May 3, 2021

Planning Commission
City of Rapid City
300 6th Street
Rapid City, SD 57701

Re: Verizon Wireless Application for Conditional Use Approval
Major Amendment to Planned Development Overlay
Loftus Dental Property at 5615 Nugget Gulch Road
(Verizon Ref. RCY SW Rapid City)

To the Members of the Rapid City Planning Commission:

Our law firm represents Verizon Wireless, and we have been asked to explain how Verizon Wireless’s application for the approval of a conditional use for the proposed Verizon Wireless communications facility ("Facility") at the Loftus Dental Property along Catron Boulevard complies with the requirements set forth in the Rapid City Zoning Ordinance ("City Code") and State and Federal law. As the application complies with the City Code and State and Federal law, Verizon Wireless respectfully requests approval of the conditional use for the site, which will result in an urgent and important improvement to Verizon Wireless’s phone service in this part of the City. Please include this letter as part of the public record.

**Verizon Wireless’s application is consistent with the stipulations of the Final Planned Development Overlay for Loftus Dental.** On May 21, 2015, the Planning Commission approved the Final Planned Development Overlay for Loftus Dental with three stipulations: (i) a revised landscaping plan in lieu of fencing; (ii) a prohibition of LED signage; and (iii) that all requirements of the General Commercial District shall be continually met and that all conditional uses shall require a Major Amendment to the Planned Development. As explained below, Verizon Wireless’s application will not interfere with the existing landscaping, and Verizon Wireless will comply with the City’s landscaping regulations for the proposed communications facility. Verizon Wireless’s communications facility will not use LED signage; the only signage will be the required FCC safety notice labels. Finally, in the General Commercial District, pursuant to Section 17.18.030, Subd. 18, Verizon Wireless’s proposed cellular communication station and transmission tower is a conditional use, and therefore a Major Amendment to the Planned Development is required.

**Verizon Wireless’s application complies with the requirements of the General Commercial District and the City Code requirements for a conditional use.** Verizon Wireless proposes to install an 80-foot tall, painted monopole with antennas and equipment mounted on short standoffs upon the Loftus Dental property, and the Facility will be served via a new driveway on Bendt Drive. The Facility complies with all the general requirements of the General Commercial District and as explained below, the proposal complies with all the criteria for a conditional use as outlined in Section 17.54.030 of the City Code.
1. The proposal is consistent with the location, character and natural features of the property. After numerous design iterations and consultations with a civil engineer, the proposed design and location for the Facility was agreed upon by Dr. Jeff and Amy Loftus. A design and location that was harmonious with the Loftus Dental office and property was of primary concern.

2. The proposal is consistent with location, character and design of adjacent buildings. The site is located in a General Commercial zoning district adjacent to the Stoney Creek Auto Spa, two dental offices and a pizza delivery business. Monopole installations are often located in these areas as they are not considered inconsistent with commercial uses.

3. The proposed facility will have adequate screening and landscaping. Verizon Wireless intends to preserve existing on-site vegetation to the greatest possible extent and the existing landscaping will not be affected. Three (3) Black Hills Spruce trees, six (6) or more feet in height at the time of planting, are proposed to be planted north and west of the proposed Facility, consistent with the enclosed site plans. At the time of this application, should the City of Rapid City find that the proposed plantings do not satisfy the landscape requirements indicated in City Code section 17.50.300 (Landscape regulations), the landscaping plan will be adjusted accordingly to meet those requirements.

4. The proposed facility will not adversely interfere with existing vegetation, topography and natural drainage.

5. The proposed facility will have adequate vehicular access, circulation and parking. A new driveway on Bendt Drive will be constructed, and the site will have parking and turnaround space for a maintenance vehicle.

6. The proposed facility will not impact existing traffic. Minimal additional traffic will be generated by the addition of the Facility.

7. The proposed facility will have required FCC safety labels and no lighting or other signs.

8. Adequate electrical and telco/fiber facilities are available to service the site.

9. The objectives of the adopted comprehensive plan and the purpose of the City Code are met.

a. The proposed communications facility is consistent the comprehensive plan objective to address infrastructure needs in neighborhoods so that Rapid City will continue to become a more livable, vibrant, and desirable community in which to live, work, contribute, and play. For many years there has been an urgent and important need to improve the wireless infrastructure in this part of the City. Likewise, the proposed facility will promote a safer community as over 80% of 911 calls are made with wireless phones. The proposed facility will also support future growth as the proposed facility is efficient, cost-effective and can be modified to support increased capacity and new technologies. Consistent with comprehensive plan objectives, the facility is also designed and constructed with materials that will remain durable in Rapid City's climate. The
proposed facility will help foster a strong and diverse economy as both employers and employees demand high quality wireless service at home, at the office, at remote work sites and while traveling. Finally, the proposed communication facility promotes the development of the mixed use commercial Community Activity Center at the nearby intersection of Catron Boulevard and Sheridan Lake Road by providing the robust wireless phone and data coverage that residents, businesses, shoppers and office visitors demand.

b. The purpose of the General Commercial District is for personal and business services and the general retail business of the city. Verizon Wireless is a business that provides communication service to residents, visitors and businesses in the area. The proposed Facility is also consistent with the general purpose of the zoning ordinance to promote the safety, health, convenience and general welfare and to encourage the use of lands in accordance with their character, adaptability and suitability for particular purposes.

10. The proposed facility complies with the applicable density, yard, height and other requirements for the General Commercial zoning district.

11. The proposed facility will produce no adverse noise, odor, smoke, dust, air or water pollution.

12. Additional conditions should not be needed to mitigate any probable adverse impacts of the proposed use on existing adjacent uses. Again, the design and location were carefully chosen by Verizon Wireless and Dr. Jeff and Amy Loftus to be consistent with the Loftus Dental office site plan and neighboring commercial uses.

Verizon Wireless's application complies with South Dakota state law. South Dakota Codified Law Section 11-4-4.1 provides that a municipal zoning ordinance shall specify the zoning districts in which a conditional use is available and the criteria for evaluating each conditional use. The approving authority shall consider the stated criteria, the objectives of the comprehensive plan, and the purpose of the zoning ordinance when making a decision to approve or disapprove a conditional use request. Id. Also, the South Dakota Supreme Court has held that the denial of a conditional permit will be "arbitrary and capricious" and overturned if it is based on false information or is characterized by a lack of relevant and competent evidence to support the action taken. See M.G. Oil Co. v. City of Rapid City, 793 N.W.2d 816 (S.D. 2011). There must be "substantial evidence" to support the findings and vague reservations expressed by council/commission members and nearby landowners are not sufficient to provide factual support for a Board decision. Id. The South Dakota Supreme Court also stated that predictions and prophecies by neighboring property owners that a facility when completed will likely become a nuisance and annoyance cannot serve as a legal reason for local governments to deny a permit to persons otherwise entitled thereto. Id. As explained above and in the other materials submitted with the application, Verizon Wireless's conditional use request complies with the stated City Code criteria, the objectives of the comprehensive plan, and the purpose of the zoning ordinance. Therefore, the application must be approved pursuant to State law.
Verizon Wireless’s application complies with federal law. Likewise, pursuant to the 1996 Telecommunications Act, a decision by a local government to deny a request to place or construct a wireless service facility shall be in writing and supported by substantial evidence contained in a written record. 47 U.S.C. §332(c)(7)(B)(iii). Pursuant to the “substantial evidence” requirement, a local zoning authority does not have the discretion to deny a permit to construct a wireless tower if the proposal meets the relevant standards within the zoning regulations. See Sprint Spectrum, L.P. V. Platte County, Missouri, 578 F.3d 727 (8th Cir. 2009). Again, Verizon Wireless’s proposal meets the relevant zoning standards.

The federal Telecommunications Act also provides that a municipality’s decision on the placement or construction of a wireless service facilities shall not prohibit or have the effect of prohibiting the provision of personal wireless services. 47 U.S.C. §332(c)(7)(B)(i). The Federal Communications Commission (“FCC”) has clarified that an effective prohibition occurs when a local requirement or decision materially inhibits a wireless provider’s ability to fill a coverage gap, densify a wireless network, introduce new services or otherwise improve service capabilities and quality. See In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment at ¶37, Declaratory Ruling And Third Report And Order, September 26, 2018.

As explained in RF engineer Rick Dobbe’s letter that was submitted as part of Verizon Wireless’s application, Verizon Wireless’s coverage in the area of the proposed Loftus Dental site is inadequate to provide the needed service quality. Specifically, there are areas in which the signal strength is too low to provide indoor coverage and, in many cases, even the outdoor or in-vehicle coverage is spotty. When the signal strength is this low, there is low data throughput, resulting in applications on the phone not working properly, poor audio quality and dropped calls (or the inability to place or receive calls). In addition, in areas like this where there is not an existing macro site, the only coverage available is from sites up to several miles away. This creates domino effects to the sites that now provide service to a much larger area and many more users than there is radio broadcasting bandwidth to support. The maximum number of simultaneous users that can be supported by a single cell or sector is limited, so over-extending an existing coverage area even results in poor service to users in close range of the over-extended sites.

As explained by Mr. Dobbe, the proposed Loftus Dental site will materially improve these wireless service coverage issues, and Verizon Wireless has proven that there are no feasible alternatives. Therefore, a denial of the requested conditional use application would be inconsistent with 47 U.S.C. §332(c)(7)(B)(i) because it would materially inhibit Verizon Wireless’s ability to densify its network and otherwise improve its wireless service capabilities and quality in this area of Rapid City.

Finally, the federal Telecommunications Act expressly preempts a local permitting authority from considering health issues as part of the permitting process as the FCC has exclusive authority over this issue and, in consultation with the EPA and other federal health experts, has established detailed regulations to ensure the safety of the public and workers. See 47 U.S.C. §332(c)(7)(B)(iv). Of course, Verizon Wireless fully complies with these FCC regulations, including those specifically related to the power and frequency of the radio broadcast signals at the facility.
Conclusion. The proposed installation at Loftus Dental will help solve an urgent and important need for improved Verizon Wireless phone service in southwest Rapid City. As the application complies with City, State and Federal law, Verizon Wireless respectfully requests approval of the conditional use for the site. I will be in attendance at the Planning Commission meeting to answer questions related to this letter and the conditional use application.

Sincerely,

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