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July 12, 2018

Centerville Township Zoning Board of Appeals Members
Centerville Township Hall
5000 S. French Road
Cedar, MI 49621

VIA: Hand Delivery to Township Attorney

RE: July 18, 2018 Hearing on CCC Tower

Dear Mr. Borton, Mr. Wurm, and Ms. Cova:

INTRODUCTION

My firm represents the Matthies family and Chateau Fontaine, who own property directly adjacent to the proposed location of the Cherry Capital Connection ("CCC") tower and antenna on French Road and who object to the siting of the tower at this location.

The Matthies family thanks the ZBA for its well-reasoned and thorough decision during the first hearing on this matter. Unfortunately, CCC appealed that decision to Circuit Court. The Court then refused to enter a consent judgment due to the objections of the Matthies family, and instead, remanded the matter back to the ZBA to determine if a list of "terms" satisfies the ZBA's concerns.

The Court's Order gives the Matthies family the right to make arguments and present evidence as to why the concerns of the ZBA (which are shared by the Matthies family) are not met by the term sheet and in fact, cannot be met with *any* evidence presented by CCC. Based on the arguments and evidence below, and the substantial record of the ZBA's first hearing, which is incorporated herein, the Matthies family respectfully requests that the ZBA find that the concerns about the proposed location of the tower are **not** satisfied, and therefore, the ZBA's previous decision stands.

THE CONCERNS OF THE ZBA (AND THE MATTHIES FAMILY)

There are two primary reasons the Matthies family objected to the proposed location of the CCC tower:

- (1) There are more appropriate alternative locations suitable for CCC's antenna that will give the same or similar coverage and not negatively impact property owners [See Zoning Ordinance, section 4.20]; and
- (2) The siting of the tower adjacent to the Matthies family property will negatively impact their property value, impede established and future business ventures, and impact their viewshed [see Zoning Ordinance, section 4.20 and 13.01].

Per the Zoning Administrator's Staff Report produced for the July 18, 2018 hearing, the Matthies family's concerns align with the ZBA's concerns. Quoting from the first ZBA decision, the Staff Report states:

- *Wurm stated that he feels that there is a missing piece in the steps that were taken to make the decision. There was not appropriate discussion of Section 13.01G.a.1.*
- *Borton feels there was a lack of discussion by the PC regarding "site shall be so developed as not to impede..." referenced in Section 13.01.G.a.1. He feels this tower impedes the established businesses, the wineries and the tastings and potentially other events that are held there.*
- *Borton stated that there was some discussion of other potential sites for the tower that would have worked just as well...*
- *Cova stated that in Section 4.20, the goals of the ordinance are listed; she is unsure if the order of the items is in order of importance, but this is the purpose of the guidelines for siting towers. The first goal is to protect residential areas and land uses from potential adverse impacts of towers and antennas. For the goal of minimizing the total number of towers throughout the community, this gets into the idea of there being an existing tower where Maylone's equipment is currently located. (See Staff Report, pp 1-2).*

The question presented by Mr. Cypher in his Report is: does Exhibit 1 as listed below, address the ZBA member's concerns regarding the Planning Commission's granting Cherry Capital Connections a Special Use Permit? (See Staff Report, p.3).

EXHIBIT 1 - THE TERM SHEET

The term sheet is attached as Exhibit 1 to the Order (and pp 3-4 of the Staff Report) and includes a number of basic, non-controversial terms to be met by CCC – including the following: **1a.** (fencing dimensions); **1c.** (lease and maintenance); **1d.** (road commission requirements); **1e.** (construction code approvals); **1f.** (soil erosion approvals); **1g.** (FCC and State requirements); and **1h.** (regulatory agencies compliance). None of these terms specifically address the concerns of the ZBA and the Matthies family – that is – potential alternative locations and impacts on adjacent property.

The terms that actually relate to the ZBA and Matthies family's concerns are *not sufficient* to ameliorate these concerns, and there is no new evidence that can adequately do so.

These terms include:

- **1b.** Identify on the site plan any significant views onto or from the site to or from adjoining areas;
- **1i.** Plant ten, 6-foot-tall conifer trees (measured from ground level and not from the bottom of the root ball) spaced 10 feet apart along the common property line between the Schaub property and the Matthies/Chateau Fontaine property to help screen the view from the Matthies/Chateau Fontaine property. CCC shall replace any trees that die within four years from the date of planting and thereafter maintain the trees so that they continue to provide an effective screen for as long as the tower is on the Schaub property; and
- **1j.** Supplement the coverage area and location information provided to the Planning Commission with the following:
 - (i) Provide a map, scaled to Centerville Township boundaries, showing in overlay fashion areas not covered with existing towers and areas that would be covered by the new tower;
 - (ii) Provide further information explaining why American towers are very difficult to justify leasing in this region of Northern Michigan; and
 - (iii) CCC has represented that the Schaub tower map was produced by subscription service towercoverage.com. CCC will provide the criteria the service was requested to search to generate the Schaub tower map.

Term 1b – the indication of significant views on the site plan.

The information provided by CCC in response to term 1b fails to adequately address the ZBA and Matthies family's concerns, and fails to meet the requirements of section 13.1(G)(a) which states:

Each site plan shall conform to all applicable provisions of this Zoning Ordinance (ie: 4.20) and the standards listed below: (1) All elements of the site plan shall be *harmoniously and efficiently organized* in relation to topography, the size and type of the lot, *the character of adjoining property* and the type and size of buildings. *The site shall be so developed as not to impede the normal and orderly development or improvement of surrounding property for uses permitted in this Ordinance.* (Zoning Ordinance, section 1301.G.a.1, emphasis added).

CCC's photographic renderings in response to term 1b, do not address the concern of the impact of the tower on the Matthies property values and business. Looking at the documents provided by CCC, the photos do not represent the significant view that would be impacted from the Matthies property. The photos are taken in the middle of winter, are fuzzy and unclear, and do not accurately represent the viewshed. The views that will be impacted occur during the spring, summer and fall seasons when the panoramic view is breathtaking of rolling hills, vineyards and wheat fields – and do not include any man-made commercial structures.

The Matthies family has operated Chateau Fontaine Vineyards, a well-respected and award-winning winery and tasting room for almost 20 years, and Dan and Lucie Matthies have their primary residence on the property. The property has been in the family since 1973. The unique scenic views of the Matthies property were described in Traverse Magazine:

If ever you wanted to fall in love with the notion of winemaking in Leelanau, this would be the time and place. The land laced with vineyard rows falls away to the south and east. To the north neighboring vineyards are over the adjacent hill. There are hills beyond hills, folding one upon the other, with hints of autumn reds and yellows framed by summer's remaining green. To the east glows a golden rectangle of wheat field, and in the distance the land rises again. (See Traverse Magazine Article, **Ex1**).

Courts routinely uphold local zoning decisions rejecting the siting of towers and antennas that are proposed in a unique scenic place. (see legal analysis, below).

About a year ago, on May 1, 2017, the Matthies family/Chateau Fontaine were bonded by the Michigan Liquor Control Commission to serve alcohol outside on the vineyard property near the proposed location of the tower – specifically due to the

panoramic views at the area near the top of the hill. (See MLCC License and renewal documents, and maps of bonded area in comparison to proposed tower site **Ex2**).

Recently, a Special Use Permit for outdoor events on the area bonded for wine-tasting and alcohol service, was granted by the Planning Commission. (Special Use Permit, **Ex3**). The view of the tower from this event area will negatively impact the use of the land for outdoor wine tasting, weddings and events as permitted by the SUP in violation of 13.01.G.a.1.

Cammie Buehler, a local event planner, states:

As an event professional who runs a venue in a similar setting as Chateau Fontaine, I feel the tower would greatly impact their ability to attract new clientele. Clients who seek farm and vineyard venues in Leelanau are attracted to our unmarred rural viewsheds. Erecting a tower in view from their property would scar the landscape, and in turn the economic viability of their location. As valued members of the local business community, the long term success of their enterprise should be considered.

(Ex4).

The Matthies family is pleased that the ZBA will be conducting a site visit to view the tower, which has been put up temporarily. In addition to the site visit, attached to this submittal are photos of the views from the Matthies property without the tower (**Ex5**); and a photo of the clearly visible tower from the Matthies property that was erected on July 11, 2018 (**Ex6**).

Additionally, in support of the fact that the siting of this tower is not in harmony with the adjacent land uses and will impede the business and normal development of adjacent lands - attached, please find letters from area realtor experts, whose opinions are that the proposed location of the tower will negatively impact the value of the Matthies family property, winery business and future special events as permitted by the SUP. (**Ex7**).

Broker Mark Carlson of Coldwell Banker, states:

It is my opinion that the value of your property in the near vicinity of the tower installation would be greatly affected in a negative way. If or when you or your family should decide to sell the property near the tower, now or in the future, the value and marketability would be significantly reduced if the tower is installed.

Broker, Dale Schuhknecht of Peninsula Properties, Inc, states:

I have been in real estate all my life, and brokered many properties in Leelanau County. I was involved with trying to sell a 160-acre piece of

property on the Cedar-Maple City road, belonging to the Noonan family. They okayed a communications tower to be built on their land, which has killed the value and the sale of the property due to this tower. The Matthies family has worked very hard planting their grapes, building their winery and making Leelanau County wines. I would hate to see them also suffer a decrease in their property values because of the placement of this proposed tower.

Broker, Mark Fisher states:

The construction of a communications tower adjacent to your vineyard property on French Road will have a definite effect on the value of all surrounding lands because of the impact on views, wind currents and overall aesthetics for the area. If a tower is allowed, the financial impact on your property will be substantial. The tower construction will have a negative impact on any events held in the vineyard in that commercial structures of this type does not fit into an established agricultural use area.

Dan Matthies is a licensed real estate agent as well, and states:

I purchased the property back in the early 1970's and eventually planted grapes on the land. To plant an acre of grapes is approximately \$15,000. Good grape growing land is now \$10,000 to \$15,000 an acre. I have nearly doubled the cost per acre. If the tower is built, it will decrease the value of my land and vineyards. At a township meeting December 11, 2017, concerning the proposed tower, Centerville Township chairman Tim Johnson stated, in front of the other township board and attendees, that our property values would definitely go down. I certainly do not want to lose any value to our land, as I have worked very hard to build the equity in it.

These expert opinions support the fact that the siting of the tower and antenna at the proposed location will negatively impact the adjacent property values and business, and would be a violation of section 4.20 and 13.01G.a.1 of the zoning ordinance.

The December 11, 2017 Planning Commission meeting minutes state:

The PC discussed whether the economic benefit to many people of having high-speed internet for their properties is worth having a few properties whose value is lower because the tower is in their backyard. (Ex8).

This is troubling for a couple of reasons. First, the proposed tower and antenna will not reach that many people, there is adequate coverage with the Pit Road tower, and

CCC recently re-negotiated its lease for continued use on that tower (see below). Second, there is a real concern of a governmental taking of the value of private property for a private purpose in violation of the Michigan Constitution, Art 10, Sec 2; See also, *Shizas v Detroit*, 333 Mich 44 (1954); *Merkur Steel Supply Inc., v City of Detroit*, 261 Mich App 116 (2004).

As demonstrated by the real estate experts above, the Matthies property will be significantly harmed, and the value of their property will decrease substantially with the tower's location, causing a *de facto* taking of their property. The ZBA should also keep in mind that CCC has stated that the tower can last for 60 years (although Mr. Maylone admits it may be obsolete in 30 years).

Term 1i – Planting 10 6-foot conifer trees along common property line to help screen the view from the Matthies/Chateau Fontaine property.

The planting of 10 trees does not adequately address the ZBA and the Matthies family's concerns about the impact of the tower siting on their property values and business. The trees have already been planted on the property line (see attached photo, **Ex9**). They are skinny, not well-planted, and measure about 5 feet tall. As of July 11, 2018, three of the trees have already been knocked over by cows. As demonstrated in the photo of the tower that was temporarily erected on July 11, 2018, the trees will not screen the view from the Matthies/Chateau Fontaine property. (See Ex6). This will further be demonstrated at the site visit on July 18th.

Additionally, the 4-year limit to replace any trees that die is not adequate given the 30-60 year lifespan of the proposed tower and antenna. Dan and Doug Matthies are very familiar with the soils on the property, and know that the trees will require constant maintenance for more than 4 years to keep them alive.

Term 1j – Supplement the Coverage area and location information provided to the Planning Commission.

This term is composed of three subsections, none of which adequately address the concerns of the impact of the tower and antenna on the Matthies property nor do they address the concerns that there are adequate alternative sites for the tower and/or antenna.

Term 1j(i) is simply another propagation map of the areas not covered with existing towers and areas that would be covered by the new tower. Interestingly, the map shows only the CCC tower coverage, and the American tower that CCC apparently cannot lease. Term 1j(ii) is an explanation of why American towers are very difficult to justify leasing in this region of Northern Michigan and term 1j(iii) is the criteria entered for the towercoverage.com service to generate the Schaub tower map.

All of this information from CCC does not adequately address the ZBA and Matthies family concerns regarding alternative siting of the proposed tower and/or antenna, and the goal of minimizing the number of towers in the township as required by the Zoning Ordinance (Section 4.20).

Importantly, 4.20(C)(n) states:

[n]o new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Planning Commission ***that no existing tower...can accommodate the applicant's proposed antenna.*** (Zoning Ordinance, 4.20(C)(n), emphasis added).

At the November 13, 2017 Planning Commission meeting, Mr. Maylone stated that the customers covered by the French Road tower are currently covered by a tower they lease from the County. Mr. Maylone stated:

This will be their main tower, and they will then fill in the gaps with 60' towers.

The county tower that CCC has been using has become too expensive, given recent rate increases, and so CCC is looking at building their own towers.

The towers can easily stand for 60-90 years, but Maylone feels that the technology will likely be obsolete within 30 years.

The customers covered by the (proposed) French Road tower are currently covered by CCC off a tower leased from the county - this lease is no longer viable due to the rate increase. Additional 60' towers would be needed to expand the coverage area. (See PC meeting minutes, emphasis added, **Ex10**).

Almost immediately after the Circuit Court hearing, CCC entered into a new agreement with the County to lease the Pit Road Tower (Central Tower) and the Law Enforcement Tower (LEC Tower) with another tower to be leased in the next few months in Maple City. The cost is not prohibitive (\$392 total for *both* the Central and LEC towers (instead of the previous rate of \$1,000 or \$1,500-1,800 for additional antennas on the Pit Road tower) and CCC will receive 1 year's lease for free on both towers. (See Contract, **Ex11**; and ISP fees, **Ex12**).

Because there is an existing tower that can accommodate CCC's antenna, per 4.20(C)(n), the proposed Schaub property tower "shall not" be permitted.

The coverage for the Pit Road tower is the same as the coverage for the Schaub property proposed tower, as Maylone admitted at the November, 2017 PC hearing, and as demonstrated by the attached propagation maps - which show identical coverage. (see Propagation map comparison, **Ex13**).

Further proof of the ability of the Pit Road Tower to cover the proposed Schaub property tower area is the attached photo of the Pit Road Tower seen from the treeline on the Matthies property. (**Ex14**). The photo shows that this large county-owned tower is capable of allowing an antenna unobstructed coverage in the area of the proposed Schaub property tower.

Additionally, at least 3 other appropriate sites were located on the Schaub property by the Matthies family - all rejected out of hand by CCC, primarily due to cost. (See attached map of locations w/ elevations listed, **Ex15**).

Finally, CCC as well as a number of other ISP providers cover a significant portion of Cedar, Lake Leelanau and Maple City as demonstrated by the attached broadbandnow.com document. CCC provides coverage in Lake Leelanau (100%); Maple City (86.3%) and Cedar (98.7%). (**Ex16**).

NO ADDITIONAL INFORMATION WILL ADEQUATELY ADDRESS THE ZBA AND THE MATTHIES FAMILY'S CONCERNS

The sections of the Zoning Ordinance that apply to the impact on neighboring properties and alternative sites for antennas include 4.20 and 13.1.G.a. Any additional information provided by CCC will fail to meet the requirements of section 4.20 or 13.1.G.a, because the proposed location of the tower does not protect residential areas and land uses from adverse impacts of the tower and antennas, and the proposed tower and antenna is not designed, sited, landscaped or camouflaged from view of the neighboring property. Further, there are sufficient alternative locations for the tower and/or antenna as required by 4.20(2)-(5) and 4.20(C)(n), as demonstrated above.

4.20 was drafted to establish general guidelines for the siting of towers and antennas and specifically for the goals of:

- (1) protecting residential areas and land uses from potential adverse impacts of towers and antennas;
- (2) encourage the location of towers in no-residential areas;
- (3) minimize the total number of towers throughout the community;
- (4) strongly encourage the joint use of new and existing tower sites as a primary option rather than construction of additional single-use towers;
- (5) encourage users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact of the community is minimal;
- (6) encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas through

careful design, siting, landscape screening, and innovative camouflaging techniques.

With regard to the goal of “minimizing the total number of towers throughout the community” Mr. Maylone stated that the proposed French Road tower would be their “main” tower, and they, “may end up making requests for up to three (128’) towers per township in the county.” (see December 11, 2017 PC meeting minutes, Ex8). Leelanau County has 11 townships, so if this statement is accurate, that means 33 new towers – which certainly does not meet the goal of minimizing the number of towers in the area.

4.20(C)(d)(2) Aesthetics. states:

towers and antennas shall meet the following requirements: (2) At a tower site, the design of the buildings and related structures shall, to the extent possible use materials, colors, textures, screening and ***landscaping that will blend them into the natural setting*** and surrounding buildings. (emphasis added).

The tower, antenna and fencing are proposed to be placed in the middle of a field marring the unique scenic views from the Matthies property, and will not blend into the natural setting at all. (See Ex 6, 9).

The Matthies family’s expert zoning witness, Dr. Christopher Grobbel has worked extensively with Leelanau County townships as a planner and zoning administrator. He has visited the Matthies property, reviewed the Planning Commission Record and ZBA record and decision, as well as the Zoning Ordinance and Master Plan. His opinion fully supports the ZBA’s original decision and the Matthies family’s arguments that the proposed location of the tower and antenna violate the Centerville Township Zoning Ordinance. (See Opinion letter and c.v., **Ex17**).

Dr. Grobbel states:

Clearly, numerous alternatives exist to the proposed tower location, and ... pursuant to Section 4.20.C.n.(vi) cost is not a disqualifying factor for Centerville Township decision-making.

Based on my experience as the professional planner and zoning administrator for a number of northern Michigan cities, villages and townships, the proposed communication tower in this setting is not harmonious or efficiently organized into the neighborhood, indeed presents adverse impacts to adjoining existing residential and ag commercial land uses, and will very likely impede the development and improvement of the winery/tasting room. Based on my review this proposal fails to comply with Section 13.01.G.A.1. of the Centerville Zoning Ordinance. (Ex 17).

In addition to not meeting the requirements of the Zoning Ordinance section 4.20 and 13.01, the proposed tower and antenna do not comply with the Master Plan as required by 4.20, which states, "In furtherance of these goals, Centerville Township shall give due consideration to the Centerville Township **master plan**, zoning map, existing land uses ... in approving sites for the location of towers and antennas." (emphasis added).

The Centerville Township Master Plan

The Master Plan emphasizes the rural and agricultural value of the Township and describes under **General Character**, "there are large acreages planted in fruit trees and other crops which provide a pastoral character to the township and contribute significantly to the local economy." (p. 1-2, Master Plan, **Ex 18**). Under **Significant Land Use** Issues it states:

The township recognizes the importance of views to many residents and visitors as well as concerns regarding the rights of property owners. The township is exploring ways to provide for development options in the Zoning Ordinance to encourage the siting of buildings so that development occurs in a manner with less visual impact. **Farmland and Open Space preservation are very important to the property owners of Centerville Township, as evidenced by the findings from the 2011 Survey.** (Ex18, p6-1).

Further, the Master Plan states under **Community Vision, Goals and Objectives** that, "according to the results of the 2011 Survey, the residents of Centerville Township value and want to maintain the peaceful rural character and the scenic beauty of their township. Most citizens want to maintain the township's farmland, open space, and natural environment without the burden of uncontrolled growth and its associated impacts." (Ex18, p. 7-1). This is reiterated under **Land Use Goals**, "Retain the township's rural and scenic character" (Ex 18, p. 7-2).

On p. 7-3, there is a section entitled, **Agricultural Support Goal** which states, "provide broader economic opportunities related to agriculture: Promote agri-tourism. Finally, under Chapter 8 of the Master Plan, **Future Land Use Recommendations** for the Agricultural District it states, "...land use planning and zoning regulations should work to maintain a scenic and healthy rural landscape..." (Ex 18, p8-1).

Clearly, the Master Plan supports the preservation of scenic viewscapes and agri-tourism which align with the use of the Matthies property for outdoor wine-tasting and special events so that the rural farmland views can be shared with the residents and visitors of Centerville Township.

LEGAL ANALYSIS

Mr. Maylone argues that local zoning can only deny towers/antennas if they have to do with safety or historic reasons. This is not true. Local governments have the power to regulate the siting of towers for aesthetic reasons and other reasons under their zoning ordinance. Courts routinely uphold local zoning decisions rejecting the siting of towers and antennas that are proposed for a unique scenic place such as the viewscape from the Matthies property. [See, *Voicestream Minneapolis, Inc v St. Croix County*, 342 F.3d 818, 831-32 (7th Cir 2003)(**rejecting a tower to be located near the extraordinary scenery of the National Scenic Riverway**); *Sprint Spectrum, Ltd. P'ship v Bd of County Comm'rs*, 59 F. Supp 2d, 1101, 1106, 1109 (D. Colo. 1999)(**sustaining a denial of a tower due to the unique and diverse landscapes of Jefferson County**); *Site Acquisitions, Inc v Town of New Scotland*, 770 N.Y.S. 2d, 157, 161 (N.Y. App Div 2003)(**potential negative impacts on views from areas of natural beauty**)].

Local government may also reject towers that conflict with its zoning ordinance and would be out of character with the adjacent properties and neighborhood. [See, ie: *Omnipoint Commc'ns, Inc v City of Nashua*, No 07-CV-46-PB, 2008 US Dist. LEXIS 8611 at 16-17 (DNH Feb.6, 2008)(**finding substantial evidence where the proposed tower would be visually, aesthetically and functionally out of character with surrounding neighborhood**); *USOC of Greater Mo., LLC v City of Ferguson*, 2007 US Dist LEXIS 87760 at 5 (E.D.Mo Nov 29, 2007) (**the tower would not blend in with the one story buildings surrounding it**); *Sprint Spectrum Ltd P'Ship v County of Platte*, No 06-6049-CV-SJ-DW, 2007 US Dist LEXIS 75724 at 12(W.D. MO Oct 11, 2007)(**finding that the zoning commission's aesthetic concerns were grounded in the specific characteristics of the proposed location, design and surrounding property as evidenced by photos indicating that the tower would not be obscured by trees or other structures and would ruin the landscape**) , John C. Nagle, *Cell Phone Towers as Visual Pollution*, 23 Notre Dame J.L. Ethics & Pub Pol'y, 537, pp 560-61, (2009)].

The FCC has limited preemptive power over local zoning of the siting of personal wireless service facility. State or local governments cannot discriminate among providers of functionally equivalent services, and planning boards must act within a reasonable time period (90 days), and any denials of towers or antennas must be in writing and supported by substantial evidence on the record. 47 USC 332(c)(7). Michigan law mimics the federal time frame requirement [MCL 125.3514(8)]. Township Attorney Chris Bzdok addressed the timing issue in his legal memo dated January 29, 2018 – wherein he states, “the denial occurred within the applicable 90-day deadline set by MCL 125.3514(8).” (Ex19).

Mr. Maylone also refers to the FCC rule entitled Over-the-Air Reception Devices (“OTARD”) rule concerning restrictions on viewer’s ability to receive video programming signals from satellites, radio service or fixed wireless signals. (47 CFR Sec. 1.4000).


The rule prohibits restrictions that unreasonably delay or prevent installation, maintenance or use, unreasonably increases the cost of installation, maintenance or use or precludes reception of an acceptable quality signal unless it is for safety or historic reasons. OTARD does *not* apply to this matter, because it does not apply to towers/antennas that are used to transmit signals to and/or receive signals from multiple customer locations. On July 10, 2018, I called the FCC to get clarification on this rule, and the agent confirmed that it does not apply to personal wireless towers/antennas that are used for multiple customers - it only applies to customer-end antennas.

Once a tower is approved and in place, FCC law provides that, “a State or local government may not deny and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.” [Section 6409(a) of the Spectrum Act; 47 USC 1455(a)]. This is concerning because if the ZBA approves the Special Use Permit for the CCC tower – the township will have limited power thereafter if CCC wants to enlarge the use of the tower – potentially ruining the view even more. Mr. Maylone has stated in the Planning Commission meetings (See Ex 8 and Ex 10) that his plan is to have the Schaub tower his “main” tower, and this could include future modifications where the township would be limited in their ability to say no. Of course, all of the statements in the Planning Commission meetings, and all of the information provided by Mr. Maylone to date were prior to his renegotiated lease on the Pit Road tower and the LEC tower, as well as his future plans for the Maple City tower lease. Nonetheless, this is one more important consideration for the ZBA, because as Mr. Maylone mentioned at the Planning Commission meetings – the tower has a lifespan of 30-60 years.

CONCLUSION

For the reasons stated above, and the complete record in this matter including the attached exhibits, the Matthies Family/Chateau Fontaine respectfully requests that the ZBA decide that the terms outlined in Exhibit 1 to the Circuit Court’s Order do not satisfy the ZBA that the proposed CCC tower/antenna on the Schaub property meets the requirements for a Special Use Permit under the zoning ordinance, and that no other evidence presented in this matter has satisfied the ZBA that CCC meets the requirements for a Special Use Permit.

Very truly yours,



Kristyn J. Houle