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Trent N. Baker
Peter F. Lacny
Nathan G. Wagner
Del M. Post
Joseph R. Casillas
George H. Corn
Kyle C. Ryan
Brian M. Lebsock
Jason A. Williams

May 29, 2015

Ronald B. MacDonald [1946-2002]

- Also admitted in Massachusetts
Also admitted in North Dakota
Also admitted in Arizona
Also admitted in Washington
Also admitted in Idaho

RECEIVED

JUN 01 2014

Ravalli County Commissioners

Five empty rectangular boxes for signatures

Via U.S. Mail

Terry Nelson, Administrator
Ravalli County Planning Department
215 South 4th Street, Suite F
Hamilton, Montana 59840

RE: Wireless Communications Facility Permit Application (WCFP-2015-03)

Dear Mr. Nelson:

Please be advised that we have been hired to represent Michael and Beverly Hennager with regards the recent application for the cell tower along the Eastside Highway in Ravalli County.

The purpose of this correspondence is to address the recent application and ultimate approval of the installation of a wireless communication facility in Ravalli County along Eastside Highway. I have reviewed Wireless Communication Facility Permit Application (WCFP-2015-03) and a letter signed by you and dated February 10, 2015 stating that "[t]he Ravalli County Planning Department has determined that the proposed installation of a new wireless communication tower located at 2276 Eastside Highway, Corvallis, MT (Legal Description: Lot C, Marnell Lots - Parcel No. 993530), conforms to the requirements and standards of Ravalli County Ordinance 13 and is therefore approved." Please be advised that the WCFP-2015-03 Application does not, and did not, meet the requirements and standards of Ravalli County Ordinance 13, as amended. Therefore, the Ravalli County Planning Department's approval of the application was in error and is subject to legal challenge.

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The WCFP-2015-03 Application does not meet the requirements of Ravalli County Ordinance 13, as amended, which states that “[a]pplications for review and approval of proposed communication facilities, and additions or modifications to existing facilities, shall include...” specific criteria. This means that before an application can be meaningfully reviewed for each criterion, each of the 12 enumerated criteria must be substantively *addressed*. With respect to WCFP-2015-03), these criteria were not sufficiently addressed; however, the Ravalli County Planning Department has nonetheless apparently approved the application.

Pursuant to Ravalli County Ordinance 13, as amended, the approval of the WCFP-2015-03 was made in error because the application did not meet the following criteria.

Section 1 (Purpose) of Ravalli County Ordinance 13, as amended, states that “[t]o accommodate the increasing communication needs of Ravalli County residents, businesses, and visitors, while protecting the public health, safety and general welfare and visual environment of the County, this ordinance is established to,” among other things, “[p]rotect the County’s natural resources and visual environment from the potential adverse visual effects of communications facilities, through careful design and siting standards,” and to “[l]imit the number of towers needed to serve the County, by requiring facilities to be placed on existing buildings and structures where possible, and requiring co-location of wireless communication providers on existing and new towers.” Based on the insufficiencies in the WCFP-2015-03 application and the errant approval of the same, the Ravalli County Planning Department has circumvented the purpose of Ravalli County Ordinance 13, as amended. By way of example, Digital Skyline and Verizon’s statement in their application that “Verizon Wireless has many existing and approved facilities within Ravalli County,” which amounts to eleven (11), contradicts the above referenced purposes of Ravalli County Ordinance 13, as amended.

Section 4.A (Standards – Preferred Communication Facilities) dictates the preferred communication facilities in the order or preference for new or reconstructed permanent communication facilities, from most preferred to least preferred. With respect to WCFP-2015-03 application, there is no reference of co-location or other feasible communication facilities in lieu of the monopole of the WCFP-2015-03. Furthermore, the application did not address the preference in Ordinance 13, as amended, that new facilities be located on public lands or structures.

Section 4.A (Standards, Facilities in Relation to Scenic Viewsheds & Historic/Cultural Resources) requires that the Land Services Department consider the following factors: “1. The extent to which the proposed communication facility is visible from the viewpoint(s) of the impacted resource; 2. The type, number, height and proximity of existing structures and features, and background features within the same line of sight as the proposed facility; 3. The amount of vegetative screening; 4. The distance of the proposed facility from the impacted resource; and 5. The presence of reasonable alternatives that allow the facility to function consistently with its purpose.” None of these factors have been considered, or in any way addressed, in the WCFP-

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2015-03 application. Based on the visuals within the application, the tower contrasts significantly with the background, is an uncommon structure within the area, tall, out in the open and easily visible, contrary to the viewshed, very close to private land (and in fact is accessed through private land to which the Marnells, Digital Skyline, Verizon, or the County have no right), close in proximity and disruptive to an original residency that is eligible for the National Historic Registry, and placed without any consideration of reasonable *alternative placements* or co-location opportunities. This is a violation of the rights of Ravalli County residents, especially those adjacent to the property.

Section 4.H.3 (Standards – Co-Location Requirements for Communication Facilities), clearly dictates that “[n]o new tower shall be permitted unless the application demonstrates that no existing tower or structure can accommodate the applicant’s proposed antenna by co-locating. Evidence submitted to demonstrate that no existing tower or structure can accommodate the applicant’s proposed antenna may consist of” factors “a” through “g,” none of which were provided in the application.

The substantial basis for the insufficient application and ultimate error in approving the WCFP-2015-03 application pertain to Section 5 of Ordinance 13, as amended. Section 5.A (Application Submittal Requirements – Application Contents) requires that applications for review and approval or proposed communication facilities, and additions or modifications to existing facilities, include twelve (12) specific items.

First, section 5.A.5 requires “[a] report describing the facility and the technical, economic and other reasons for its design and location, the need for the facility and its role in the overall network; and describing the capacity of the structure, including the number and type of antennas it can accommodate.” The WCFP-2015-03 application contains no such descriptions. Instead, the application makes general allegations not pertinent to specific details required by section 5.A.5. The application contains no description of the technical, economic, or other reasons for the design and the location. This requirement has not been satisfied as required by the Ravalli County Ordinance 13, as amended.

Second, section 5.A.6 requires “[t]he FAA response to the Notice of Proposed Construction of Alteration (FAA Form 7460-1), if the facility is located within the distance from the Airport runway as specified under paragraph 77.13, of FAA Form 7406-1, Construction or alteration requiring notice.” The WCFP-2015-03 application alleges that the “FAA Form 7460-1 will be provided.” This does not meet the requirement that the FAA response be included in the application. This response is necessary to determine whether or not the application should be approved for a tower in that location. This FAA notice for proposed construction and the FAA response should have been received before the application had been approved.

Third, section 5.A.7 requires “[a] statement from the applicant verifying that the request has been submitted to the Montana Aeronautics Division for a formal response.” Again, the application alleges that FAA Form 7460-1 “will be provided...” This is not sufficient and does

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not allow for a response from the Montana Aeronautics Division to respond prior to the approval of the application. This is also an error.

Fourth, section 5.A.8 requires “[a] copy of the provider FCC license verifying that the applicant is authorized by the licensing guide of the FCC.” No such license is included in the WCFP-2015-03 application. Instead, it contains a “reference copy” of a radio station authorization for a CELLCO PARTNERSHIP which explicitly states on its face that “[t]his is not an official FCC license.” A legitimate FCC license must be submitted before approval of the application, or, if the license is held by Cellco Partnership, the Ravalli County Planning Department must have first received some verification of a legal and binding relationship between the provider and Cellco Partnership to ensure that the provider have an existing FCC license.

Fifth, section 5.A.9 requires a “letter of intent to allow co-location on the antenna tower as proposed, if the communication facility is taller than 60 feet in height.” Section 5.A.10 requires a “letter of intent to remove the facility at the expense of the facility and/or property owner if it is abandoned. The letter shall include a signed statement by the property owner consenting to the County’s entry on to the property to remove an abandoned facility.” Neither of the aforementioned letters of intent is included in the application. The general statement in the application is not the same, and does not have the same binding authority, as a signed letter of intent as contemplated in the Ravalli County Ordinance 13, as amended.

Sixth, section 5.A.12 requires that the application include a “statement by a licensed professional engineer... be provided demonstrating that the proposed facility complies with all FCC standards for radio emissions, and for all applicable local, state or federal building codes.” The application includes a statements provided by Adams & Clark, Inc. and an RF Engineer from Verizon Wireless. The Adams & Clark, Inc. statement alleges that the site plans comply with the “International Building Code 2009.” This is inadequate in that the current version applicable in the State of Montana is International Building Code 2012. Furthermore, the application does not include building, plumbing, or electrical permits.

Finally, the application fails to provide tangible evidence or verification that they are not in an area that would otherwise require co-location. This must also be provided before an application can be approved.

Based on the foregoing, consider this our formal demand to withdraw the approval of the WCFP-2015-03 application, or otherwise allow for an appropriate appeal process, and direct Digital Skylines, Verizon Wireless, or any other party to immediately cease the construction of the intended monopole referenced herein until the application is deemed sufficient and Ravalli County citizens, especially those adjacent to the property at issue, have had an opportunity to be heard.

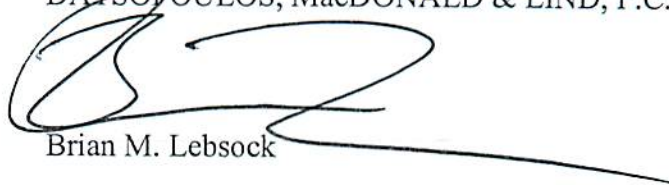
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Please confirm that you have taken these measures within ten (10) days from the date of this letter, or legal action may be necessary to preserve the rights of persons in Ravalli County.

Thank you,

DATSOPOULOS, MacDONALD & LIND, P.C.

A handwritten signature in black ink, appearing to read "Brian M. Lebsock", with a long horizontal line extending to the right.

Brian M. Lebsock

cc: Ravalli County Commissioners
Michael and Beverly Hennager