

Pollard General Counsel, LLC



Full Service Law Practice

March 5, 2020

Via Email (hilbert.hans@countyofdane.com)

Dane County Board of Adjustment
c/o Hans Hilbert
City-County Building, Room 357
210 Martin Luther King Jr Blvd
Madison, WI 53703

**Re: Board of Adjustment Administrative Appeal #3703 - Conditional Use Permit 2481
SBA Telecommunications Tower Site located at
County Road A & I-90 Egerton, WI 53534 (“Existing SBA Cell Tower”)**

Dear Dane County Board of Adjustment:

This law firm represents SBA Communications Corporation (“SBA”). SBA owns the above-referenced Existing SBA Cell Tower in the Town of Albion, WI. The Existing SBA Cell Tower is located less than 700 feet from the site of the new tower being proposed by the applicant, Tillman Infrastructure LLC. The mobile service provider, AT&T, has been collocated on SBA’s Existing Cell Tower for almost 20 years.

Submitted herewith is a letter from SBA’s Site Manager for the State of Wisconsin, Kent Meier. In his letter, Mr. Meier verifies that he has been in communication with AT&T to discuss the lease terms for SBA’s Existing Cell Tower, but AT&T has never submitted any request or proposal for a modification of any terms related to the lease for this site. Based on this and other information provided at the Dane County Zoning & Land Regulation Committee (“Committee”) meeting on November 26, 2019, the Committee properly determined that Tillman has failed to “evaluate the feasibility of collocation” on the Existing SBA Cell Tower, and therefore denied Tillman’s application pursuant to the applicable state statute, Wis. Stat. § 66.0404(2)(e).

Furthermore, the Committee correctly determined, by four to zero (4-0) vote, that the applicant failed to provide substantial evidence to demonstrate that its proposal satisfies all standards and requirements enumerated in Section 10.101(7)(d)1 and 10.220(1)(a) of the Dane County Ordinances. It is important to note that, notwithstanding the state statute governing mobile tower siting, the County is still required to apply its own ordinances, and the applicant, in this case Tillman, has the burden of demonstrating, with substantial evidence, that the standards prescribed in the local ordinances are met. *See Eco-Site, LLC v. Town of Cedarburg*, 2019 WI App 42, 388 Wis. 2d 375, 387, 933 N.W.2d 179, 185; *see also* Wis. Stat. 60.61(4e)(b)2

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For the reasons stated on the record at the public hearing and Committee meeting on November 26, 2019, a duplicative and unnecessary cell tower less than 700 feet away from an existing tower very clearly does not satisfy the foregoing County Ordinances. Therefore, the County correctly and lawfully denied the application. *See e.g. Town of Cedarburg*, 2019 WI App 42, ¶ 20, 388 Wis. 2d at 388, 933 N.W.2d at 186 (Town correctly denied application for new tower based on failure to satisfy all standards in local ordinance).

Accordingly, the Committee correctly denied Tillman's application as a matter of law, and SBA respectfully asserts that the Board of Adjustments must affirm and uphold the Committee's decision. SBA reserves all legal rights and claims.

Thank you for your attention to this matter. Please do not hesitate to contact me if you have any questions.

POLLARD GENERAL COUNSEL, LLC
Attorney for SBA Communications Corp.

A handwritten signature in dark ink, appearing to read 'K. Pollard', is written over a light blue horizontal line.

Kevin C. Pollard

cc: Majid Allan (via email only: allan@countyofdane)