

HUSCH BLACKWELL

Rodney W. Carter

Partner

555 East Wells Street, Suite 1900
Milwaukee, WI 53202
Direct: 414.978.5365
Fax: 414.223.5000
rodney.carter@huschblackwell.com

March 5, 2020

VIA E-MAIL

hilbert.hans@countyofdane.com

Dane County Board of Adjustment
c/o Mr. Hans Hilbert
City County Building, Room 106
210 Martin Luther King Jr. Boulevard
Madison, Wisconsin 53703

**Re: ADMINISTRATIVE APPEAL 3703
PETITION: CUP 02481
APPEAL OF DENIAL OF CONDITIONAL USE PERMIT**

Dear Members of the Board of Adjustment:

Husch Blackwell LLP ("HB") and Tillman Infrastructure, LLC ("Tillman"), respectfully request an adjournment of the appeal hearing scheduled for 6:30 p.m., Thursday, March 26, 2020.

This appeal arises from the November 26, 2019 decision of the Dane County Zoning & Land Regulation Committee (the "Committee") denying CUP 02481 (the "CUP") pertaining to construction of a 260' self-support telecommunications tower with a 9' lightning rod at approximately 400' north of 869 County Highway A in the Town of Albion (the "Proposed Tower").

The Proposed Tower is approximately 400' from an existing 160' telecommunications tower owned and operated by SBA Communications (the "SBA Tower"). AT&T Mobility ("AT&T"), Cellco Partnership d/b/a Verizon Wireless ("Verizon") and T-Mobile USA, Inc. ("T-Mobile") are all located on the SBA Tower. Each carrier indicated a desire to relocate from the SBA Tower to the Proposed Tower during the Committee's CUP deliberations. A significant basis of the Committee's CUP denial was the perceived refusal of the carriers to evaluate the feasibility of continued collocation on the SBA Tower. The carriers maintain collocation on the SBA Tower cannot be mandated under Wisconsin law—specifically Wis. Stat. § 66.0404, which provides that an applicant need not collocate on an existing structure if it provides "a sworn statement from an individual who has responsibility over the placement of the mobile

Dane County Board of Adjustment
March 5, 2020
Page 2

service support structure attesting that collocation within the applicant's search ring ... is economically burdensome to the mobile service provider." Wis. Stat. § 66.0404(2)(b)6.

Dane County Planning and Development Staff advised the Committee the carriers could pursue a complaint against SBA, alleging that SBA is not complying with the condition in its conditional use permit (the "SBA CUP") which requires SBA to make collocation sites available "...at the prevailing market rate in the region and upon contractual provisions which are standard in the industry."

Verizon Wireless has formally requested our office file a complaint with Dane County concerning SBA's failure to extend economic terms at the prevailing market rates on the SBA Tower. Immediately following the CUP denial, AT&T expressed the desire to bring a complaint against SBA for violating the SBA CUP. AT&T was represented by Attorney Paul Jonas before the Committee, who is copied on this request. T-Mobile is aware of the Committee proceedings; however, I am unaware whether T-Mobile intends to file such a complaint.

An adjournment and stay of this appeal would allow any complaints relative to the SBA CUP to be filed and processed by the Committee. An adjournment and stay would clearly benefit the Board of Adjustment, the County and the carriers, as it would afford an opportunity to focus on resolving the issues pertaining to the SBA CUP. If the Committee revokes the SBA CUP and requires removal of the SBA Tower, the parties would request reconsideration of the CUP to expedite a cellular coverage solution due to the impact of decommissioning the SBA Tower. Failure of the Committee to revoke the SBA CUP could also result in an appeal to the Board, which should logically be consolidated with the pending appeal. Finally, one could make the argument that, without an adjudication of the SBA CUP complaint, the carriers have not exhausted their administrative remedies with Dane County, and therefore, the pending appeal to the Board of Adjustment is premature.

Finally, HB made an open records request to Dane County on November 7, 2019 for documents relevant to the CUP and its subsequent denial. Despite continued inquiries to Dane County concerning the records request, Dane County did not respond to HB's November 7, 2019 records request until February 20, 2020—*105 days following the date of the request*. The County's February 20, 2020 response was incomplete. It only provided items already provided to HB and/or Tillman in conjunction with the CUP filing and Committee hearing. It did not provide, or address, other requests made by HB. I spoke with Dane County Record Custodian Daniel Lowndes earlier this week about the remaining responses, and am securing the additional documents requested. Without the additional documents (or a written confirmation from Dane County that no additional documents exist), we cannot adequately prepare for the pending appeal.

HUSCH BLACKWELL

Dane County Board of Adjustment
March 5, 2020
Page 3

For these reasons, HB and Tillman respectfully request that the Board adjourn the scheduled hearing set for 6:30 p.m., Thursday, March 26, 2020, to a date and time following Committee adjudication of the complaints on the SBA CUP and allow the County to respond to our pending open record requests. While I cannot speak for AT&T, Verizon Wireless will commit to having its complaint filed with the Committee by no later than April 1, 2020. I hope the County could also respond to our open records requests within the next 30-45 days.

Thank you for your attention to this request.

Respectfully submitted,

HUSCH BLACKWELL LLP



Rodney W. Carter

RWC:wp

cc: Roger Lane, Dane County Zoning Administrator (via e-mail)
Attorney Paul Jonas, counsel for AT&T Mobility (via e-mail)
Tillman Infrastructure, LLC (via e-mail)
Cellco Partnership d/b/a Verizon Wireless (via e-mail)