

**SWS, LLC**  
PO Box 18 • Kimball, SD 57355



Vick Fisher  
Planning Manager  
Rapid City Growth Management Department  
300 Sixth Street  
Rapid City, SD 57701

**RE: 4616 Jackson Blvd PD Amendment and Fence Height Exception**

Dear Mrs. Fisher,

It is our understanding that during the recent public works hearing on June 9<sup>th</sup>, a new issue regarding landscaping and erosion control was presented by John Skulborstad as being his main concern regarding the fence exception and SWS's attachment and improvements within the Verizon lease area.

It is also our understanding that Mr. Skulborstad does not want SWS to access his property beyond Verizon's lease area or easements. Given this, SWS is reluctant to participate in any repairs or improvements outside Verizon's lease or easement area. However, SWS will agree to fix the following items as identified below if granted written access by Mr. Skulborstad within fourteen days following approval of our zoning application.

The items we have identified based on a recent email and photographs from Mary Bosworth from Growth Management are:

- Apply 3 ton of 2" – 3" rock of colors similar on top of the existing rock along the east edge of the existing curb and gutter to the Verizon site access. This should aid in keeping the existing rock in place and add to the overall rock coverage.
- Remove the existing rock around the power pole and telco pedestal and apply weed fabric underneath. Then re-apply the rock.

- Reseed the approximate 20 s.f. area just north of the power pole and apply straw on top of the reseeded. Then place approximately 20' of straw waddle on the downhill slope of the reseeded area.
- Plant a medium sized deciduous tree at the location identified in the attachment provided to us from Vicki Fisher with the variety picked by the Rapid City Planning Department.

It is our understanding that these items above were identified by Mr. Skulborstad as his primary concern. If Mr. Skulborstad is in agreement we would anticipate that he has no further issue with SWS's eventual approval and co-location at the site.

We are sending this letter via email as we understand that resolution of the issue is needed prior to the Monday, June 15<sup>th</sup>.

Regards



Mark Benton, President

RICHARD A. CUTLER  
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June 19, 2009

JEAN BROCKMUELLER, CPA (Inactive)  
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VIA U.S. MAIL AND EMAIL TO [Vicki.Fisher@rcgov.org](mailto:Vicki.Fisher@rcgov.org)

Ms. Vicki Fisher  
 Planning Manager  
 Rapid City Growth Management Department  
 300 Sixth Street  
 Rapid City, SD 57701

*Re: 4616 Jackson Blvd PD Amendment*

Dear Ms. Fisher:

This firm serves as General Counsel to SWS, LLC, a South Dakota limited liability company ("SWS"). This letter is intended to summarize the position of SWS and its version of events regarding its submittal to co-locate wireless communications facilities at the Verizon facility at 4616 Jackson Boulevard (the "Co-location Submission").

SWS understands it is the City's policy to have any instances of non-conformance fixed prior to submitting an application to the Planning Commission. The instances of non-conformance claimed in regard to the Co-location Submission were initially presented by Mr. John Skulborstad at the public works hearing held on June 9, 2009 and reaffirmed by a subsequent visit by Planning Staff.

At the City Council Meeting held on June 15, 2009, SWS offered to repair the instances of non-conformances at its own expense. SWS's offer was conditioned on Mr. Skulborstad granting access to the property and supporting the Co-location Submission. Mr. Skulborstad stated at the hearing that he would still not support the project even if the items were fixed and would still request that SWS' submittal be denied based on principal. This leaves SWS in the predicament of being required by the City of Rapid City to pay the cost of repairing damage that SWS did not cause in order for SWS to obtain a building permit that it has no assurance of being able to obtain because the landlord is actively opposing the grant of the permit in violation of his own signed lease agreement for reasons which will be addressed later in this letter.

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Since the June 15, 2009 City Council Meeting, SWS has reviewed the pictures and statements provided by staff regarding the non-conformance. SWS estimates the cost to repair the non-conformances to be approximately \$1,500. If SWS is granted a building permit to proceed at this site, SWS proposes to post a performance bond for the estimated cost of these repairs. The City of Rapid City would be entitled to access the performance bond 180 days after SWS receives the building permit if SWS has not already repaired the problems itself by that time. This proposal provides assurances to the City of Rapid City and Mr. Skulborstad that the instances of non-compliance will be repaired, while still not obligating SWS to repair damage it did not cause when it is not even assured it will ever have the benefit of using the property.

SWS anticipates that Mr. Skulborstad will reject this proposal and continue to resist the Co-location Submittal. Based upon prior negotiations with Mr. Skulborstad, SWS believes that the motivation for his opposition comes down to one thing, additional rent. The problem with this position is that Mr. Skulborstad signed a written lease agreement with Verizon Wireless. That written contract permits Verizon Wireless to sublease space on its tower to other tenants, such as SWS. Mr. Skulborstad's problem with the written agreement he signed is that it does not provide for any additional rent to him if Verizon subleases space on its tower or on any of the adjacent land already leased by Verizon. Mr. Skulborstad may not like that deal now, but it is nonetheless what the written agreement he signed and agreed to requires.

It is also worth noting that this is not the first co-location application to be submitted in regard to this site. Alltel has previously co-located its facilities there. There also were instances of non-compliances during Alltel's zoning process, in fact some of the same conditions now complained of existed then too. However, there was no apparent opposition from Mr. Skulborstad at that time. This is easily explained as Alltel, which also subleased from Verizon, needed additional land beyond that already leased by Verizon to place its equipment on. Alltel had to lease that additional land from Mr. Skulborstad and paid him accordingly. SWS does not need any additional land. Mr. Skulborstad is not being asked to give up anything, but only to abide by the written agreement he signed with Verizon. He has already leased his property to Verizon. Verizon is only subleasing its interest and no additional compensation is due Mr. Skulborstad.

The course of SWS's negotiations with Mr. Skulborstad over the last several months also supports the conclusion that these ongoing complaints are nothing more than a tactic to cause delay in order to extract additional rent. The first meeting SWS had with Mr. Skulborstad was on approximately December 15, 2008. In this meeting SWS asked him to sign the zoning application. He then stated that he would not sign the zoning application unless SWS agreed to sign a lease with him and pay him a significant amount per month. He also stated that the zoning application requires a PD amendment and SWS could not get approval without his support. There was no mention of any Verizon non-compliance issues at that time or at any time prior to the meeting held on June 9, 2009 nearly six months later.

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SWS does not need a lease with Mr. Skulborstad, only a sublease with Verizon. Since the rent which he demanded, when combined with the sublease rent SWS must pay Verizon, was prohibitive, SWS inquired with the City as to whether it was necessary to have the Mr. Skulborstad sign the zoning application. The City Attorney responded with a determination that the signature was not needed. During the Public Works Hearing held on June 9, 2009, the City Attorney stated that requiring a landowner's signature has not always been policy and is not ordained in any city code or ordinance, thus the allowance to have Verizon sign instead of Mr. Skulborstad. It was only then that the issue of non-compliance was raised.

As of this time, SWS has entered into a sublease with Verizon. According to the lease agreement that Mr. Skulborstad signed with Verizon, it has the right to sublease at its "sole discretion." When Verizon subleases its rights to a third party, no additional rent is due to Mr. Skulborstad according to the written lease he signed because no additional portion of his land is being used. In spite of his written agreement with Verizon, Mr. Skulborstad persists in demanding additional rent and conditions his signature on that payment. SWS believes that the current issues of non-compliance are nothing more than a delaying tactic in the hope that SWS either gives in and pays rent when it is not required to do so or moves on to another site.

Wireless carriers are required to co-locate or prove that there is no suitable pole or tower within one mile of the desired site. Technically the site works well. However, if denied the only option is to build a tower location in the Canyon Lake area, which is an area where proliferation of towers would not be welcomed. Verizon received zoning approval to build a three-carrier pole, which was supported by Mr. Skulborstad. Rapid City City Ordinances require three carrier poles in an effort to minimize tower proliferation. However, three-carrier poles are significantly more expensive than one-carrier poles. One of the reasons to have subleasing rights is to recoup the cost to build a three-carrier pole. Verizon should be permitted to do so.

It has also been represented by Mr. Skulborstad that the City should view this case as Rapid City standing strong against Verizon, a large corporation. Nothing could be further from the truth. Verizon is only utilizing the rights granted to it by Mr. Skulborstad in a written agreement signed by him. The company being adversely affected and put in an impossible position is SWS, a company owned entirely by nine South Dakota based local telephone cooperatives, including Golden West Telecommunications. All of which are owned by their members, who are overwhelmingly South Dakotans.

SWS would like to resolve this situation reasonably. SWS did not cause the current instances of non-compliance that are now holding up its application. However, SWS is willing to take responsibility for repairing them and will post a performance bond for the estimated cost of \$1,500.00. However, before SWS is willing to commit to rectify a problem it did not cause, it must be assured that it will have the beneficial use of the property in question. SWS therefore respectfully requests that its application for a building permit be granted based on the condition

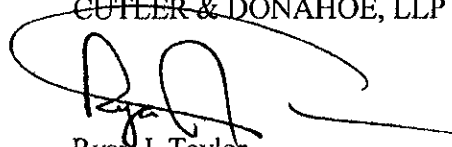
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that it post a performance bond for the repair of non-conformities for the estimated cost of \$1,500.00.

If you have any questions regarding this matter please feel free to contact me at your convenience at (605) 335-4950. Thank you for your consideration and assistance with this matter.

Sincerely,

CUTLER & DONAHOE, LLP

A handwritten signature in black ink, appearing to read 'Ryan J. Taylor', is written over the printed name. The signature is stylized with large, sweeping loops.

Ryan J. Taylor  
For the Firm