

Sent: Friday, July 22, 2022 2:28 PM

Subject: Letter to the Marine Planning Commission

22 July 2022

Dear Members of the Marine on Saint Croix Planning Commission,

I write to oppose the variance application for the proposed placement of a Vinco cell tower on the city's compost site.

You (and Vinco) wish to construct a cell tower in a location that does not meet the minimum setback requirements as specified by the wireless communication ordinance adopted by the city on October 14, 2021. So, you seek a variance from these requirements.

But you have not established that there are "practical difficulties in complying with the zoning ordinance" as written, difficulties specified by the three-part test for a permissible variance as determined by the State of Minnesota (Minn. Stat. 462.357. subd.6.2). All three tests must be met before a variance can be granted, and yet it is not altogether clear that any one of them has been.

Reasonableness. Are there good reasons to place the cell tower here and not elsewhere, reasons strong enough to warrant an exception to the setback ordinance, reasons that generate a *necessity*, such that the city can *only* place it here? No. Obviously not. The public works site offers a reasonable alternative, one that would secure the better cell service that the MPC desires but without requiring an exception to the city's cell phone zoning ordinance.

But there's more. If the variance is granted and the city council votes to place Vinco's cell tower at the compost site, in a few years' time, the city's drain field will have to be placed right up against my property line, threatening me and family with stench and sewage run-off during heavy rains and with nitrates and other pollutants in our well water. How (then) can it be reasonable to grant this variance and generate these threats when the public works site offers a reasonable alternative for the cell tower?

Well, you might say, it's because the compost site, apparently, will provide better cell coverage than the public works site. Perhaps it will, but 'better' is an imprecise test. The coverage map that I have attached indicates that a cell tower placed at the public works site will substantially improve cell coverage in Marine. And, crucially—this is my point—placing it there would secure that improved service but without threatening me or any other property owner with undue burdens and without generating conflicts with city ordinances. How then can this variance request be reasonable?

Uniqueness. Here the question is whether the problem with the compost site for which the MPC and Vinco seek a variance regards physical characteristics that are unique to the site itself. Again, the answer is no. There is nothing about the physical characteristics of the compost site—its topography or its other natural features like wetlands or trees—that create a problem for which a variance is required as a solution. No, the problem is that the compost site is too close to both Highway 95 and Wm. O'Brien State Park to place a cell tower in it. But *this* problem does not regard physical features unique to the property; rather, it regards the whole property itself. There are no unique features of the compost site that create the problem for which a variance is the solution. No, the problem is with the compost

site. How then can we conclude that the uniqueness test has been met, when the problem is not some unique feature of the site but rather the site itself?

Essential character. Here the question is whether the variance, if granted, will alter the essential character of the locality. Will a cell tower in the compost site fit into the surrounding area or will it create excessive impacts or changes in the area around it? Yes, it will. As I have said, moving the city's drain field to the border of my property will be a direct and unavoidable consequence of placing the cell tower in the compost site. There is no other place for that drain field, and placing it there will create an excessive negative impact on the quality and value of my property and the health and well-being of my family.

So, the variance request fails the State of Minnesota's three-part test.

I also oppose the variance application on procedural grounds. When a variance application comes before the MPC, its members exercise "quasi-legal" authority. When they apply the three-part test for an acceptable variance as specified by the State of Minnesota, they act like a judge in evaluating the application and the related facts against this legal standard and in light of the city's zoning codes and ordinances.

In ordinary cases, they exercise this judicial authority with no interest of their own. Their only desire is that the petitioner's application will be judged objectively, with due attention to the facts, the city's codes and ordinances, and the State's three-part test. It is this disinterestedness and this commitment to objectivity that allows the citizens of Marine to assume that their petitions will be judged fairly.

But this is not an ordinary case. On behalf of the city, MPC is seeking a variance from the city's own ordinance, which means that the MPC functions as both petitioner and judge, as both the party with an interest in securing the variance and as the officials whose judgment must be disinterested. You cannot have it both ways. You cannot petition yourself for a variance to your own ordinance, and then claim that your judgment was both fair and objective.

I say all of this with gratitude for the work you have done on behalf of the city.

Respectfully yours,

John Bowlin
Marine on St. Croix, MN

Sent: Saturday, July 23, 2022 2:22 PM

Subject: Re: Letter to the Marine Planning Commission

23 July 2022

Dear Members of the Marine on Saint Croix Planning Commission,

I write to offer an additional reason for concluding that Vinco and the MPC have not met the reasonableness test for an acceptable Variance.

In Minnesota, a Variance can be granted only when the hardship was not caused by the applicant. For example, when a property owner applies for a Variance because they wish to build a house that in some way violates a zoning ordinance---the house is too big (let's say) and it encroaches on a required setback---the hardship for which they seek relief was, obviously, self-created. They do not have to build a house of this size or that encroaches on this setback. Other options are available that do not create this hardship and that do not require the Variance.

Vinco and the MPC find themselves in a similar circumstance, where they have created the hardship for they seek relief. They seek a Variance because they wish to put up a cell tower that violates the MPC's own ordinance. The cell tower will encroach on required setbacks and thus cannot be built without the Variance. But the encroachment, and thus the hardship, was *caused* by the applicant, by Vinco and the MPC. Since there are other placement options available that do not require this Variance, that do not create with this hardship, the reasonableness test has not been met.

Sincerely yours,

John Bowlin
Marine on St. Croix, MN

Sent: Saturday, July 23, 2022 8:50 AM

Subject: Request for Environmental Review - State Park System

To: Mayor
Planning Commission Members
City Council

Dear officials:

When I told a friend about your desire to build a cell phone tower in the drain field, a few feet away from O'Brien State Park, they said: "Why? The only reason I travel to the park is to get away from towers and the like and enjoy the outdoors"!

The State Park system said they would do an environmental impact statement if it was so requested by the city of Marine. I am asking that you do so in order to cover all the bases before you start construction of the tower.

Here is the contact information that you need to initiate the request:

"But if the city requests an environmental review, the state will do one.
wayne.boerner@state.mn.us"

Thank you,

Jon Fogelberg
Marine on Saint Croix MN 55047

Sent: Monday, July 25, 2022 12:47 PM
Subject: Feedback for Cell Tower 7/26/22 Hearing

Dear Planning Commission Members and City Council Members,

We are writing in regard to the July 26, 2022 public hearing for the variance request for construction of a 4G tower at the city compost site.

We are suggesting that the city leaders deny this variance request.

Pursuant to (Minn. Stat. 462.357. sub.6.2) variances should only be permitted when the following are met:

Reasonableness:

What is reasonable about the city placing a cell tower at the compost site? Here are the unreasonable reasons. The landowner to the south of the city owned compost property will have full view of the 180ft cell tower. Because of this, the city is going against its comp plan general guiding principles of "continue to be a good steward of the City's natural resources...and to preserve and maintain contiguous common open spaces for scenic enjoyment, recreational use, environmental stewardship and rural identity."

In addition, to make room for the cell tower at the compost site, the sewer reserve drain field is being positioned directly next to this same landowner. What about their quality of living within feet of a sewer drain field and the impact on their well water quality? What many of the city leaders are not aware of, is when the city built the original drain field in 1984/85, the surrounding neighborhood to the drain field retained legal counsel so that they would be protected from any potential contamination to their residential water wells from the drain field. On May 9, 1985 the city signed resolution order 85-05-01 and agreed to annual testing of 11 homes within 1/4 mile of the drain field. Testing of individual wells continues until two years after the original drain field is sunsetted. It is inconclusive right now as to what the nitrates and chlorides are currently reading, the city is currently working on updating these test results.

We feel too many unknowns regarding current and future water quality issues right now to grant this variance, so one cell provider can locate on prime land for a cell tower for 4G only. Is this a reasonable risk to take? Do any other of the 12 sites have this level of risk impacting health and wellness?

A Verizon tower is already located 2-3 miles to the south, and T-Mobile tower is 2-3 miles to the east. Why would these companies want to co-locate on a tower being 2nd or 3rd tier on a pole? Is this a reasonable expectation that other companies will co-locate on this tower?

You have not proven that this variance request is reasonable?

Uniqueness

I can't think of anything that makes this site unique to build a cell tower on. Two facts, it is city owned and is home to the sewer drain field, originally built in 1984/85. Shouldn't safety continue to be the priority along with the best placement of the next sewer drain field? Shouldn't the compost property be strictly unique to fulfill the objectives of the city's wastewater treatment goals?

The city has not done due diligence to recognize the importance of the sewer reserve area or proven why the compost property is so unique to locate a cell tower.

Essential character

If the cell tower is built on the compost site, it will go against your vision statement in your comp plan to value natural resources and community. As your comp plan states, the city commits to “protect the natural areas by carefully zoning specific areas for further development.”

If the cell tower is built on the compost site it will immediately impact the essential character of that site in a negative way, specifically pushing the sewer reserve drain field next to the resident to the south who already will have clear visibility to the cell tower. Priority land is being given away for a one provider cell tower without even determining if the reserve area will even be feasible. City of Marine leaders-where is plan C if the sewer reserve area where you are proposing doesn't work out?

Deny this variance and either go back to the table and review site locations or wait for satellite technology.

Thank you for all that you do. We ask that you procedurally do the correct thing and also honor the city's comp plan that you authored.

Sincerely,

Mary Burke and Roger Lyle
Marine, Mn. 55047

Sent: Tuesday, July 26, 2022 4:15 PM

Subject: cell phone tower

To whom this may concern

I am writing this email to let the people know as an owner of the Brookside Bar and Grill on Marine on St Croix why I think the cell phone tower is a benefit to the community.. As a mother of two girls I feel the need to have coverage for safety is a huge part in why I think we need one here.. Whether it's for a flat tire, an accident or a quick call to let me know they are on their way and are safe its a comfort knowing as a parent that they will have coverage. I also think with the rising number of people working from home and students as well this would be a huge benefit to the community for when people are considering on moving here to the town of Marine So my vote is yes

Thanks for listening

Courtney Taylor