



# TOWN OF BLACK WOLF

380 E. Black Wolf Ave. Oshkosh, Wisconsin 54902

## MINUTES OF THE October 4, 2021- October Workshop and Public Hearing PLANNING AND ZONING

The Planning and Zoning Public Workshop was called to order by Chairperson Al Stenerson at approximately 6:30 p.m.. Members present were Tracy Kollock, Jim Chitwood, Howard Schwartz, Eric Youngbauer via phone, and Sandra Golliher. Also present Zoning Administrator Tom Verstegen, Town Chairperson Frank Frassetto, Town Supervisors Rob Keller and Mike Pollack, Attorney Alex Ackerman, and Secretary Thomas Coppola. Public present resident Bryan Frank, Michael Doran- Maguire Development representative for Harmoni Towers ATT, Andrew Flowers Senior Construction Manager ATT, Jim Jermaine Affairs Representative ATT, Attorney Paul Jonas ATT, and Attorney Kevin Pollard SBA

- **Motion (Chitwood, Golliher)** to approve August 30, 2021 (September) minutes. **CARRIED**
- **Discussion of CSM for Black Wolf Development** opened with announcement by Chairperson Stenerson attorney granted a 45 day extension of November 15, 2021 to provide a timely response from applicant. Zoning Administrator Tom Verstegen advised of a telephone discussion with a potential buyer asking if the buyer can pay to bring the road to Town Standards. Zoning Administrator advised a discussion with engineering company will have to take place in order to certify standards. Zoning Administrator noted CSM is unable to be approved without a variance. Chairperson Stenerson asked Attorney Alex Ackerman if applicant submitted the questionnaire from residents, attorney advised a submission has not been received. Attorney advised the *main issue is that the CSM must conform to Land Division Ordinance for newly created lots on public roads-* approval will be difficult without variance- confirming no submission from developer or applicant. A new date is set for November 15, 2021. Town Chairperson Frank Frassetto advised of Highway State Statute which provides for towns to allow for smaller widths/dimensions based off need. Attorney Ackerman suggested State Statute 82.50 *which breaks down categories for Town Roads to increase of average daily traffic and standards will identify the right of way and width of road.* Chairperson Stenerson confirmed approximately 8 total homes with 4 new lots pending submission of questionnaire and the hear say of using the 1<sup>st</sup> developed to create road to Town Standards. Stenerson asked Town Supervisor Keller a cost to create road. Keller advised could be estimated up to 500,000 due to construction and building specification. Stenerson asked if any there are any standards for the enhanced gravel. Keller advised the least permeable surface is hard surface or asphalt and to refer to state specification for type of grade/asphalt. Keller advised must meet Town Standards will require an engineer and engineer must review that is meets Town Standards requirements. Stenerson asked who is responsible for paying. Keller advised *it is not responsibility of Town due to burden of expressed finances and should not be passed on to other tax payers.* Attorney Ackerman confirmed *once dedicated to town, the expense to maintain will be incurred by Town, it is in the interest of Town to get the road to Town Standards before dedication to Town in order to offset escalated cost for accepting a road below Town Standards.* Howard Schwartz asked if they can use current road with additional enhanced gravel. Keller advised does not meet requirements due to Town Standards of surface. Jim Chitwood advised he spoke with land owner on Sesame Street and owner does not want to incur additional cost for new development. Chairperson Stenerson advised to wait for timely submission of questionnaire for review at next workshop on November 1.
- **Announcement** of Terry Sweeney appointed term ending on the Committee. A brief discussion took place on possible appointment for pending vacancy on the Planning & Zoning Committee.
- **Motion (Golliher, Schwartz) to end Workshop at approximately 6:51 p.m. for recess until 7:00 p.m. for Public Hearing.**
- **Discussion** of the application for Harmoni Towers representing private owner and interests of AT&T was reviewed. Attorney Alex Ackerman opened the Public Hearing with noting the Harmoni application- will provide details of application, questions will then be asked, public will be able to communicate with applicant, this will include Town Board quorum, committee, and residents. Upon deliberation, a recommendation may be made to Town Board. Planning and Zoning may recommend if the application may be approved, denied, or approved with conditions. Attorney noted conditions may be added post recommendation to Town Board, so by the Town Board. Statute driven by 66.0404 for process with limitations, as review, deemed application complete within the 90 day window beginning August 2, 2021. Hearings are 1 meeting, but the deliberation can be over multiple meetings. It is a lengthy process but must be understood by both parties. Limitations at municipal level determined by 66.0404 subsections 4 the Town will have as review to consider. Record is established. At this time, 5 exhibits entered as review: 1) Application 2) Zoning Narrative 3) State Statute 66.0404 4) Conditional Use Town Zoning Ordinance 5) RSRP coverage Plot. Any decision Act 67- must be based off reviewing for substantial evidence and any condition imposed must be based off of substantial evidence or any relation to conditional use will not be satisfied. *Substantial evidence rule is a principle that a reviewing court should uphold an administrative body's ruling if it is supported by evidence on which the administrative body could reasonably base its*

decision other than merely personal preferences or speculation. Attorney Ackerman turned over to applicant representatives. Michael Doran of Harmoni Towers announced the submissions to support application to include affidavits, elevation records, zoning maps, colocation, economic burden, and zoning narrative. Doran advised the criteria is met for local ordinance and state statute. Advised surrounding towers will not interrupt coverage. Attorney Ackerman asked for a walk through of maps and if the approved coverage will meet existing or improve coverage in the area. Andrew Flowers, Senior Construction Manager, advised *leasing, zoning permitting, cell sites do not take lightly to build new facilities, so what is the benefit- RF map identifies on page 2/3 that the tower will gain 70' of elevation to cover more areas to benefit 1<sup>st</sup> responders- tower will increase coverage up to 4 miles to North, West, South, and 4.5 miles on the lake. Object is to for high speed to not interrupt at below ground levels, which is reduced by time, a more slower connection process. The frequency will change based on level of service 700 megahertz for furthest, then 1900—1850 curtailed by the amount of traffic being used.* Attorney Ackerman confirmed max height for approval is 262'. Flowers confirmed with lighting rod of 3' above antennas. Attorney Ackerman asked for clarity on the blue spot on map at 180' - *what is the difference in coverage at the 180' height.* Flowers advised at this point it is difficult to determine, but the in building coverage, will increase further you go. Stenerson said reviewing the RSRP 90, the best is 0' to 100'. Flowers advised it is only a model until built. Stenerson confirmed at this time we do not know performance. Flowers advised it all depends on how much service it will be able to have ie 911 calls and 1<sup>st</sup> responders for furthest distance – shows how ATT will spend the money on the community. Stenerson recalled at one time the tower can extend up to 7 miles off lakeshore, is this still accurate? Flowers confirmed optimization is based off of signal by narrowing areas to bring together to fill space in between which in turn could increase optimization or distance. Jim Jermaine of Govt affairs for ATT confirmed that every 9 miles you need a tower- to connect signal- by adding more does not always optimize, but fills space, so by adding other frequencies and addressing height of towers limited to population density- confirmed by engineer of a provided range of 250' to 300' can optimize frequency. Stenerson asked if the tower was less than 250' will it not work for ATT. Flowers confirmed *due to the economic burden between ATT/SBA as they have not agreed to a master lease, with increased costs incurred, an additional tower that is not 250' collocated by SBA will not be able to handle the frequencies or multiple carriers- confirming engineer standards have changed over the years so modifications must happen and will associate a cumulative cost to add on the high rents and unreasonable terms, facility cost will half million dollars to increase service capabilities, so reducing the height is not feasible.* Jermaine announced ATT as a 180 billion dollar company so why the economic burden- *explained as due to increased costs, towers construction assumed the overall costs, but provides flexibility in enhancements for changing equipment, leasing space by not impacting the structure, allows ATT to change rapidly- in part due to the need for first responders network to make sure can provide the emergency coverage to rural communities to a price advantage to keep cost down for citizens.* Attorney Ackerman asked if the proximity will affect current tower coverage at all. Flowers confirmed no due to the tower being 70' taller than other towers, with no bearing effect on existing due to FCC regulations. Stenerson advised tower proximity is not common across state, so why is tower so close to existing. Flowers confirmed due to no other options to improve service to community- new tower built at today standards will handle all technology changes as old tower cannot. Larger cities have towers in closer proximity due to space. All balanced- height supports stronger materials used in construction today versus past. Attorney Paul Jonas of Harmoni and ATT- *confirmed 2 towers next to each other will be removed due to ordinance – old towers are removed from sites- Act 67/ and state statute 64.0404- restrictions on municipalities and requirements on applications. Economic burden is a facet, flexibility is a problem because due to change in technology to modify for future is challenged when not owned, SBA stands today to be the monopoly.* Attorney Ackerman noted subsection 7 identifies the removal of abandoned antennas or a tower for 12 months is considered abandoned. Town Ordinance encourages number of towers to be further apart or added ala cart to existing towers. Tracy Kollack asked if there are any other co-locators who have applied to be on the new tower? Flowers advised not at this time, but co-locators will be able to be added to the new tower and are able to communicate directly with ATT for availability. Stenerson asked if Harmoni traded private or publicly? Attorney Paul Jonas advised it may be publicly traded at higher level or if approved will run the rights obligation to bear ownership of new owner. Attorney Alex Ackerman advised ordinance surrounding uses adjacent to proposed tower is covered in application. Stenerson advised of the 3 news homes being built across the street from cell tower that Harmoni wants to build. Michael Doran advised that is the basis of moving the tower back 500' referencing fall distance and applicant owner being comfortable with location decided. Tower is 150' from right of way. Flowers acknowledged the engineering of tower can be in accordance to area fall zone well constructed on 3 legs. Noted Setbacks in subsection 40 and section 2G- not touch right of way- will be working the problem backwards should sucj arise. Attorney Kevin Pollard *advised SBA objects to the tower due to the proposed proximity, ATT has been a client of SBA since the year 2000, and lack of substantial evidence being submitted for economic burden.* Attorney Kevin Pollard advised application has issues in application from maps to 1<sup>st</sup> net being offered on existing towers for 1<sup>st</sup> responders emergency calls. *Economic burden is the colocation concern – recently amended last year . Mr. Meir has not been contacted to discuss the matters of rent, or coverage. Pollard advised Harmoni is not exempt in evaluation based off of lease term so they haven't evaluated colocation or provided substantial evidence. The affidavit filed was speculative, since they have not contacted owner of existing tower whom is willing to work with ATT.* Attorney Pollard recited Wisconsin State Statute 3.27 - *No agent or insurer shall recommend to a prospective buyer the purchase of any individual policy without reasonable grounds to believe that the recommendation is not unsuitable to the applicant. The agent or insurer shall make such inquiry as may be necessary under the circumstances to determine that the purchase of such insurance is not unsuitable for the prospective buyer. This requirement shall not apply to an individual policy issued on a group basis. Assumed activity is to construct new tower, collocate or evaluate colocation to consider, and to have SBA comply with tower rod to comply with ordinances so Harmoni should too, including the number of facets for posed denial.* Attorney Ackerman entered 2 documents as exhibits of review: 6) SBA coverage map 7) letter from Kent Meir owner.

Attorney Ackerman allows for Question and Answers from public. Stenerson asked about coverage. Pollard answered lower megahertz better coverage, higher megahertz less penetration. Pollard advised SBA can accommodate what ATT is trying to do with Harmoni. Attorney Paul Jonas clarified *why ATT chose Harmoni- map submitted by SBA is not applicable per municipality each tower lease with 80' extension is not feasible solution amended on a short term basis for agreement to accomplish same things SBA chooses to accomplish- cannot have discussion to make posed map (submitted by SBA) relevant.* Flowers advised *ATT is a telecommunications provider. SBA is a leasing company for other carriers. ATT map is more visual with frequency change model used in actual frequency. Engineer study is provided by ATT, SBA did not submit an engineer study.* Attorney Pollard advised of 66.0404- *new tower process is to include affidavit of reason, technical, coverage and/or economic burden. Economic burden was not demonstrated here by aligning speculative costs.* Howard Schwartz asked if Harmoni has reached out to SBA. Pollard advised *they have not reached out to Mr. Meir, as he is willing to discuss and work with ATT.* Flowers advised *Tim Brenner has discussed colocation since 2018 and Meir cannot discuss leases due to national level.* Attorney Jonas advised *this is why a new negotiation has happened for a better deal for Harmoni, colocation considered, seek external tower due to what has been described, flexibility, new technology.* Ackerman reminded all of Eco-Cite Case study, Jonas confirmed it was before Act 67. Ackerman reminded parties substantial evidence must be determined and discussed in the case with a tiered approach. Ackerman advised given agenda will applicant be willing to a 30 day extension noting August 2 as complete application, given a 30 day extension to November to allow for a timely recommendation to Town Board- actionable on November 1<sup>st</sup> and forward to Town Board for November 8<sup>th</sup>. Jonas confirmed the 30 day extension with actionable on November 1<sup>st</sup> and forward to Town Board for November 8<sup>th</sup>. Ackerman noted both parties agreed to extension pending evidence as review on the 1<sup>st</sup>.

- **Motion (Kollack, Chitwood) to approve extension to November 1, 2021 at 6:30 p.m.**
- **Motion (Chitwood, Schwartz) to adjourn Public Hearing at 8: 39 p.m. CARRIED**

Next Workshop – November 1, 2021 @ 6: 30 p.m.  
Respectfully Submitted,  
Thomas Coppola, P&Z Secretary