Bill Gajewski, Vice Chairman

4 Pat Kelly, Secretary

5 Mary Adams, Board Member

6 Mary Herda Sprawka, Board Member

7 DeNette Bolyard, Recording Secretary

8 Patrick Sloan, Director of Planning and Zoning

9
10 ALSO PRESENT:

11 Claudine Antoun

12 Doug Rodus

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TOWNSHIP MEETING
February 11, 2009

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1 Dexter, Michigan

2 Wednesday, February 11, 2009

3 7:00 p.m.

4 CHAIRMAN BURCH: Good evening Ladies and
5 Gentlemen. I call to order the February 11th, 2009
6 meeting of the Dexter Township Zoning Board of
7 Appeals.

8 Before we move into the meeting proper I
9 invite you to join me and stand for the pledge of
10 allegiance.

11 (Pledge recited at 7:01 p.m.)

12 CHAIRMAN BURCH: Thank you, Ladies and
13 Gentlemen.

14 (Off the record at 7:01 p.m.)

15 (Back on the record at 10:05 p.m.)

16 CHAIRMAN BURCH: Next item on the agenda,
17 09-ZBA-707, Par d/b/a Verizon Wireless care of
18 Telesite, Inc., 10101 North Territorial.

19 Mr. Sloan, would you please present this
20 case to the board?

21 MR. SLOAN: Yep. Let me just pull up the
22 report real quick.

23 Okay. Going back two months, on October
24 28th, 2008 the Dexter Township Planning Commission
25 granted approval with conditions of a special land use

1 application and accompanying preliminary site plan for
2 a cellular telephone tower at 10101 North Territorial
3 Road, Dexter 48130, Parcel No. 04-14-300-009. The
4 applicant is Telesite for a New Par doing business as
5 Verizon Wireless. It is a parcel located on the south
6 side of North Territorial Road and is more commonly
7 know as the Ann Arbor Moose Lodge property.

8 The parcel is located about one mile west
9 of the intersection of North Territorial and
10 Dexter-Pinckney Roads. Verizon Wireless proposes to
11 use a 70 foot by 70 foot area along the 30 foot wide
12 east of the ingress/egress of the public utilities.

13 There are two conditions of approval of the
14 planning commission Resolution 08-EZ-132 that we're
15 here to discuss tonight. There were several
16 conditions but two of which there's some contention
17 over.

18 No. 1 was: Prior to final site plan
19 application the applicant shall either obtain a
20 variance for a lower cable/ice bridge of 10 feet high
21 or raise the cable/ice bridge to 15 feet high. On the
22 application the applicants had proposed the cable/ice
23 bridge being under 15 feet, and the ordinance requires
24 a minimum height of 15 feet high.

25 I believe the intent on that is vehicle

1 access, specifically emergency vehicle access. Given
2 the layout of the site and the distance between the
3 tower and the building where the cable/ice bridge will
4 be placed, it's highly unlikely, almost impossible
5 that a fire truck or any vehicle would need to access
6 between those points. And the way the site is laid
7 out it doesn't appear to impair fire access either
8 way.

9 So my recommendation to the planning
10 commission, I didn't have any objection to lowering
11 that cable/ice bridge, and they didn't voice any
12 objections one way or another. I think that -- this
13 is just something they wanted the zoning board of
14 appeals to take care of, whether they get the variance
15 or whether they have to raise the cable/ice bridge.
16 All they called for in their resolution is for that
17 matter to be resolved one way or another. But as the
18 planner I had no objection to that.

19 The second condition of approval of the
20 planning commission the resolution read: Prior to
21 final site plan application the applicant or property
22 owner shall demonstrate compliance with Dexter
23 Township's Land Division Transfer Ordinance.
24 Regarding that requirement for a land division, the
25 township attorney and I considered the proposed lease

1 area to be a division according to the Land Division
2 Act. The act defines the division as, quote: The
3 partitioning or splitting of a partial or a tract of
4 land by the proprietor thereof or by his or her heirs,
5 executors or administrators, legal representatives,
6 successors or assigns for the purpose of sale or lease
7 of more than one year or a building development that
8 results in one or more parcels of less than 40 acres
9 or the equivalent and that satisfies the requirement
10 of Sections 108 and 109.

11 The item of emphasis in my report here is
12 the portion that reads or lease for more than one
13 year. Because the lease between Ann Arbor Moose Lodge
14 and New Par doing business as Verizon Wireless will
15 most likely last more than one year. The 70 foot by
16 70 foot lease area will be considered a division act
17 of one year in our opinion; therefore, I recommend to
18 the planning commission, property owner, slash,
19 applicant obtain approval of a land division for a
20 three-year split prior to applying for final site plan
21 approval.

22 Per Section 16.24, Subsection A1 of the
23 zoning ordinance, three acres is the minimum lot size
24 for communication towers. Preferably the new parcel
25 will also contain the required 199 foot fall radius of

1 the proposed tower. The applicant believes that our
2 interpretation of the Land Division Act is incorrect
3 and requested an administrator review by the zoning
4 board of appeals.

5 Section 4.05A of the zoning ordinance
6 states, quote: The zoning board of appeals shall hear
7 and decide appeals where it is alleged by the person
8 aggrieved that there is an error in any order,
9 requirement, permit decision or refusal made by the
10 zoning administrator or by any other official or by
11 the planning commission in administering or enforcing
12 the provisions in this ordinance.

13 Specifically this -- the way I take this
14 application to mean is that in my role as zoning
15 administrator I interpreted the lease to qualify as
16 something that required a land division. That was the
17 recommendation I gave to the planning commission. The
18 only thing the planning commission put in its
19 resolution is that prior to a final site plan
20 application the applicant or property owner shall
21 administer compliance with Dexter Township's Planning
22 Commission Transfer Ordinance.

23 So my interpretation was that a land
24 division is required. The applicants maintain that a
25 land division is not required. So I think rather than

1 appealing, a requirement of the planning commission --
2 I take this to mean in administering a review,
3 appealing those, my interpretation of the zoning
4 ordinance, the planning commission just wants
5 compliance with the township ordinance one way or
6 another. I don't think it takes a position just like
7 with the cable/ice bridge.

8 So with that I will -- before I hand it
9 back to the zoning board of appeals, the township
10 attorney had submitted a letter and he gave you an
11 updated copy with a signature and the title at the
12 top. I don't know if you've had an opportunity to
13 read the letter, but it is there as part of the record
14 tonight for your consideration.

15 So with that I will hand it back to the
16 zoning board of appeals.

17 CHAIRMAN BURCH: Thank you, Mr. Sloan. And
18 I'll give everyone the opportunity to review
19 Mr. Flintoft's letter and find the relevant paperwork.

20 I will proceed on this, and this is to read
21 the person's noticed for this appeal:

22 Star Hill, LLC, 206 South Fifth Avenue,
23 Extension 175, Ann Arbor.

24 University of Michigan, 3241 Baxter,
25 Ann Arbor.

1 Ann Arbor Moose Lodge, No. 1253, P.O. Box
2 1122, Ann Arbor.

3 David K. Miller, 10200 North Territorial
4 Road, Dexter.

5 Vergie Harden, 10180 North Territorial
6 Road, Dexter.

7 Edward B. Froelich, 1380 East Square Lake
8 Road, Bloomfield Hills.

9 James H. Nakastry, 10282 North Territorial
10 Road, Dexter.

11 Alfred and Genevieve Ostrowsky, 625
12 Highview, Dearborn, Michigan.

13 James M. and Jean Clark, 10240 North
14 Territorial Road, Dexter.

15 And Edward P. Froelich, 1380 East Square
16 Lake Road, Bloomfield Hills.

17 Members of the board?

18 MS. KELLY: I have one question.

19 CHAIRMAN BURCH: Okay. Ms. Kelly.

20 MS. KELLY: This may seem like a rather
21 simple question, but a variance costs \$400. A land
22 division costs 120. For the life of me I can't figure
23 out why you didn't save yourself \$280. It just --
24 philosophical differences perhaps a bit aside, I -- I
25 want to know why you don't want to do the land

1 division. I don't understand it.

2 MR. HERRICK: My name is Ben Herrick,
3 H-e-r-r-i-c-k. My office is 1126 North Main Street,
4 Rochester, Michigan 48307. With me is Doug Rodus,
5 formerly the assistant director of Office of Land
6 Survey and Remonumetation, that's the state office
7 that administers the Land Division Act. Also in the
8 room is Claudine Antoun of Telesite and John Crane is
9 my boss here to oversee my work.

10 And there's more to a land division
11 application than just the application fee. The
12 surveyors are quite expensive.

13 SECRETARY KELLY: But it's already been
14 done.

15 MR. HERRICK: It's not a -- a different
16 survey would be required showing plot plans and
17 basically a plat, as I understand it.

18 SECRETARY KELLY: I think this -- I'm the
19 officer of the township that approves land divisions,
20 and it sure looks good to me. That's why I don't get
21 it, so perhaps you can --

22 MR. HERRICK: Our interpretation is -- we
23 are not proposing a partition of this land. This is
24 going to be -- the Moose Lodge is going to own the
25 land. There's not going to be a transfer of property

1 rights other than our -- Verizon Wireless's use of the
2 land to erect a cellar tower, just like the power
3 company has an easement to go and put power lines in
4 the back of your yard.

5 SECRETARY KELLY: Again, you're making my
6 argument for me. I -- Doug, I don't -- this is so
7 easy I don't understand why -- why it just isn't done.
8 I thought through the tax implications, and so much as
9 I'm able to do, I just can't figure it out, so I'll
10 leave it at that, but --

11 CHAIRMAN BURCH: Thank you, Ms. Kelly.

12 And for the benefit of the board, on the
13 first item that is being requested here, the ice
14 bridge, as you know, professionally I am responsible
15 for about 15 of these things in Southeastern Michigan.
16 This -- looking at the plans, this is an absolute
17 no-brainer. An 8 foot high ice bridge is going to
18 present no safety or technical hazard at the site. I
19 believe that part of the variance request can be
20 granted without any jeopardy at all.

21 SECRETARY KELLY: Well, would you like a
22 simple motion for that?

23 CHAIRMAN BURCH: Would you please,
24 Ms. Kelly?

25 SECRETARY KELLY: I would be happy to offer

1 that motion based on your comments and other comments
2 in the record, both from Mr. Sloan and from Mr. Crane.
3 I have absolutely no issue with the coaxial cable and
4 ice bridge placement and the variance requested.

5 MR. GAJEWSKI: I'll support that motion.

6 CHAIRMAN BURCH: It has been moved and
7 seconded that we approve the request for the coaxial
8 cable and ice bridge elevation to be 8 feet rather
9 than the required 15 feet.

10 Ms. Adams?

11 MS. ADAMS: Yes.

12 CHAIRMAN BURCH: Ms. Adams votes yes.

13 Ms. Herda Sprawka?

14 MS. HERDA SPRAWKA: Yes.

15 CHAIRMAN BURCH: Ms. Herda Sprawka votes
16 yes.

17 Mr. Gajewski?

18 MR. GAJEWSKI: Yes.

19 CHAIRMAN BURCH: Mr. Gajewski votes yes.

20 Ms. Kelly?

21 SECRETARY KELLY: Yes.

22 CHAIRMAN BURCH: Ms. Kelly votes yes and
23 the chair votes yes. That part is approved.

24 Now to the land division issue.

25 SECRETARY KELLY: My question is still on

1 the floor; why?

2 MR. HERRICK: Well, if I may, your
3 ordinance for cellular towers really pushes the
4 applicant to exhibit -- examine co-location
5 opportunities to limit the number of towers and make a
6 tower that is constructed available for co-location
7 with a three-acre parcel. And assuming that
8 Mr. Flintoft will analyze all of the applicants that
9 may come in the future the same as he analyzed our
10 proposal, if a second party like T-Mobile or Sprint or
11 Metro PCS or Singular would want to come in and use
12 the tower for co-location, we don't think if the land
13 division is required that they would be able to do so.
14 Because --

15 MR. FLINTOFT: Excuse me, Mr. Herrick. I
16 don't understand that point. Are you saying if the
17 co-location came on the tower there would be another
18 three-acre parcel required?

19 MR. HERRICK: Yes. That would be at least
20 for more than one year.

21 MR. FLINTOFT: No. That's not -- that's
22 not -- no.

23 MR. HERRICK: I mean, that's -- that's not
24 an interpretation.

25 MR. FLINTOFT: That's not an interpretation

1 I would ever come to.

2 MR. HERRICK: But we would be leasing --
3 the Moose Lodge would be leasing them to stay as
4 a [inaudible] development for more than one year for
5 their radio equipment. Wouldn't that require an
6 additional three-acre parcel?

7 MR. FLINTOFT: No.

8 MS. HERDA SPRAWKA: Is the radio equipment
9 going to be placed on your tower?

10 MR. HERRICK: It would be placed on the
11 ground near the tower.

12 MS. HERDA SPRAWKA: Near your tower.

13 MR. HERRICK: But not if we can't put any
14 buildings or structures in the fall zone or in the
15 three-acre lot that is required under the --

16 MR. FLINTOFT: That's a different issue.

17 MS. HERDA SPRAWKA: It is. What size are
18 these buildings?

19 MR. HERRICK: Typically the buildings run
20 anywhere from 10 by 20 to 12 by 26 to 12 by 30, which
21 we don't really use anymore.

22 SECRETARY KELLY: Which buildings are
23 these?

24 MR. HERRICK: This is a prefabricated
25 building to house radio equipment that connects the

1 antennas to the radios and then --

2 SECRETARY KELLY: And that's all that's
3 needed? Do you have a co-locator?

4 MR. HERRICK: A co-locator would need their
5 own radio equipment but would use the same tower.

6 MS. HERDA SPRAWKA: So you could lease it
7 out to Singular or --

8 MR. HERRICK: That's correct.

9 MS. HERDA SPRAWKA: In a sense you would be
10 leasing your tower but they have to have their
11 building and equipment; is that correct?

12 MR. HERRICK: That is correct.

13 MS. HERDA SPRAWKA: And so the building and
14 equipment would have to be placed somewhere within --

15 MR. HERRICK: Three acres away.

16 MS. HERDA SPRAWKA: No, not necessarily
17 three acres away.

18 MS. ADAMS: They could sublease the
19 building area from you.

20 MR. HERRICK: But if I'm reading the letter
21 from Mr. Flintoft correctly, any lease for -- let me
22 see. It's page 4. Any lease for more than one year
23 or building development would require a -- would have
24 to satisfy the Land Division and Transfer Act, and
25 that would require another land division.

1 MR. FLINTOFT: May I respond?

2 CHAIRMAN BURCH: Mr. Flintoft, please do,
3 sir.

4 MR. FLINTOFT: He didn't get my letter in
5 less than 24 hours ago but filed the variance request
6 weeks before. I'm amazed, because is it not the
7 policy of the township zoning ordinance to encourage
8 co-location?

9 MR. CRANE: Absolutely.

10 MR. HERRICK: And that's why we're here.

11 MR. CRANE: That's why we're citing it in
12 our brief, the issue, that very issue. John Crane.

13 MR. FLINTOFT: But I've never thought that
14 that was any difference of opinion between Mr. Crane
15 and myself ever on that.

16 SECRETARY KELLY: So -- and may I get this
17 straight as a layperson?

18 MR. FLINTOFT: Because it's always done,
19 that someone will come in for a permit to co-locate
20 and there is always the addition of equipment or
21 another structure on the same site, whether it be five
22 acres or three acres.

23 SECRETARY KELLY: So if I may just ask this
24 question, if I get this right, we all agree we want to
25 co-locate and encourage co-location?

1 MR. HERRICK: Absolutely.

2 SECRETARY KELLY: So you think when that
3 inevitable co-location comes up, because it's so hard
4 to find anyplace in our township to have a tower, that
5 they're going to be required to put a building up, and
6 you think at that point in time that we're going to
7 require another land division?

8 MR. HERRICK: Under the strict
9 interpretation of the Land Division Transfer Ordinance
10 that we feel came from Mr. Flintoft, that's correct.

11 SECRETARY KELLY: Okay. And you think
12 that's going to be required because the building
13 cannot be put in your little circle --

14 MR. HERRICK: That is correct.

15 MR. CRANE: -- because of the fall zone?

16 MR. HERRICK: Well, and would be the lease
17 for the development for more than a year, so the Land
18 Division Transfer Ordinance would have to be applied.

19 SECRETARY KELLY: So is the lease from the
20 Moose Lodge or is the lease from you?

21 MR. HERRICK: Well, if we could accommodate
22 them in the tower compound that we propose, then the
23 lease would be from Verizon Wireless.

24 SECRETARY KELLY: So make a bigger circle.

25 MR. HERRICK: But we want to take as little

1 space from the Moose Lodge as we possibly can.

2 SECRETARY KELLY: They're not going to do
3 anything with it. It's just a field. It's a buffer
4 for them shooting their guns.

5 MR. HERRICK: But it's their field.

6 SECRETARY KELLY: I understand. But I'm
7 sure they don't care.

8 MR. CRANE: Are you sure of that?

9 SECRETARY KELLY: Yes.

10 MR. CRANE: You're sure of that?

11 SECRETARY KELLY: Well, it's my opinion.

12 MR. HERRICK: Well, okay. If I may, we
13 approached them and wanted a hundred by hundred parcel
14 and they said, no, how about a 70 by 70.

15 SECRETARY KELLY: Okay. Well, maybe they
16 do care.

17 MR. HERRICK: They do want to use their
18 land.

19 SECRETARY KELLY: I don't know why they
20 would, but --

21 MS. HERDA SPRAWKA: What do other
22 communities do?

23 MR. HERRICK: This is actually --

24 MS. HERDA SPRAWKA: We have over 1100 sites
25 in the state of Michigan, and I know of the Land

1 Division Transfer Ordinance that's being applied in
2 maybe one or two other out of 1100.

3 MR. FLINTOFT: And it's all in this area?

4 MR. HERRICK: The Moose Lodge parcel is
5 almost 60 acres, so we're not -- we don't want to set
6 up a separate parcel just for the power separate from
7 the Moose Lodge. I mean, it's still their land.

8 MR. FLINTOFT: It will remain their land,
9 and it does not uncap their taxes because your lease
10 is less than 35 years.

11 SECRETARY KELLY: Because this is their
12 land division not yours anyway. In fact, that's
13 another question I have. Why are we talking to
14 Verizon instead of the Moose Lodge on this?

15 MR. FLINTOFT: Well --

16 SECRETARY KELLY: It's their land division.

17 MR. FLINTOFT: Well, they filed -- they've
18 claimed they had the authority of the Moose Lodge
19 right along.

20 CHAIRMAN BURCH: And I'm sorry. I've got a
21 more fundamental question. If it is your anticipation
22 to comply with our zoning ordinance, land division
23 aside for the moment, maintaining a fall zone with a
24 70 by 70 foot parcel is impossible.

25 MR. HERRICK: Well, the fall zone will be

1 outside of our controlled area. The Moose Lodge would
2 be able to use that fall zone as they see fit other
3 than erecting structures, so if they wanted to go do
4 their hiking or what -- we're not going to put a fence
5 around the fall zone. The fence will be just
6 around -- as minimum of a space as we can get, and
7 that -- but no structures are allowed in the fall
8 zone.

9 CHAIRMAN BURCH: Except for your structure.

10 MR. HERRICK: Except for our structures,
11 that's correct.

12 MS. HERDA SPRAWKA: And then if Nextel
13 wants to build a structure --

14 MR. HERRICK: They would -- typically they
15 would go inside the tower compound on the existing
16 parcel without any extra land divisions or any land
17 divisions.

18 MS. HERDA SPRAWKA: Okay. But within a
19 fall zone?

20 MR. HERRICK: Within the fall zone.

21 SECRETARY KELLY: If we were to make a
22 motion that it was -- if you got the land division you
23 would not require a subsequent land division,
24 although, doggone it, I -- I struggle with us having
25 any authority over whether or not the Land Division

1 Act should be enforced or not anyway, because that's
2 not our purview. Our land division ordinance is, but
3 to state the law isn't -- isn't our purview.

4 MR. HERRICK: I believe the planning
5 commission sent us here to demonstrate that we've
6 complied with your land division ordinance.

7 SECRETARY KELLY: And the state's statute.

8 MR. FLINTOFT: But here's the other
9 problem. If we could speak to this and the reason in
10 the letter is that the definition in the zoning
11 ordinance of what a lot is is that it's to be a --
12 that it's a recorded document. How can the township
13 administer an ordinance and not know what the lot is?
14 And the only way to have a lot is to have one of
15 record.

16 MR. HERRICK: I'm going to ask Mr. Rodus to
17 answer that. He's an expert. Mr. Rodus, do you have
18 an answer for them?

19 MR. RODUS: Okay. This whole -- from the
20 documentation I have been able to review the land
21 division issue is being applied because of the lease
22 of more than one [inaudible] of the land. My
23 suggestion to avoid any of this issue is that the
24 Moose Lodge grant an easement for this purpose. If
25 it's an easement, there is no Land Division Act issue.

1 It's just like granting any utility.

2 You know, Moose grants the township an
3 easement for a sanitary sewer. You don't -- the Land
4 Division Act in our application -- in the 20 years
5 that I've been here, the Land Division Act only comes
6 up when an ownership interest transfers. You have
7 case law that says easements are not divisions. So
8 this issue of whether -- or the struggle whether
9 Verizon has to meet the -- your Land Division
10 Ordinance or any other conditions would not be an
11 issue for either party, in my opinion, if the Moose
12 just granted Verizon and the public -- and it's an
13 easement for public utilities as well. And the issue,
14 in my view, then goes away because there's no
15 ownership interest transfer here in any -- and any
16 opinion that we have, numbered or unnumbered, in case
17 law in granting of easement is not a land division.

18 MR. HERRICK: We are willing to recast all
19 of our contracts with the Moose Lodge as an easement.

20 CHAIRMAN BURCH: Mr. Flintoft?

21 MR. FLINTOFT: The problem with that is
22 that the very case that they cite as far as an
23 easement is concerned -- and that's on page 5 -- in
24 the middle of that is the reference to an attorney
25 general's opinion way back in 1976 that says when -- a

1 subdivision occurs when somebody receives exclusive
2 rights to a parcel, and they -- Verizon certainly is
3 receiving exclusive rights to this parcel. The
4 Charlevoix case has to do with an underground easement
5 for placing a septic field; okay? But here Verizon is
6 granted rights to the surface of the ground to do all
7 these improvements and to have the free-fall zone.

8 And, in fact, as I point out in the lease,
9 they've got other -- other rights that are
10 automatically triggered. They exclude essentially any
11 other communications facility and any other competing
12 facility. So above-ground, certainly 200 feet in the
13 air, they're excluding people. That's not like a
14 septic easement. And they are not -- they are a
15 public utility but they are not an essential service
16 because your essential services definition in the
17 ordinance specifically excludes towers. And you have
18 specific provisions on towers, and you -- you regulate
19 it.

20 This is not a question of the Land Division
21 Act. This is a question of your ordinance. Your
22 zoning ordinance, that's what this is.

23 Now, if they have some other way that they
24 will record a lot, they could call it an easement,
25 they could call it anything they want, but at some

1 point they're going to have to record a notice of this
2 lease in the register of deeds. I assume that they
3 always do that so that the land isn't sold out from
4 underneath them. At that point I think the township
5 is entitled to have a description of a lot and that --
6 that also to be recorded.

7 Now, whether that triggers a land division
8 or whatever else is really irrelevant, but I don't
9 understand how you can have an ordinance that says a
10 minimum lot area of 3 -- of 3 acres. You -- you
11 define a communications tower as a principal use of
12 land and here is another principal use of land the
13 Moose. And in every other case that I know of you say
14 you can't have those two principal uses on the same
15 lot; therefore, the land must be divided, a line drawn
16 somewhere. Whether they want to go and pay their \$120
17 or not to the land division, I don't particularly
18 care, but I do think that when they record their --
19 their lease, they're going to have to put a
20 description of a three-acre lot. That's what you
21 require.

22 Now, if they -- they can cross the bridge
23 later on as far as -- as far as land division. I
24 don't know why the legislature would have put a lease
25 of more than one year in that statute if they didn't

1 mean it. But that's kind of separate from your
2 ordinance.

3 SECRETARY KELLY: Mr. Chairman?

4 CHAIRMAN BURCH: Ms. Kelly.

5 SECRETARY KELLY: I have a follow-up
6 question for Mr. Flintoft then. If what's kind of
7 driving this -- if I just understood you correctly --
8 is the use and the competing uses?

9 MR. FLINTOFT: That's right.

10 SECRETARY KELLY: If Nextel comes in and
11 wants to put their little thing up, that's the same
12 use?

13 MR. FLINTOFT: Exactly right.

14 SECRETARY KELLY: So it doesn't trigger the
15 same thing.

16 MR. FLINTOFT: That's right.

17 SECRETARY KELLY: Would it be appropriate
18 for us to say -- or, I mean, we're acknowledging that
19 on the record right now I guess, if there was any
20 question about it.

21 MR. FLINTOFT: If they're asking for an
22 interpretation, certainly make an interpretation along
23 the way we've discussed it.

24 SECRETARY KELLY: So if that issue goes
25 away, I come back to my original question; why

1 wouldn't you pay \$120 instead of 400?

2 MR. HERRICK: Can I just address the one
3 issue that was brought up in Mr. Flintoft's letter,
4 and I -- I'm not sure you fully understood our right
5 of first refusal provision that's in there. It is not
6 meant to prevent other towers from being erected on
7 the facility and it's not meant to prevent anybody
8 else from doing anything on it. It is only meant to
9 protect Verizon Wireless from somebody buying out the
10 Moose Lodge's interest in our contract -- in the
11 Verizon Wireless's contract with them and then they
12 step in and say, well, take your tower down or pay us
13 two times the rent. And, also --

14 SECRETARY KELLY: We protect you in our
15 ordinance on that issue anyway.

16 MR. HERRICK: Well, if a subsequent
17 purchaser came by and said we don't want the tower and
18 we're going to cut it down in the middle of the night,
19 I mean --

20 SECRETARY KELLY: Your lease isn't very
21 good if they do that.

22 MR. HERRICK: It is not meant to prevent
23 any other communications facilities from being erected
24 on the site. It's just meant for -- there's certain
25 companies that are buying out the interests of the

1 landlord in these kind of cases, and we just want to
2 protect against that. That same thing with the phone
3 company or the power company, it doesn't want somebody
4 to buy a lot and say I don't want these power lines in
5 my backyard. I'm going to knock them down. It's
6 really not for anything more than that.

7 MS. HERDA SPRAWKA: If it's clear that the
8 land use is for communication, who you would be
9 co-locating with would be other communications on the
10 outside of that NASA maybe? I don't know. Who else
11 would you --

12 MR. HERRICK: There is --

13 MS. HERDA SPRAWKA: -- would use that
14 besides communications?

15 MR. HERRICK: You mean the tower itself?

16 MS. HERDA SPRAWKA: Uh-huh.

17 MR. HERRICK: I'm not sure this constitutes
18 a principal use that is in violation of the Moose
19 Lodge's use. Typically when we have these we go on
20 office building sites, county property, any other
21 property where there is a use and we are an additional
22 use. This is the first time that I've known that
23 it's --

24 SECRETARY KELLY: It's not compatible with
25 shooting guns. That's what they do there.

1 MR. HERRICK: In fact, we have towers at
2 gun ranges in other communities, and this hasn't come
3 up at all. So the principal use is the Moose Lodge,
4 and then the additional use would be the
5 communications facility. And we would consider the
6 Lodge not to be split into two different uses but one
7 use subject to the communications facility just like
8 you have a residential home with a big lot, one lot,
9 subject to a telephone line in the back -- in the back
10 or a sewer easement or something like that. The fact
11 that the tower is above the ground I don't think is
12 material.

13 SECRETARY KELLY: I guess I just -- I still
14 come back to if your only issue is resolved, I -- I
15 don't get why you just don't do it. I'm not hearing a
16 reason why -- a compelling reason why. I mean, I'm
17 hearing good legal arguments, and I'm sure a judge
18 would appreciate them a lot more than I do, but --

19 MR. HERRICK: We don't feel like the Moose
20 Lodge would be favorable to that, because it would be
21 really restricting their future use of the other
22 property.

23 SECRETARY KELLY: How?

24 MR. HERRICK: Because we're not going to be
25 able to have a land division on the circle in the

1 middle of a 60-acre piece that's 200 feet around.

2 SECRETARY KELLY: Why not?

3 MR. HERRICK: It wouldn't satisfy the Land
4 Division Act -- Transfer Act Ordinance. You'd have
5 the lot, the depth and the frontage and we wouldn't
6 satisfy anybody.

7 SECRETARY KELLY: Would a circle meet any
8 lot depth?

9 MR. SLOAN: Well, in terms of the frontage,
10 that would be -- that would be corrected by having a
11 shared driveway.

12 SECRETARY KELLY: Right.

13 MR. SLOAN: If you have a shared driveway,
14 shared driveways are regulated in our private zoning
15 ordinance.

16 MR. FLINTOFT: And that's also in the
17 planning commissions --

18 MR. SLOAN: One of their -- one of the
19 planning commission's conditions of approval is
20 approval of a shared driveway. Regardless if a land
21 division happens or not, a shared driveway has to
22 happen because there are two distinctly separate users
23 for it. So more or less shared driveways are private
24 roads. They don't have to meet private road standards
25 because of the limited number of users, but once a

1 private road -- if there's a land division, once the
2 private road reaches that -- once the shared driveway
3 reaches that division, then that is the frontage. And
4 then, you know, whether it's a square or something,
5 that's width to depth, that could be done once a
6 shared driveway is put in.

7 SECRETARY KELLY: I'm still not hearing a
8 reason. I don't get it.

9 MR. HERRICK: Again, we feel this is not a
10 partition or a Land Division Act issue, and this is
11 one of the few times it's come up in the 30-plus years
12 that John has been working on it. And he did the
13 first nine towers in the entire Metro Detroit area
14 that was supposed to cover everything, so --

15 SECRETARY KELLY: And, again, I appreciate
16 your philosophical differences, but at the end of the
17 day tell me what difference it makes.

18 MR. CRANE: Tell us what difference it
19 makes.

20 MR. HERRICK: I don't know.

21 SECRETARY KELLY: We pay that guy, and he's
22 interpreted the five-page document.

23 MR. HERRICK: Well, I don't know what the
24 township gains by a lot that is a 200 foot circle --
25 you know, 200 foot radius circle in the middle of a

1 60-acre parcel.

2 SECRETARY KELLY: Well, I think Peter
3 actually said why.

4 MR. HERRICK: If we record a memorandum of
5 our agreement, it will note that the driveway is here
6 and the space is there and the time period is X amount
7 of time, and that's typically all they know.

8 MR. FLINTOFT: Well, you're going to have
9 to be in compliance with the zoning ordinance and
10 describe the three-acre parcel, a three-acre lot.

11 MR. HERRICK: The parcel is not changing.
12 The Moose Lodge parcel we don't feel should change,
13 and that's a 60-plus acre --

14 MR. FLINTOFT: But they don't want their
15 entire 60 acres encumbered?

16 MR. HERRICK: We described in our
17 memorandum the specific 70 by 70 parcel as well as the
18 overall parcel. So, in effect, it gives everybody
19 record notice that this parcel is encumbered and this
20 is the specific area that's within the parcel that's
21 encumbered, so -- and they're okay with that.

22 SECRETARY KELLY: Why did you file a land
23 division in a couple locations where you did?

24 MR. HERRICK: I don't believe we did. The
25 issue was brought up and the two resolutions in those

1 cases were -- I believe one of them was a series of 30
2 leases of 364 days each and -- which seems a little
3 silly to me. And the other one was an easement
4 cleared up -- if it's not a lease for more than one
5 year, then it doesn't trigger the land use act. In
6 364 leases none of them are more than a year. They
7 actually -- I wasn't working on that one, but it was
8 in Michigan. And the other one after we brought up,
9 well, we'll do an easement, then the municipality
10 dropped it, which we're willing to do here.

11 SECRETARY KELLY: And, again, Peter,
12 explain to me why we care.

13 MR. FLINTOFT: Well, we care so that
14 there's a record so that when all of us are dead and
15 gone we know where the three acres is.

16 SECRETARY KELLY: Thank you.

17 MR. HERRICK: I mean, if it would please
18 the Board, we will write a description for the fall
19 zone and record that as well, and I think that would
20 clear up everything. And that is certainly easier and
21 quicker than anything else I can think of. All of our
22 ingress and egress and utilities will be included as
23 well. And this is including a significant upgrade to
24 the existing driveway, which doesn't meet your fire
25 code, which we're happy to do.

1 SECRETARY KELLY: We appreciate that.
2 I'm a little bit bothered that if it's a
3 lease that the owner of the property isn't here. I --
4 I mean, I'm a little bit bothered the owner of the
5 property didn't file for the variance because that's
6 really who should have, and there's nothing in the
7 file that indicates they gave him permission to do
8 that.

9 MR. HERRICK: Well, when we went to the
10 planning commission we sort of addressed this.

11 SECRETARY KELLY: Right.

12 MR. HERRICK: And, you know, we're privy to
13 the contract and they've given us authority to act on
14 the land.

15 SECRETARY KELLY: But Mr. Crane rightly
16 challenged my -- whether I knew for sure, but do you
17 know for sure?

18 MR. CRANE: Do I know for sure what?

19 SECRETARY KELLY: Do I know for sure they
20 wouldn't mind and do you know for sure they would?

21 MR. HERRICK: They call me every few weeks
22 or so and ask is this done yet.

23 SECRETARY KELLY: Well, and then, you know,
24 I know those Moose guys, and I think they just want
25 their rent check.

1 MR. CRANE: I think you're right.

2 SECRETARY KELLY: I really don't think
3 they -- I mean, it's hard for me to imagine why they
4 care what you call it.

5 MR. FLINTOFT: I would like to say one
6 thing. The township was a party to a lawsuit over
7 that shooting --

8 SECRETARY KELLY: I understand that.

9 MR. FLINTOFT: So it is not that we don't
10 have history with this parcel.

11 SECRETARY KELLY: I know.

12 MR. HERRICK: As you pointed out, there are
13 a few parcels that would satisfy the rest of the
14 ordinance for cell towers.

15 SECRETARY KELLY: I don't think there's a
16 person hardly in this township with the possible
17 exception of somebody who works on that tower up on
18 Peach Mountain who doesn't want you to put this tower
19 up.

20 MR. HERRICK: We've made a deal with them
21 too.

22 SECRETARY KELLY: I understand.

23 MS. HERDA SPRAWKA: That's true.

24 SECRETARY KELLY: I mean, we're not trying
25 to stand in your way, but, I mean, I still don't

1 understand why you just don't make this easy on
2 yourself.

3 MS. HERDA SPRAWKA: And on us.

4 MR. HERRICK: Well, we will describe the
5 200 foot radius circle to the fall zone in addition to
6 the ingress/egress easement and -- I mean, if that's
7 all it is, then people will know where the fall zone
8 is. And we'll be happy to do that.

9 CHAIRMAN BURCH: Mr. Flintoft, is there any
10 way that the methods that the applicants are proposing
11 would work out to satisfy the memorialization of this,
12 codify it?

13 MR. FLINTOFT: This is an appeal of a
14 provision of the zoning ordinance. Whether or not
15 they're going to follow through and apply for a land
16 division later on is their call. It's the call of the
17 Moose.

18 MR. CRANE: Very good.

19 MR. FLINTOFT: But -- so that's -- so I
20 don't think the question is here as to how we help
21 them. They're certainly able to help themselves.

22 CHAIRMAN BURCH: Okay. I'm just looking
23 for a way that we can resolve the issue.

24 MR. CRANE: We can memorialize it.

25 MS. HERDA SPRAWKA: What about a lease for

1 364 --

2 MR. CRANE: We don't want that.

3 MR. FLINTOFT: That is -- that is simply
4 form over substance, and I don't think Mr. Crane is
5 interested in doing that.

6 MR. CRANE: No, I'm not interested in doing
7 that.

8 MS. HERDA SPRAWKA: What about the easement
9 proposition?

10 MR. FLINTOFT: The easement is the same as
11 the lease. That's -- that's just form over substance,
12 because you still -- it doesn't change your ordinance.
13 Your ordinance talks about lot areas and uses of land,
14 and you could call it an easement, a license, any
15 number of -- of creation of legal interests,
16 condominium, whatever.

17 MR. RODUS: May I ask, is this a Land
18 Division Act issue or not? Because the township
19 letter says it has to comply with the Land Division
20 Ordinance.

21 MR. FLINTOFT: Well, the Land Division
22 Ordinance is there, and you're going to have to pass
23 that, but really everything you've appealed you've
24 appealed -- you've appealed essentially definitions, I
25 think, that are in the zoning ordinance. I mean, you

1 have to address those. You could -- if you want to
2 characterize your appeal elsewhere -- but, I mean,
3 your real problem is with the zoning ordinance, and as
4 you indicated your real concern was whether or not
5 you'd have to carve out another three acres every time
6 you co-locate somebody. And that's certainly not any
7 interpretation that I've ever had or ever heard of.

8 MR. CRANE: It was raised in the brief.

9 MR. FLINTOFT: Well, I didn't contest that,
10 John.

11 MR. RODUS: So, I mean, separate the issue;
12 this is not a land use? This is a zoning issue?

13 MR. FLINTOFT: The zoning issue -- I think
14 it is a land division issue, but your initial problem
15 here is you're going to have to describe a lot.

16 MR. RODUS: So --

17 MR. CRANE: So we would --

18 MR. HERRICK: We would describe the lot as
19 the entire 60-acre parcel and then --

20 MR. FLINTOFT: And then you're going to fly
21 into the face of the ordinance that requires
22 separation of principal uses.

23 MR. HERRICK: We'd be happy to describe --
24 without going through the formalities of a separate
25 lot and a separate Tax I.D. number and all that stuff,

1 we would be happy to describe a 200-foot radius circle
2 which is -- we could even enlarge it to make it three
3 acres -- we would be happy to do that. But I think
4 tonight we're here to -- for an interpretation so we
5 can go back to the planning commission to say, yes,
6 we've satisfied the zoning board of appeals with
7 respect to the Land Division Transfer Act -- the Land
8 Division Transfer Ordinance. Your ordinance does
9 allow the ZBA to offer opinions or grant waivers and
10 relief from the strict interpretation of the Land
11 Division Transfer Ordinance. I can cite you the -- I
12 have the page out right here.

13 SECRETARY KELLY: No. I'm looking at it
14 too, but there's standards of review, and that's what
15 I'm not hearing.

16 MR. HERRICK: We can go through all the
17 standards. Do you want to go through them now?

18 SECRETARY KELLY: Yeah.

19 MR. HERRICK: Okay. Let's go through them.
20 Special conditions and circumstances which
21 are unique to the land structure or [inaudible]. I
22 would think a cell tower in this township --

23 SECRETARY KELLY: Whoa. Whoa. Whoa.
24 Whoa. Wait.

25 MR. HERRICK: I'm on page Section --

1 SECRETARY KELLY: 4.05 --

2 MR. HERRICK: 4 --

3 SECRETARY KELLY: -- 1A?

4 MR. HERRICK: That's Section 6B of the
5 Land -- Ordinance No. 27.

6 SECRETARY KELLY: Oh, oh, oh, I don't have
7 that book here.

8 MR. HERRICK: I'll give you my copy.

9 SECRETARY KELLY: They're essentially the
10 same but not word for word.

11 MR. HERRICK: It starts on this page here
12 and right at the bottom.

13 SECRETARY KELLY: They're slightly in a
14 different order but they're the same standards of
15 review that we have.

16 MR. HERRICK: Okay.

17 SECRETARY KELLY: I mean, I'll give you the
18 code word; practical difficulty, what is it? Bill,
19 you're laughing at me. Is that not it?

20 MR. GAJEWSKI: Right. Right. I agree.

21 SECRETARY KELLY: That's what I'm getting
22 at; what is the practical difficulty?

23 MR. HERRICK: If it were the Moose Lodge
24 building the tower, would the same -- would --
25 Mr. Flintoft, would you require a three-acre parcel if

1 it was the Moose Lodge building their own tower?

2 MR. FLINTOFT: Yes.

3 CHAIRMAN BURCH: That's part of our zoning
4 ordinance.

5 MR. FLINTOFT: This township has for 40
6 years regulated Detroit Edison and the placement of
7 its utility structures including its transmission
8 station and issues special land use permits to them
9 and deals with all these questions of setback for
10 public utilities on that.

11 SECRETARY KELLY: I.T.C.

12 MR. FLINTOFT: I.T.C.

13 SECRETARY KELLY: Mr. Crane has been here
14 when they've been in.

15 MR. CRANE: I've been here many times.

16 SECRETARY KELLY: Well, again, I just --

17 MR. HERRICK: I've been through these six
18 criteria on that section, and I don't -- I think we
19 meet every one of them. I don't think if you grant us
20 relief from the strict interpretation that anybody
21 else can come in with their own tower and say we don't
22 want to do a lot split either. They're going to come
23 to use our tower, which is required anyways.

24 SECRETARY KELLY: I guess what I'd suggest
25 is you put these in writing and then we can rule on

1 them, because I haven't heard -- I haven't heard you
2 tell me what the practical difficulty is.

3 MR. HERRICK: Okay.

4 SECRETARY KELLY: You know, and the other
5 biggie here, the special circumstances and conditions
6 on which the appeal is based do not result from the
7 actions of the applicant. I mean, if you weren't
8 asking for this you wouldn't need a variance. I mean,
9 this is a self-created problem as we feel famous for
10 saying, and I just -- you know, we have to meet all of
11 these standards reviewed, not just one of them or two
12 of them or three of them.

13 MR. HERRICK: That's correct.

14 SECRETARY KELLY: I mean, you guys are all
15 lawyers. You know that.

16 MR. HERRICK: We would classify this as a
17 dimensional variance, and I think that's what the
18 standard for --

19 MR. CRANE: Practical difficult can be
20 self-inflicted.

21 SECRETARY KELLY: Not in our zoning
22 ordinance.

23 MR. CRANE: That's state statute, a
24 dimensional variance can be self-created.

25 SECRETARY KELLY: Not in our zoning

1 ordinance. So, I mean --

2 MR. CRANE: We don't want to --

3 SECRETARY KELLY: -- we can move to deny
4 this based on any credible evidence of a practical
5 difficulty or you guys can try and find us one.

6 MR. HERRICK: We are not partitioning the
7 land. Tell the planning commission to come -- you
8 know, when they come for final site plan -- when we go
9 to the planning commission for final site plan, you
10 could tell them, look, make sure they record a
11 memorandum with this 200 foot fall zone so everybody
12 knows, and I think that would satisfy --

13 SECRETARY KELLY: We could do that but it
14 doesn't comport with our ordinance, and I don't -- you
15 haven't given me a reason why you shouldn't comport
16 with the ordinance other than you don't want to.

17 MR. HERRICK: You mean the transfer -- the
18 Land Division Transfer Ordinance?

19 SECRETARY KELLY: All the above.

20 MR. HERRICK: Well, like I said, we don't
21 feel this is a partition.

22 SECRETARY KELLY: Well, I guess I accept
23 the interpretation of our attorney that it is.

24 MR. HERRICK: In the alternative, we can
25 come up with some more reasons and we'll come back in

1 two weeks, pay our fee for a special meeting. We
2 don't want to wait another month. However long you
3 need.

4 MS. HERDA SPRAWKA: I won't be here in two
5 weeks. I might be -- I might be --

6 SECRETARY KELLY: We're on --

7 MS. HERDA SPRAWKA: When is our next
8 scheduled --

9 MR. HERRICK: Never mind that. We will
10 accept the decision of the board.

11 MS. HERDA SPRAWKA: Are we going to make a
12 motion on this or --

13 SECRETARY KELLY: I have a question for our
14 attorney, if I may, Mr. Chair.

15 Peter, is there enough verbal evidence on
16 the record to deny this in your opinion without
17 sitting here until 1:00 this morning writing an
18 official resolution?

19 MR. FLINTOFT: Well, I think you've asked
20 them to state the practical difficulties and you
21 indicated you haven't had a response to that. They
22 have one last time to make a statement as to what the
23 practical difficulty is complying with the ordinance.
24 If they can't do that, I think that is sufficient for
25 you to make a resolution.

1 SECRETARY KELLY: Just a simple motion?

2 MR. FLINTOFT: A simple motion.

3 SECRETARY KELLY: Okay. With the role call
4 vote.

5 (Reporter interrupted the record at
6 10:55 p.m.)

7 CHAIRMAN BURCH: Ms. Kelly, you have the
8 floor.

9 SECRETARY KELLY: What I'm asking the board
10 members here if we're clear on exactly what section of
11 what ordinance we're -- we've been asked to give
12 relief. I mean, I read the application and it says
13 Section 16.24B9.

14 MR. HERRICK: Which is the --

15 CHAIRMAN BURCH: B9 is the cable which we
16 already did that.

17 MR. HERRICK: Where is the request for the
18 other one?

19 CHAIRMAN BURCH: Ordinance 27, the planning
20 commissioner --

21 SECRETARY KELLY: Oh, it's 27.

22 CHAIRMAN BURCH: PC 132.

23 SECRETARY KELLY: What section?

24 MR. HERRICK: Well, that's the thing, we
25 want the transfer ordinance to apply to all.

1 SECRETARY KELLY: Peter, if I may, what
2 are -- what are we being asked to grant a variance
3 for?

4 MR. FLINTOFT: They styled their --

5 MS. HERDA SPRAWKA: Land division.

6 MR. FLINTOFT: They styled their -- the ZBA
7 is from the Township Land Division Act, it's the Land
8 Division Ordinance, which by -- which -- and that's
9 got the six classic standards for a review, and I
10 guess you have to go through them one at a time, all
11 six.

12 SECRETARY KELLY: Well, I have a question.

13 MR. FLINTOFT: Yeah.

14 SECRETARY KELLY: If I remember correctly,
15 why would you ask for a variance from this --

16 MR. FLINTOFT: Because they never --

17 SECRETARY KELLY: -- if you've never
18 applied for one?

19 MR. FLINTOFT: Right. They never applied
20 for it, but they're asking for it.

21 SECRETARY KELLY: I mean, this is just --
22 normally somebody comes to us and they say I want to
23 do this, and the ordinance says they can't do this and
24 I want you to grant me some relief. And so I'm trying
25 to get at the heart of what are we asking relief from

1 here and --

2 MR. HERRICK: We're asking relief from the
3 strict interpretation of Ordinance No. 27, to allow
4 us --

5 SECRETARY KELLY: What section of Ordinance
6 27?

7 MR. HERRICK: Oh, you have my copy.

8 SECRETARY KELLY: Do you need it?

9 MR. HERRICK: I've got one here.

10 SECRETARY KELLY: I can call one up on my
11 machine here.

12 MR. SLOAN: I think we can start with the
13 first page, B, the definition of divided or division.
14 The third line, I'll just read part of that, quote:
15 That results in [inaudible] parcels of less than 40
16 acres or equivalent providing all --

17 (Reporter interrupted the record at
18 10:58 p.m.)

19 MR. SLOAN: I'll just leave that definition
20 of divide or division.

21 SECRETARY KELLY: Patrick, with all due
22 respect, I'm interested in them telling me what
23 they're trying to ask for rather than you trying to
24 figure it out.

25 MR. HERRICK: We are asking the zoning

1 board of appeals to interpret our project and Section
2 31B of Ordinance No. 27 --

3 SECRETARY KELLY: 31B of Ordinance 27.
4 Okay.

5 MR. HERRICK: -- and rule that the project
6 that we have proposed is not a division as defined.
7 It doesn't make any sense.

8 SECRETARY KELLY: I mean, what we're
9 telling you you have to do is a division.

10 MR. HERRICK: Okay. How about if we are
11 asking the zoning board of appeals to interpret our
12 proposal as complying with Ordinance No. 27?

13 SECRETARY KELLY: We can't do that. I
14 mean, you haven't even applied for a land division, so
15 how can I tell you if it complies.

16 MR. GAJEWSKI: Or is it a dimensional
17 variance that we're simply --

18 SECRETARY KELLY: Or is this a variance
19 to -- a zoning ordinance as Mr. Flintoft has implied
20 rather than a Land Division Ordinance? It doesn't
21 seem like this should be this hard.

22 MR. HERRICK: Well, what we could do is
23 table this because the hour is late, and I know our
24 brains are not all functioning at the same level they
25 were when we started today. We will come back with a

1 full proposal and then we'll go from there.

2 SECRETARY KELLY: I'm certainly in favor of
3 that. I'll move to table to allow the applicant time
4 to prepare application materials outlining what
5 section of what ordinance you're requesting relief
6 from.

7 MR. FLINTOFT: Is this to a date certain or
8 just tabling it until they notice it back up?

9 SECRETARY KELLY: Well, I guess I don't
10 feel as compelled to have a date certain here
11 because --

12 MR. HERRICK: What's your next --

13 CHAIRMAN BURCH: Wait. Wait.

14 MR. CRANE: We don't need a date certain,
15 no.

16 CHAIRMAN BURCH: Our next meeting is March
17 3rd.

18 MR. HERRICK: We don't need a date certain.

19 SECRETARY KELLY: Okay. So allow the
20 applicant time to provide information outlining what
21 section of what ordinance you wish us to consider a
22 variance for and then your rationale of why you meet
23 our standards of review, whether they be from
24 Ordinance 27 or Ordinance 34.

25 CHAIRMAN BURCH: And that was in the form

1 of a motion?

2 SECRETARY KELLY: It was. And she can read
3 it back.

4 CHAIRMAN BURCH: Well, we -- I'm assuming
5 that before I ask the legal recorder to read it back
6 we'll have support for it.

7 MS. HERDA SPRAWKA: I support that.

8 CHAIRMAN BURCH: Okay. We have a motion on
9 the floor. Ms. Court Reporter, would you please read
10 that back for us?

11 (Requested portion of the record read at
12 11:03 p.m.)

13 "So allow the applicant time to provide
14 information outlining what section of what
15 ordinance you wish us to consider a
16 variance for and then your rationale of why
17 you meet our standards of review, whether
18 they be from Ordinance 27 or Ordinance 34."

19 CHAIRMAN BURCH: Thank you. And,
20 Ms. Kelly, did you set a date for this?

21 SECRETARY KELLY: I don't believe it's
22 necessary, although I can say if Mary is inclined to
23 support this amendment to March 3rd, 2009 -- can we
24 meet noticing requirements for that if --

25 MR. CRANE: Can you do that?

1 MR. HERRICK: Can we go after the 3rd?

2 MR. CRANE: We'd like another 30 days.

3 SECRETARY KELLY: It's okay with me.

4 MR. CRANE: All right. April -- the April
5 meeting.

6 CHAIRMAN BURCH: Okay. Which sets it the
7 April 7th meeting.

8 SECRETARY KELLY: You'll have God Bless
9 America here with you.

10 MS. HERDA SPRAWKA: Maybe we can put them
11 first though.

12 MR. HERRICK: Ours is an easy one.

13 SECRETARY KELLY: One would have thought.

14 CHAIRMAN BURCH: We have a motion on the
15 floor to defer the Verizon request to the April 7th
16 meeting. I will not attempt to repeat the motion.
17 All in favor say aye.

18 (Members replied aye.)

19 CHAIRMAN BURCH: Any opposed? No. The
20 motion carries.

21 (Meeting concluded at 11:05 p.m.)
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23
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25

1 CERTIFICATE OF REPORTER

2
3 STATE OF MICHIGAN)
4) SS
5 COUNTY OF WASHTENAW)
6

7 I hereby certify that I reported
8 stenographically the foregoing proceedings and
9 testimony at the time and place hereinbefore set
10 forth; that thereafter the same was reduced to
11 computer transcription under my supervision; and that
12 this is a full, true, complete and correct
13 transcription of said proceedings.
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22 _____
23 DORA L. DOLETZKY, CSR-6110
24 Notary Public
25 Washtenaw County, Michigan

My commission expires: 9-12-11