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May 29, 2020

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By Email

Chairperson Bruce Flower and
Members of the Planning Board
20 Middlebush Road
Wappingers Falls, NY 12590

RE: Tarpon Towers II, LLC
Proposed Wireless Telecommunications Facility at 110 Chelsea Road
Parcel # 6056-03-339420

Dear Chairperson Flower and Members of the Planning Board:

This letter is respectfully submitted on behalf of our client, Tarpon Towers II, LLC (the "Applicant") in furtherance of its application for site plan, special permit, wetlands permit, and area variance approvals to install a new wireless telecommunications facility (the "Facility") at 110 Chelsea Road in the Town of Wappinger, New York (the "Property").

In particular, the Applicant hereby provides the following information and materials in anticipation of the continued public hearing on July 6, 2020, the adoption of a SEQRA Negative Declaration that evening, and in response to the public comments from the May 18, 2020 Planning Board public hearing.

The Proposed Wireless Facility Complies with Federal RF Emissions Standards

As the Planning Board is aware from its review of other wireless applications, Congress enacted provisions in the Telecommunications Act which explicitly preempt state and local regulation of the placement, construction and modification of "Personal Wireless Service Facilities". The most relevant preemption at this time is the fact that local regulations may not regulate the placement, construction or modification of personal wireless service facilities on the basis of the "environmental effects of radio frequency emissions" as long as the facilities meet standards set by the FCC. See The Telecommunications Act, 47 USC § 332(c)(7)(B). The Applicant has met those standards and the Town Wireless Consultant has confirmed this fact.

Indeed, the Applicant included as part of the November 2019 submission, an RF Compliance Certification (dated October 31, 2019), and an RF Non-interference Letter (dated October 15, 2019). These materials were reviewed by the Town retained RF Engineering Consultant – Mr.



May 29, 2020

Page 2

Douglas Fishman. In his March 6, 2020 Reviewing Memorandum, Mr. Fishman required the Applicant to provide additional information relative to the precise calculation of FCC RF Emissions Compliance in accordance with the FCC OET Bulletin No. 65 methodology even though he acknowledged that no issues with respect to RF compliance were expected or anticipated from this application due to the height of the monopole relative to the accessible area in and around the site. Thereafter, the Applicant through its representative Michael Crosby, a Verizon RF Design Engineer, provided on April 14, 2020 and April 15, 2020, to Douglas Fishman, as the Town Wireless Consultant, the additional materials requested. As a result, Douglas Fishman issued his April 20, 2020 Supplemental RF Review Memorandum concluding that: (i) the additional emissions information provided consistent with the FCC RF Emissions Compliance criteria enunciated in FCC OET Bulletin No. 65 shows that the site is expected to be about 0.27% of the FCC General Public standard at 6 feet above ground level; and (ii) this site easily meets the FCC guidelines for RF exposure.

No Diminution in Property Values will result from the Construction of this Wireless Facility

The Applicant respectfully submits that the proposed wireless facility will not result in the diminution of property values or reduce the marketability of properties in the immediate area.

In support of this conclusion, please find enclosed a Report previously prepared by Robert G. Pogel, SRPA, of Pogel, Schubmehl & Ferrara LLC, a professionally designated and state certified real estate appraiser with an expertise in property valuation. Although this Report is an outgrowth of consideration of a specific property in the Town of Irondequoit, NY, Mr. Pogel in this Report surveys several types of towers at various heights and proximities to residential properties in several locations within the greater Rochester area of New York State. Based on examination of the sale prices of homes located within view of cell towers in comparison with sales of properties in the same neighborhoods without a view of the cell tower, he concludes that there is no credible evidence that there is any appreciable diminution in value resulting from the location of the cell tower. This finding is consistent with similar studies prepared by Lane Appraisals Inc before other municipal Boards in the Mid-Hudson Region and the State of Connecticut, such as <https://www.ryeny.gov/Home/ShowDocument?id=9888> and https://www.ct.gov/csc/lib/csc/pendingproceeds/docket_366/exhibit_d_to_9_5_08_application.pdf, wherein Lane Appraisals Inc concludes that in its expert opinion and in view of its decades long ongoing study of sales of homes within a close proximity of similar communications facilities in Westchester, Putnam, Ulster, Orange, and Rockland Counties, the installation, presence, and/or operation of wireless facilities will not result in the diminution of property values or reduce the marketability of properties in the immediate area. Lane



May 29, 2020

Page 3

Appraisals Inc's background as appraisers in this field includes New York State licensing as well as the more stringent educational requirements of the MAI designation.^{1,2,3}

The Additional Extension of the Shot Clock

Notwithstanding its original submission of this application on October 9, 2019, the Applicant has consistently based its calculation of the 150 day Shot Clock timeline from its submission on December 23, 2019 of the Visual Resource Evaluation as a result of the Balloon Float on December 7, 2019. As such, the Applicant during the May 4, 2020 public meeting agreed to a 45-day extension of the FCC Shot Clock from May 18, 2020 to July 5, 2020. The Applicant acknowledged in writing this agreement as part of its May 15, 2020 submission. Yet, it is presently awaiting the signature by the Town Planning Board and Zoning Board of Appeals Attorney evidencing the Town's Acceptance and Agreement to Extension of the Shot Clock to July 5, 2020 before counter-signing itself.

¹ It is also worth noting that speculative environmental loss, such as concern for property values, is not an environmental factor under SEQRA. Indeed, as discussed in the SEQRA Handbook (4th Edition), Chapter 5 on Page 114 in the Answer to Question 9, and emphasized in the Decision by the United States District Court for the Western District of New York in Bell Atlantic Mobile of Rochester L.P. v. Town of Irondequoit, 848 F. Supp. 2d 391, 401 (W.D.N.Y. 2012): “[p]urely economic arguments have been disallowed by the courts as a basis for agency conclusions when concluding a SEQRA review by developing Findings. Therefore, potential effects that a proposed project may have in drawing customers and profits away from established enterprises ... a possible reduction of property values in a community, or a potential economic disadvantage caused by competition or speculative economic loss, are not environmental factors.”

² Similarly, the SEQRA Handbook, Chapter 4 on Page 85 in the Answer to Question 34 states plainly in response to the question as to whether a determination of significance can be based on economic costs and social impacts that: “No. A determination of significance is based on the regulatory criteria relating to environmental significance as set out in 617.7(c). Also, the definition of “environment” set out in 617.2(l) includes “physical conditions” that will be affected by a proposed action. For instance, impacts to physical conditions related to community character would include noise, aesthetics, and traffic, and are properly “environmental”. However, potential impacts relating to lowered real estate values, or net jobs created, would be considered economic alone, not environmental.

³ To the extent there is even a scintilla of credible evidence to support any notion of a diminution in property values, it is important to remember that since at least 1993, courts in the State of New York, including the New York State Court of Appeals, have consistently held that FCC licensed wireless carriers are public utilities for zoning purposes, and as such, any decrease is an insignificant factor. Indeed, in Section 24.19 of Robert M. Anderson's treatise *New York Zoning Law and Practice*, it is noted expressly that public utilities “are essential and that they must be permitted to expand although such expansion is accomplished at the expense of some diminution of property values in the immediate vicinity of new installations.” See also Matter of Cellular One v. Rosenberg, 153 Misc.2d 302, 581 N.Y.S.2d 554 (Westchester Co. 1992), affirmed, 188 A.D.2d 648, 591 N.Y.S.2d 526 (2d Dept. 1992), affirmed, 82 N.Y.2d 364, 624 N.E.2d 990, 604 N.Y.S.2d 895 (1993)(“Rosenberg”).



May 29, 2020

Page 4

More importantly, the Planning Board during the May 18, 2020 meeting advised that it was continuing the public hearing on this application to July 6, 2020. This adjournment goes beyond the 1st 45 day Shot Clock Time Extension that the Applicant had provided. Although the Applicant is reticent to grant a further time extension of the Shot Clock, **it is willing to grant a 2nd 45 day Shot Clock Time Extension under 47 U.S.C. § 332(c)(7)(B)(ii) and 47 C.F.R. § 1.6003 to August 19, 2020**, without waiver or prejudice to any of its rights or arguments. The Applicant notes that the Planning Board has 4 scheduled meetings between now and then (i.e., July 6th, July 20th, August 3rd and August 17th) and the Zoning Board of Appeals too has 4 scheduled meetings during that timeframe (i.e., June 23rd, July 7th, July 21st, and August 4th).

Accordingly, the Applicant and the Town by each countersigning below through their respective attorneys are accepting and agreeing to the extension of the Shot Clock to August 19, 2020. This letter may be countersigned in counterparts, which when taken together, shall constitute one instrument. Further, photocopies of signed counterparts, including those transmitted by facsimile or email, shall have the same force and effect as originally signed counterparts. The parties remain free to amend this Agreement; but, any amendment must be in writing.

Conclusion

The Applicant looks forward to its continued public hearing on July 6, 2020. It also respectfully submits that, based on all the materials submitted to date, adoption of a SEQRA Negative Declaration is warranted at that time. Should the Planning Board, its Consultants, or Town Staff have any questions or comments in the interim, please feel free to contact me. Thank you for your time and consideration in this matter.

Very truly yours,

A handwritten signature in blue ink that reads 'Neil J. Alexander'. The signature is fluid and cursive, with the first name 'Neil' being particularly prominent.

Neil J. Alexander

Enclosures

cc: Barbara Roberti, ZEO
Beatrice Ogunti, Secretary to the Planning Board and to the ZBA
James Horan, Esq., Town Attorney
Lisa Cobb, Esq., Town Planning Board Attorney
David Stolman, AICP, Town Planning Consultant
Peter Setaro, PE, Town Consulting Engineer
Douglas Fishman, Town Wireless Consultant



May 29, 2020

Page 5

ACCEPTED AND AGREED TO EXTENSION OF SHOT CLOCK TO AUGUST 19, 2020

For Town of Wappinger, Dutchess County, NY:

By: _____

Lisa Cobb, Esq.

Town Planning Board and Zoning Board of Appeals Attorney

Dated: June ----, 2020

For the Applicant:

By: _____

Neil J. Alexander, Esq.

Attorney for the Applicant

Dated: June ----, 2020