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May 29, 2020

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By Email

Chairperson Peter Galotti and
Members of the Zoning Board of Appeals
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 Galotti and Members of the Zoning Board of Appeals:

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 seeks placement on the agenda of the Zoning Board of Appeals on June 23, 2020** relative to this Application that it originally filed jointly to the Zoning Board of Appeals and the Planning Board on October 9, 2019, and that has been proceeding before the Planning Board for the past seven (7) months, where the Planning Board assumed SEQRA Lead Agency Status for a Coordinated Review without objection on January 22, 2020. The Applicant last appeared before the Zoning Board of Appeals on November 12, 2019, and it made its last formal submission directly to the Zoning Board of Appeals on December 23, 2019.

The October, November and December 2019 Submissions in Support of the Variance

On October 9, 2019, November 1, 2019, and December 23, 2019, the Applicant made a series of submissions jointly to the Planning Board and the Zoning Board of Appeals in support of its various land use entitlements. The October 2019 submission included for purposes of the Zoning Board of Appeals, a completed Area Variance Application Form, a Full Environmental Assessment Form, a Visual EAF Addendum, a Verizon Wireless RF Report (dated September 17, 2019), relevant FCC licenses, a Site Selection Analysis (dated September 17, 2019), and Site Plans prepared by Tectonic Engineering & Surveying Consultants, PC (dated October 3, 2019).



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The November submission included in pertinent part a FAA Certification (dated October 7, 2019), an RF Compliance Certification (dated October 31, 2019), and an RF Non-interference Letter (dated October 15, 2019) as well as a check made payable to the Town of Wappinger in the amount of \$750 representing the Zoning Board of Appeals area variance application fee.

And, the December submission entailed most saliently the submission of the December 23, 2019 Visual Resource Evaluation based on the results of the December 7, 2019 publicly noticed balloon float.

The Proposed Wireless Facility

As previously discussed with the Zoning Board of Appeals, the Applicant has proposed a wireless telecommunications facility for the 28.5 acres portion of Hobbit Hill Farm in the Town of Wappinger classified in the R40/80 zoning district and bearing a Parcel Identification No. of 6056-03-339420. The wireless telecommunications facility will consist of a 150-foot-tall monopole within an approximately 65-foot by 75-foot fenced enclosure. Verizon will install its antennas and other equipment at a centerline height of 146 feet above grade level as well as equipment at grade level within the fenced compound. There is capacity at both grade and on the monopole for other wireless carriers to co-locate. Outside the fenced enclosure but within the 100-foot by 100-foot lease area, the Applicant will install necessary support utilities including a transformer. The Planning Board as Lead Agency has been reviewing the application as to SEQRA compliance and the requested Special Permit for Wireless Telecommunications facilities, Site Plan Approval and local Wetlands Permit.

The Variance Required

An area variance from Section 240-81G(4)(c)(2) is also part of the land use entitlements sought by the Applicant because the tower will be located within 750 feet on a horizontal plane to 6 existing dwelling units. These dwelling units include: (A) 106 Caroline Drive East owned by Ricky Harrison with a Tax Identification No. of 6056-03-261413 at 678 feet; (B) 108 Caroline Drive East owned by Mark Springer with a Tax Identification No. of 6056-03-259396 at 558 feet; (C) 107 Caroline Drive East owned by Luis Merchan with a Tax Identification No. of 6056-03-238390 at 732 feet; (D) 110 Caroline Drive East owned by Seth Flamholtz with a Tax Identification No. of 6056-03-255378 at 550 feet; (E) 114 Caroline Drive East owned by Cynthia W. Lydford with a tax identification No. of 6056-03-250363 at 585 feet; and (F) 116 Caroline Drive East owned by Edward T. Campbell with a Tax identification No. of 6056-03-242352 at 649 feet. On Sheet AD-1 of the Site Plans prepared by Tectonic Engineering, dated October 3, 2019, last revised February 27, 2020, this 750-foot distance from the tower is superimposed over the Adjoiners Plan with the specific limiting distances delineated for the aforementioned, 6 dwelling units and alongside the Adjoiners List.



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The Applicability of the Public Necessity Test And Not the Statutory Area Variance Test

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. 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”).

As a public utility, variance applications are not governed by the typical standards set forth in New York State Town Law Section 267-b. Rather, when a Zoning Board of Appeals reviews an application for a variance by an entity providing public utility services, the law in the State of New York requires that the Board apply the less restrictive standard of “public necessity.” See Rosenberg. Indeed, as set forth by the Court in Rosenberg, the public necessity standard requires that:

[A] balance must be maintained between those interests of the locality which can be expressed by zoning ordinances and the needs of the community which must be served by the utility... [n]ot only is it within the power of the respondent [the Town] to grant a variance, but, the fact the applicant is a utility calls for a balancing of interests.

In short, the “public necessity” standard provides that a Zoning Board of Appeals may not exclude a wireless carrier/public utility from a community where it has shown a need for its facilities.

The materials submitted to date in support of this Application demonstrate that the proposed facility is necessary for Verizon Wireless to provide reliable wireless service and adequate capacity to its customers living in and traveling through this area of the Town. Indeed, without this proposed Facility at the proposed height, Verizon Wireless will be unable to consistently provide reliable wireless capacity and service to the public living in and traveling through this area as required by its FCC licenses.

The Applicant’s variance application conforms to the requirements of the Public Necessity Standard because it establishes that the development of the proposed wireless facility will enable Verizon Wireless to remedy gaps in coverage and capacity that currently prevent it from providing safe, adequate and reliable service to its customers in and around the Town of Wappinger.



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The Town RF Consultant Has Confirmed the Need and the Minimum Height

The Applicant in its October 2019 submission included a Verizon Wireless RF Report (dated September 17, 2019) and Verizon's relevant FCC licenses. As part of the November 2019 submission, the Applicant included 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. Douglas Fishman. In his March 6, 2020 Reviewing Memorandum, Mr. Fishman agreed that from an RF Engineering standpoint the proposed monopole is necessary to improve both capacity and coverage for Verizon in the Castle Hill area in Wappinger. Nonetheless, he required the Applicant to provide additional information as to whether a lower/alternative antenna height was viable, and 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 are 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 Doug Fishman, as the Town Wireless Consultant, the additional materials requested. As a result, Doug Fishman issued his April 20, 2020 Supplemental RF Review Memorandum concluding that: (i) Allowing the monopole to be constructed as proposed is really the best solution to provide the coverage, quality and capacity improvements sought by Verizon Wireless in the Castle Hill area of Wappinger; (ii) Reducing the height would not only decrease the efficacy of the site, but will also increase the likelihood of subsequently needing an additional site in the area; (iii) 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 (iv) this site will easily meet the FCC guidelines for RF exposure.

It is also worth noting that as part of its October 2019 submission, the Applicant included a Site Selection Analysis (dated September 17, 2019) that discussed from a leasing perspective the search ring analysis, potential locations considered, and landlord rejections that collectively substantiated that there were neither co-location opportunities in the vicinity, nor viable large-lot alternative locations.

Accordingly, the Applicant and Verizon respectfully submit that it has demonstrated its need for this wireless facility consistent with the applicable and less restrictive variance standard of "public necessity".



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No Visual Effects on Inventoried or Designated Resources

As noted above, the Applicant submitted on or about December 23, 2019 a Visual Resource Evaluation based on the results of the December 7, 2019 publicly noticed balloon float.

The regulatory review of this application has also included consultation with the New York State Office of Parks, Recreation and Historic Preservation. Indeed, NYS OPRHP issued the included April 30, 2020 Sign-Off Determination substantiating that the proposed wireless facility will have No Effect as a result of new information submitted after a recent additional balloon float and as is consistent with the NYS OPRHP's previous approval for a 154 foot tall tower at this location on January 3, 2018 in File Number 0008041903. The supplemental balloon float pictures relative to Stony Kill Farm and its environs referenced in that Sign-Off Determination are also enclosed.

It is further worth noting that the Original Visual Resource Evaluation, dated December 17, 2019, simulated views of the monopole in Views #1, 2, 3, 5 and 6 of 28. The Applicant also has provided a Supplemental Visual Resource Evaluation prepared by Tectonic Engineering that was initially submitted to the Planning Board as the SEQRA Lead Agency. The Supplemental VRE builds on the Original VRE and provides photosimulations of a monopole, a monopine, and a blue monopole from Views #3 and 5. Reference to these views, which are approximately 1,540 lineal feet and 730 lineal feet away, respectively, reveals the benefits of a monopole over a monopine in that the darker colored, monopine with its significantly wider silhouette creates a visual destination. A monopine is out of context in that the height of this monopine is much taller than the surrounding tree canopy and it is a conifer where the predominant trees species in the vicinity are deciduous. Moreover, the difference in girth is apparent in the photosimulations, particularly at the apex, and prevents the monopine from blending into the background. Monopoles are typically 18 inches in diameter at the top and approximately 5 feet at the base. In contrast, the top sections of a monopine are much wider due to the branching layouts, which are 10 feet in diameter at the top and 20 to 28 feet in diameter at the lower level of the branching to create a tree-like taper. Although the pole section of a monopine is similar to a monopole, some adjustment increasing the girth of the pole section of a monopine does need to be made for the additional wind loading associated with the branching. As such, the monopine does not minimize, lessen or mitigate any visual impact because it does not decrease the visual contrast. Rather, it would increase the visual contrast due to its wider profile. Consequently, the Applicant respectfully submits that, based on these materials, the proposed monopole will not have a significant adverse visual impact on the environment or the character of the community, particularly given the OPRHP sign-off evidencing no impact to Federal or State designated aesthetic, scenic, historic or archeological resources. Further, in



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looking at both the SEQRA Handbook and the DEC Assessing and Mitigating Visual Impacts policy guidance (July 2000), it is important to note that there are no Town of Wappinger resource-focused plans, such as Local Waterfront Revitalization Plans (LWRP), Greenway plans or Heritage Area plans, that have been adopted identifying any designated local aesthetic resources within immediate proximity to the Premises. In sum, the visual assessments performed have substantiated that there are no federal, state or local resources adversely effected within the Project's viewshed. Visibility is different from clear interference with an inventoried resource. Here, there is no need for mitigation strategies, such as a Monopine instead of a Monopole, because there are no adverse impacts to identified and inventoried scenic or aesthetic resources. It is also worth noting that carriers and emergency services using a monopine will incur additional costs as the branching on the monopine makes for more involved equipment deployment and maintenance processes. Installation, maintenance and repair on a monopine requires more time and use of a crane to account for the branching. This translates to additional costs for all users of the tower, including emergency services. And, here, the Fire Prevention Bureau in its January 2020 Memorandum has requested and the Applicant has agreed to providing emergency response access to the proposed wireless facility. Yet, it is important to note that generally emergency equipment cannot be successfully concealed within monopine branches, which undermines the efficacy of a monopine as a "stealthing" technique.

Accordingly, the Applicant respectfully submits that the Visual Resource Evaluations submitted along with the SHPO No Effect determination substantiate that the proposed monopole will not have a significant adverse visual impact on the environment or the character of the community, including the 6 identified dwelling units within 750 feet of the base to the monopole on Caroline Drive East. Moreover, the public necessity standard mandates that where, as is the case here, the intrusion or burden on the community is minimal, the showing required by the wireless carrier should be correspondingly reduced.

Conclusion

The Applicant respectfully submits that approval of the instant application is warranted based on the materials submitted as the proposed wireless facility is required to render safe and adequate service, constitutes the least intrusive means available for doing so, and intrudes minimally on the community. The Applicant looks forward to its June 23, 2020 ZBA appearance. Should the Zoning Board of Appeals, its Consultants, or Town Staff have any questions or comments in the interim, please feel free to contact me.



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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 a long horizontal flourish at the end.

Neil J. Alexander

Enclosures

cc: Chairperson Bruce Flower and Members of the Planning Board
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