



November 2, 2022

Re: Proposed Small Communications Tower setbacks on Bergen Holdings, LLC property

Applicant was denied approval to proceed to permitting, due to the fact that the tower is proposed only 86.5' from their westerly quarter section property line, also owned by subject landowner Bergen Holdings, LLC, and both zoned A-2 Rural Agriculture. Adjusting the proposed tower siting location would impose hardship on the landowner as well as the applicant, therefore, the Applicant would like to apply for a Variance, with the conditions of justifications for the Variance listed below.

In response to:

1. "There are special conditions or circumstances peculiar to the land or structure involved"

The land owners have agreed to and approved this section of land for the tower, for multiple reasons including the following:

- In order to aesthetically minimize the appearance of the tower from the public view (driving along Imhoff Road), they have chosen this location to 'hide' the base of the tower and equipment, by tucking within the tree-line out of direct line of visibility
- Bergen's maintain a Certified Organic grazing pasture, which is north of the heavily treed area where the tower is proposed, and is also 'bermed' off with a wall of dirt and debris, intended to keep the cattle out of the heavily treed area. Shifting the proposed tower to meet the 200' setback to adjacent Bergen parcel 166838, they would lose over approximately 2500' square feet of Organic cattle grazing land. Bergen Holdings, LLC provided a letter of approval for the applicant's proposed tower location, understanding the requirement to be 200' to the Adjacent Bergen Parcel line, but also understanding their approval does not supersede the City of Norman ordinance.
- By shifting north / northeast to meet 200' setback to the Adjacent Bergen Parcel line, that would place the tower and equipment within or very close to the proximity of a major Zone A FEMA floodplain. Being near or within the floodplain, the applicant risks damage to their telecommunications equipment due to exposure to water in case of flood. Flooding of the area could also prohibit certain timely maintenance if standing water prevents access to tower site and equipment location
- The actual resident / house / dwelling on the Adjacent Bergen Parcel is over 1/3 of a mile from the proposed tower location. The proposed Tower Site has a low impact on Adjacent Bergen Parcel: Less than 0.5 acres of Adjacent Bergen Parcel is impacted, representing 0.2% of the 226 total acres associated with the Adjacent Bergen Parcel. If the tower were sited just inside the east property line of the Adjacent Bergen Parcel—the parcel that's effectively being protected by the ordinance—the applicant would comply with applicable setbacks relevant to the Subject Bergen Parcel.
- There were no objections from the community, per the (850') Certified Ownership List at the original Pre-Development Community meeting. On September 23, 2022 The City notified the applicant that they can proceed straight to permitting; With this approval, the applicant began



581 Enterprise Drive, Edmond OK 73013

405-348-5460



ordering the regulatory and environmental due-diligence items needed to proceed with our location, such as land clearing, Geotechnical investigation, NEPA, etc. On October 4, 2022 The City notified the applicant that they are NOT approved to go to permitting due to the setback violation relative to the Adjacent Bergen Parcel. Understandably the time and cost associated with the orders placed hardship on the applicant since we had services to cancel, etc.

In response to:

2. **The literal interpretation of the provisions of the Ordinance would deprive the applicant of rights enjoyed by others in the same district;**

The City's literal interpretation of the code is causing a denial based on a setback technicality that applicant believes warrants leniency given the unique project circumstances.

- Applicant's anchor carrier, Verizon, has a substantial coverage need at this location. The tower is sited on the outer edge (~0.35 miles) from Verizon's search ring center, enabling it to satisfactorily serve a significant gap in coverage for Verizon.
- Applicant conducted exhaustive multi-year search for candidates in the area. All other candidate land owners declined to lease to Applicant. This is the only location that fulfills Verizon's search ring.
- Verizon requires a 175' height to properly fill its significant gap in coverage. This height is more important given the tower's fringe location on the edge of the search ring.
- Finally, as Verizon is planning to deploy C-Band (L-Sub6) spectrum at this Communications Tower site, it is positioned to provide *fixed wireless home broadband internet service* (branded as 5G Home) to rural residences with deficiencies, which the applicant believes may qualify this tower as a "Small Communication Tower", with setback requirements that the applicant would comply with pursuant to its current proposal. The applicant is choosing to take a more conservative approach to zoning than the alternative of applying for a Small Communications Tower because the exact timing of Verizon's initiation of 5G Home service from this communications tower site is uncertain. The applicant, however, is proposing a tower type and height and in a zone that are permitted for a Small Communication Tower per the City's ordinance.



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In response to:

3. The special conditions or circumstances do not result from the actions of the applicant

The applicant arrived at the proposed tower location through an exhaustive search, with the guidance and support of the owner of the Adjacent Bergen Property and the Subject Bergen Property. The applicant's objective is to design and place the site so as to have the lowest possible impact on its surroundings, and is contending with a number of natural constraints in this effort:

- Adjacent flood plain
- Concentrated grove of trees
- Certified organic grazing pasture
- Prominent berm that separates the grove of trees from the certified organic pasture.

In response to:

4. The granting of the Variance will not confer special privileges on the applicant that are denied to other lands and / or structures in the same district

- There will be no privilege gained by the applicant if a variance were granted. The applicant would enjoy no more use out of the communications tower at the proposed location (85' from the Adjacent Bergen Parcel) than if it were located 200' from the Adjacent Bergen Parcel.
- For many months, the applicant explored all other alternative candidates on other parcels in the area zoned A-2, but was unsuccessful due to lack of owner interest.
- The communications tower site will be designed for co-location. Service providers other than Verizon (including those offering wireless home broadband such as T-Mobile and Wireless Internet Service Providers "WISPs") will be able to co-locate on the tower. The surrounding community and commuters on Imhoff Road will be the beneficiaries through increased productivity, quality of life and public safety.
 - Communications Tower Sites are permitted by the City on A-2 parcels.
 - Adjacent Bergen Parcel and Subject Bergen Parcel are zoned A-2. The primary use of both parcels is agriculture. The City's code does not contain a setback restriction for A-2 parcels without residential structures. There happens to be a residential structure on the Adjacent Bergen Parcel, but given the thoughtful positioning of the tower in a grove of trees and out of a certified organic grazing pasture that's shared amongst the Adjacent Bergen Parcel and Subject Bergen Parcel this residential structure is not any more impacted than it would be with the tower located anywhere else on either parcel.
 - There would be negative impacts to the landowner, the broader community and to the applicant of placing the tower site in a certified organic grazing pasture, in a Zone A floodplain and more prominently in the view plane of the highest-trafficked vantage



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points; any combination of which would be the case in a move away from the east parcel line of the Adjacent Bergen Parcel

- The owner of the Subject Bergen Parcel, the same owner as the owner of the Adjacent Bergen Parcel, is in support of the project, and wants the tower as sited on the Subject Bergen Parcel because doing so creates the lowest impact on the Bergen's combined landholdings.



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Photo Exhibit 1

Verizon Search Ring to fill significant coverage gaps

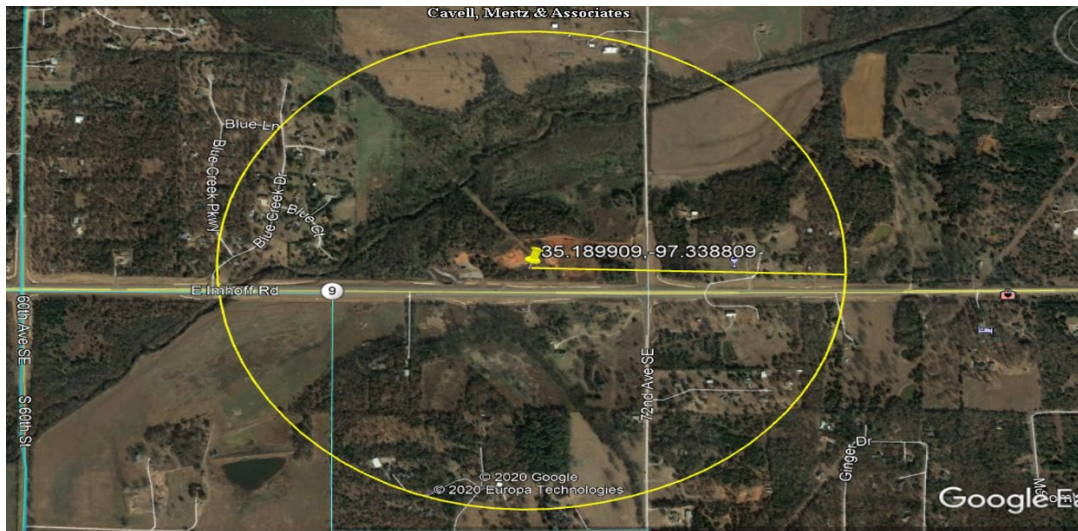


Photo Exhibit 2

Verizon coverage without proposed tower:

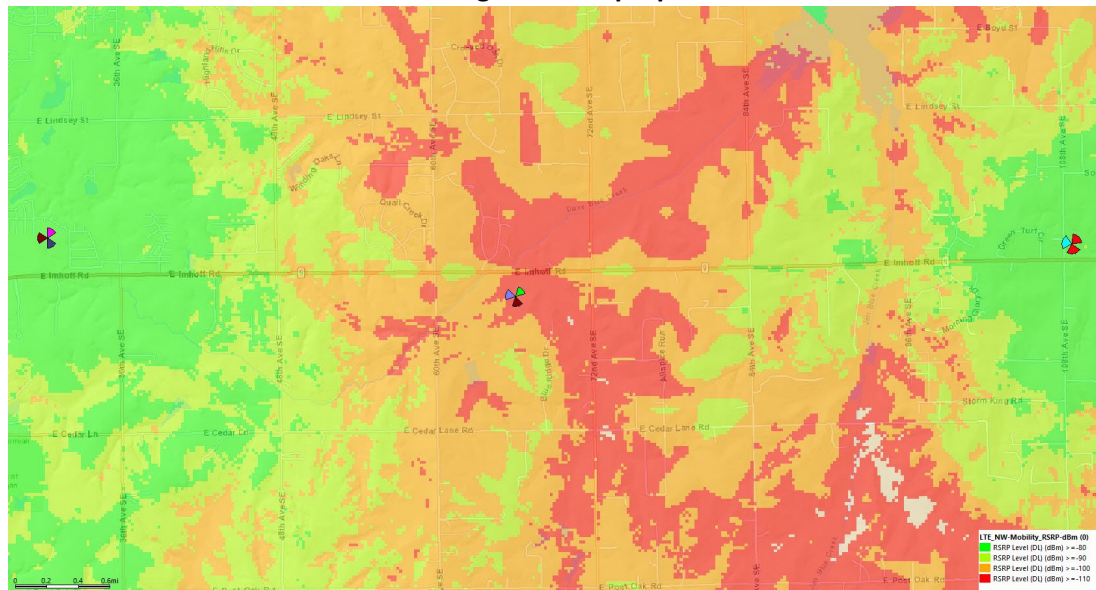


Photo Exhibit 3

Verizon coverage with proposed tower:

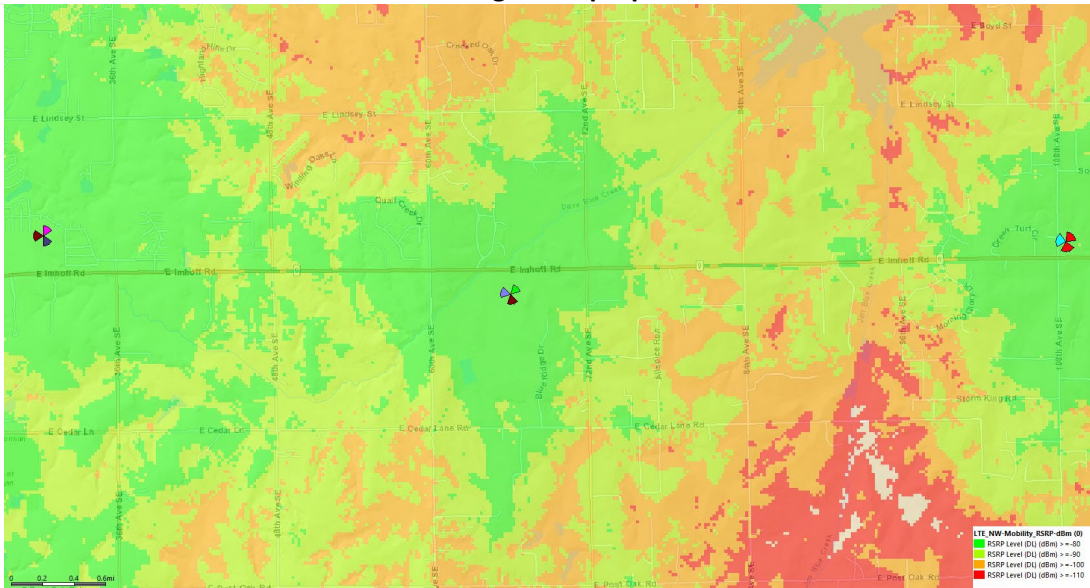
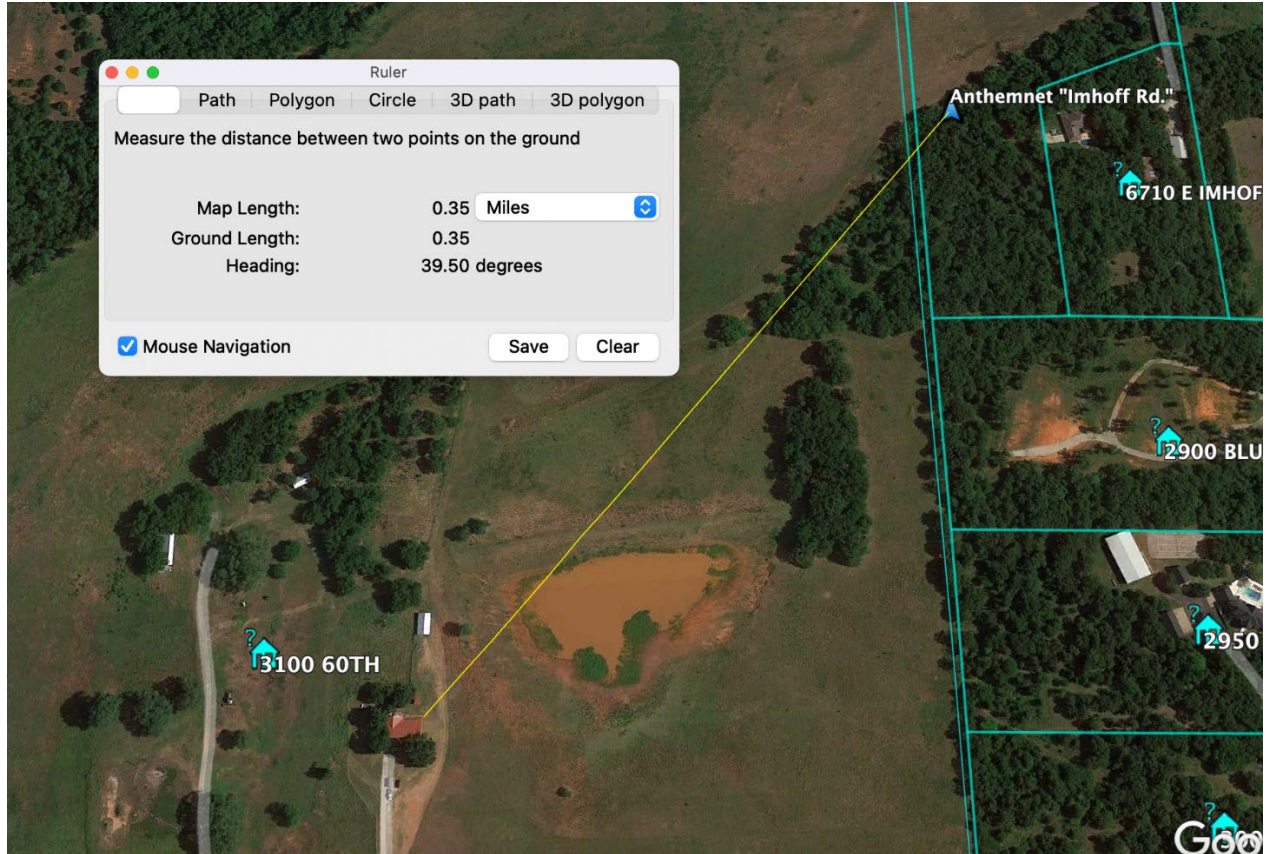


Photo Exhibit 4

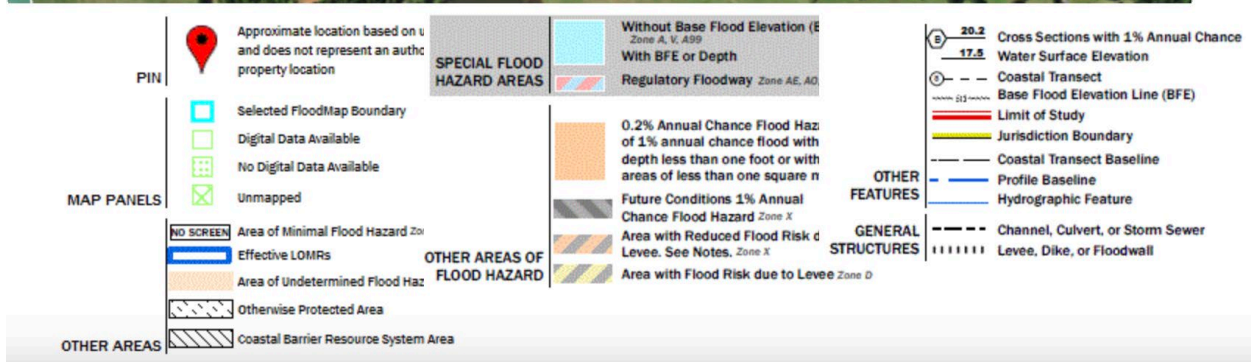
Proposed Tower Site is over 1/3 of a mile from the Residence on Adjacent Bergen Parcel



Bergen Holdings LLC owns the overall Subject and Adjacent (west) properties, both zoned A-2 for Agricultural use. If applicant were to shift the proposed tower location west 100', to be within the "Adjacent Bergen Parcel", there are no property setbacks of 200' to the easterly property line, since there is not a house on the "Subject Bergen Parcel".

Photo Exhibit 5

Aerial view of both Subject Bergen Parcel and Adjacent Bergen Parcel, showing floodplain parameters



By strategically placing the tower in the elevated area within the grove of trees, the applicant is intentionally avoiding the potential flooding that will occur within this floodplain.