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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 has prepared the below correspondence and associated supplemental reports to respond to the July 24, 2020 letter received from Planning Board Chairperson Bruce Flower requesting supplement materials further addressing certain concerns relative to property valuation, visual impacts, and alternative sites, and also to recount the tenor and nature of the Applicant's recent appearances before the Planning Board.

The Applicant's July 2020 Appearances Culminating in the Chairman's July 24th Letter Request

On July 6, 2020, the Applicant appeared in person before the Planning Board, and the Planning Board expressly authorized by unanimous resolution of the 4 members present the Town Planner to draft a SEQRA Negative Declaration for review at the July 20, 2020 Planning Board meeting and continued the public hearing on the special permit, site plan and wetlands permit. No new materials were submitted by the Applicant between July 6, 2020 and July 20, 2020, other than for the Applicant to advise the Town Planning Board consultants and staff that the Applicant's Engineering firm had previously submitted materials answering all questions as to: (i) *Noise* in the form of a March 3, 2020 study concluding in that noise analysis for the proposed Verizon Wireless emergency backup power 30kW outdoor propane fueled AC generator with a sound-attenuating enclosure that the average sound pressure level is 57.0 dBA at a reference distance of 23.0 feet and 31.0 dBA at the nearest property line 510 feet-away compared to 60

dBA for a normal conversation, and which absent exigent circumstances will run once a week during daytime hours for approximately 45 minutes for routine testing purposes, and where the Applicant is also willing to stipulate to cycling midday/mid-week; (ii) *Lighting* on the 20th sheet of the most recently submitted zoning drawings as to the D-Series 1 LED Flood Luminaire Model DSXF1 LED, including its specifications, color temperature, voltage, lumen output, and photometric diagrams; and (iii) *Structural Design* of the monopole tower, foundation and antenna supports, noting the deployment of the most stringent criteria of the 2020 New York State Building Code and ANSI/TIA-222-H-2017 "Structural Standard for Antenna Supporting Structures and Antennas and Small Wind Turbine Support Structures" (i.e., 115 MPH in this region) with the tower designed to accommodate antenna arrays for three (3) future carriers in addition to the proposed Verizon Wireless installation and those future carrier's design loading equal to that of the proposed Verizon Wireless loading.

Thereafter, on July 20, 2020, the Applicant appeared before the Planning Board having received a draft of the SEQRA Negative Declaration beforehand that the Planning Board had directly authorized the Town Planner to prepare. The same handful of households spoke once again against the Project *in toto* raising general concerns that had already been addressed and for which no expert evidence was proffered to controvert the record in support of the project. The Planning Board then approved a motion unanimously by the 6 members present to close the public hearing. Nonetheless, the Planning Board decided not to take action to adopt the SEQRA Negative Declaration. The Planning Board did not provide any basis in writing for delaying such action. This delay by the Planning Board has also led the Zoning Board of Appeals as a SEQRA involved agency in the coordinated review of this Project to delay its action on both July 28, 2020 and August 11, 2020 relative to the Applicant's pending variance application.

Subsequently, on July 24, 2020, the Applicant received a letter from Planning Board Chairperson Bruce Flower requesting that the Applicant supplement its application and address further certain concerns relative to property valuation, visual impacts, and alternative sites.

It is important to note that this request for additional information was without any reference to a single code provision in the Town Zoning Code, and after the expiration of both the initial Shot Clock, and the first 45 day extension of the Shot Clock as evidenced by the Town Attorney's July 15, 2020 countersignature executing the second 45 day extension of the Shot Clock to August 19, 2020. This request is also untimely and in violation of federal telecommunications law[1]. Further, it is factually salient to reiterate: (i) that the 150 Day Shot

[1] See 47 CFR Section 1.6003 and FCC 18-33, Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket 17-79 (September 26, 2018)(a local effective prohibition in violation of federal law occurs when a regulation or decision materially inhibit services - not only by rendering a service

Clock ran on May 18, 2020, (ii) that the Applicant had previously granted the Town an extra 75 days by calculating the start date of the Shot Clock from December 23, 2019 and not the original application submission on October 9, 2019, (iii) that the Planning Board did not hold a meeting on this Application during the 1st 45 day Shot Clock extension timeframe of May 18, 2020 to July 5, 2020; and (iv) that when the 2nd 45 day Shot Clock extension expires on August 19, 2020, the application will have been pending for 315 days – a timeframe representing more than double the presumptive 150 days enunciated in the Shot Clock.[2]

Notwithstanding and without prejudice to the foregoing and to the Applicant's prior submission of extensive materials relative to property valuation, visual impacts, and alternative sites over the last, approximately 10 months of review., the Applicant has spent the past three weeks in time and at significant expense preparing additional materials as detailed below along with a select reiteration of the information already in the record on these issues unequivocally supporting the Applicant's entitlement to any and all land use permits for this wireless facility immediately.[3]

Tectonic Engineering's Tertiary Visual Resource Evaluation Materials

The Applicant hereby provides additional visual resource evaluation materials after significant further field work consisting of extensive, additional photography and drone fly video footage (the attached Tectonic written narrative as well as the high resolution photographs and drone fly video found here - *https://tecfiles.tectonicengineering.com/?ShareToken=9BBBC7AE19B6B544414F9B97E864ACC3360C45BE* are collectively the "Additional VRE"). This Additional VRE represents at least the 3rd significant submission of visual materials to the Planning Board. Reference to the Additional VRE reveals the balance that this site has navigated extremely well given its location between

provider unable to provide an existing service in a new geographic area or by restricting the entry of a new provider in providing service in a particular area, but also by materially inhibiting the introduction of new services or the improvement of existing services).

[2] Even though Opposition Attorney Campanelli has sought to incite the Planning Board and foment the notion that no matter how egregiously the Planning Board acts, there is no monetary exposure for the Town, it is important to emphasize that the targeting of an applicant overtly or covertly as well as any unequal treatment could raise significant questions as to whether they constitute Class of One/Discriminatory Intent/Animus in violation of the Equal Protection and Due Process provisions of the United States Constitution and the New York State Constitution, which in turn would raise the specter of 42 USC Section 1983 Damages and Attorney's Fees. See Vill. of Willowbrook v. Olech, 528 U.S. 1073 (2000), 120 S. Ct. 1073 (2000).

[3] There was a tertiary question raised by the public as to fire response and fire safety. Yet, it is important to underscore that the Applicant previously received Sign-Off Memoranda in both October 2019 and January 2020 from the Town Fire Prevention Bureau, and the Applicant has consistently agreed to the request that the Applicant provide the Town with rent-free positions on the monopole and within the fenced compound for the Town's emergency response communications network.

the Hudson River, the Taconic State Parkway, and the National Register Listed Stony Kill Farm and Environmental Center. There are absolutely no views to the South or the East per photos 28 through 51. Further, the leaf-on condition is such that 2 properties to the North on Chelsea Road in views 1, 3 and 22 have visibility from greater than 1000 feet away. As for the West, there are 5 properties with visibility as expressed in photos 13, 14, 16, and 17 as well as 19. In short, there are in excess of 50 houses in proximity and leaf-on shows 7 have some visibility. Yet, none of these views show the wireless facility compound. All of these visible views are limited to the top one-tenth to one-third of the monopole. And, 4 of these dwelling units with visible views also have views of the Veterans Administration Water Tank from a similar distance as the proposed wireless facility. As such, it is Tectonic Engineering's expert opinion that the proposed wireless facility is well screened by intervening landforms and vegetation for all sensitive visual resources resulting in no adverse visual impact. Moreover, a substantial buffer of existing mature forest vegetation will remain between the proposed project and adjacent residences. Although select views may occur above intervening trees, views from neighboring properties will be substantially screened by forest cover and understory vegetation during leafless winter months and more fully screened during the summer months.

As the Planning Board recalls, the Original Visual Resource Evaluation, dated December 17, 2019, was submitted on December 23, 2019 (the "Original VRE"). It was performed after consultation with the Town and with advance public notice covering a two miles study area in leaf-off condition and entailed over two dozen photographic vantage points, including those added by the Planning Board, Zoning Board of Appeals and Town Staff, such as Castle Point Park, the Chelsea Post Office/Grammar School, and St. Marks. The proposed wireless facility was not visible from any of those locations. The Original VRE also simulated views of the monopole in Views #1, 2, 3, 5 and 6 of the 28 views, which included the driveway for the Premises, the Chelsea Ridge driveway, 108 Caroline Drive East, and 114 Caroline Drive East, with both of the existing dwelling units on these Caroline Drive East properties being among the 6 properties within 750 feet on a horizontal plane to the wireless facility.

During the January 22, 2020 Planning Board meeting, the Applicant submitted a Supplemental Visual Resource Evaluation (the "Supplemental VRE") that built upon the Original VRE and provided photosimulations of a monopole, a monopine, and a blue monopole from Views #3 (i.e., from Chelsea Road looking over 102 Chelsea Road) and #5 (i.e., 108 Caroline Drive East). Reference to these views reveals that they were from approximately 1,540 lineal feet and 730 lineal feet away.

On May 15, 2020, the Applicant re-submitted to the Planning Board a copy of the April 30, 2020 NYS OPRHP Sign-Off Determination and which provided that the proposed wireless facility will

have No Effect. That determination was consistent with the NYS OPRHP previous approval for a 154 foot tall tower at this location on January 3, 2018 in File Number 0008041903. The April 30, 2020 Determination was also a result of new information submitted after a more recent additional balloon float and supplemental balloon float pictures in leaf-off condition relative to Stony Kill Farm and its environs referenced in that Sign-Off Determination that were also enclosed with the Planning Board submission.

Moreover, on June 24, 2020, the New York State Department of State completed its review and issued the Concurrence with Consistency Certification under the New York Coastal Management Program.

Further, the FAA has concluded that the proposed wireless facility would not be a hazard to air navigation, and that neither marking nor lighting are necessary per the attached June 26, 2019 determination.

Lastly, there is misinformation circulating as to Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 ("Tax Relief Act"). Section 6409 provides that "a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." See 47 U.S.C. § 1455(a)(1). It also defines an "eligible facilities request" as "any request for modification of an existing wireless tower or base station that involves (A) collocation of new transmission equipment; (B) removal of transmission equipment; or (C) replacement of transmission equipment." See 47 U.S.C. Section 1455(a)(2). Although the FCC's guidance on what constitutes a "substantial change" for the purposes of Section 6409 circumscribes a Board's authority to deny a proposed modification, a Board still retains the ability to do so under certain conditions. More importantly, the speculative nature of a future 6409 Eligible Facilities Request was expressly rejected as a basis for denial by the federal Southern District of New York in its decision in the Town of East Fishkill, NY when it found that "speculation based on what may or may not happen in the future cannot provide substantial evidence for denying the Application", which decision was affirmed by the Second Circuit Court of Appeals. See Orange County-Poughkeepsie Limited Partnership v. Town of East Fishkill, 84 F.Supp.3d 274 (2015), affirmed in 632 Fed.Appx. 1 (2015).

As such, the Applicant respectfully submits that, based on all 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, NYS DOS, and FAA sign-offs evidencing no impact to Federal or State designated aesthetic, scenic, historic or archeological resources. Further, in 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 for a few select dwelling units of one-tenth to one-third of the top of the monopole is different from clear interference with an inventoried resource. Here, there are no adverse impacts to identified and inventoried scenic or aesthetic resources.

Rather, what we have here is analogous to the situation in T-MOBILE NORTHEAST LLC v. Town of Ramapo, 701 F. Supp. 2d 446 (S.D.N.Y. 2009). There, the Federal Court found that the Town did not support its decision with substantial evidence. First, the Federal Court found that "health concerns undoubtedly played a role in both the community opposition T-Mobile faced during the application process as well as the Planning Board's decision in March of 2008 to deny it a permit." The Federal Court also struck down the Town's attempts to rely on aesthetic and property value concerns. Indeed, in referencing the Second Circuit Court of Appeals decision in Cellular Telephone Company, Doing Business as at & T Wireless Services v. The Town of Oyster Bay and the Town Board of the Town of Oyster Bay, 166 F.3d 490 (2d Cir. 1999), the Federal Court in Ramapo-noted that more than a few generalized expressions of concern are required, and rejected the board's aesthetics rationale because it was premised on a few residents' comments at public hearings that failed to articulate specifically how the proposed cell sites would have an adverse aesthetic impact on the community. It also rejected the board's property values rationale because the volume and specificity of the comments were not adequate to satisfy. In sum, the Court stated that localities should not accord weight to a small number of unspecific, unsupported statements that cell towers adversely affect property values, and then jettisoned the public comments as grounded in general NIMBY feelings.

The current situation here is also similar to what the New York State Court of Appeals found in WEOK Broadcasting Corp. v. The Planning Bd. of the Town of Lloyd, 79 N.Y.2d 373 (N.Y. 1992), 583 N.Y.S.2d 170, 592 N.E.2d 778 under State law. In WEOK Broadcasting Corp., the Court of Appeals found that while "[w]e do not intend to diminish in any way the importance of public comment with respect to any proposed site plan; SEQRA is designed to encourage public participation in the review process (ECL 8-0109-[6]). However, generalized community objections such as those offered here in response to the comprehensive data provided by petitioner, cannot, alone, constitute substantial evidence, especially in circumstances where there was ample opportunity for respondent to have produced reliable, contrary evidence." "Negative aesthetic impact considerations, alone, however, unsupported by substantial

evidence, may not serve as a basis for denying approval of a proposed "action" pursuant to SEQRA review."

Accordingly, the Applicant's expert testimony in the record is unequivocal that the proposed monopole will not have a significant adverse visual impact on the environment or the character of the community.

A Third MAI Firm Substantiates on behalf of the Applicant No Diminution in Property Value

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

The Applicant now submits a Site Specific Market Study Report by Donald A. Fisher, MAI, ARA of CNY Pomeroy Appraisers, Inc., dated August 5, 2020, and entitled "A Market Study of Proposed Castle Point NY 1136 Cellular Tower, 110 Chelsea Road, Town of Wappinger, Dutchess County, New York" (hereinafter the "Fisher Market Study"). The Fisher Market Study has analyzed the "as is" impact on market value of the improved residential properties in close proximity to the proposed wireless facility. Ultimately, the Fisher Market Study finds in its expert opinion that market values of nearby improved residential properties in proximity to a cellular tower are not adversely affected. Additionally, the Fisher Market Study concludes that: (i) its research could not identify any market evidence that a cellular tower is not in harmony with the surrounding neighborhood; (ii) the opposition documents, including brokers' opinions, are devoid of market data or statistics specific to the Castle Point location; and (iii) other professionally designated appraisers reports submitted by the Applicant (see below) were credibly completed and concluded that those neighborhoods studied too did not reflect overall negative value impacts to nearby residential properties based on the proximity and view of a wireless facility. Indeed, the Fisher Market Study found based on its local studies an overall average and median change in value at rates of appreciation/increase of 11.15% and 12.09%, respectively, using the Before & After Sales Methodology. Similarly, the Fisher Market Study found increases in value using the Sales-Resales Methodology at an overall average and median appreciation/increase of 12.53% and 14.11%.

As the Planning Board also recalls, the Applicant previously submitted on May 29, 2020, a similar Market Report 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 (hereinafter "the Pogel Market Study"). Although the Pogel Market Study is an outgrowth of consideration of a specific property in the Town of Irondequoit, NY, the Pogel Market Study 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, the Pogel Market Study concludes that there is no credible evidence that there is any appreciable diminution in value resulting from the location of the cell tower.

In addition to these findings, the Applicant previously submitted consistent and 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 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.[4,5,6]

[4] 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."

[5] 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.

[6] 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

The Applicant also has since located another Lane Appraisals report attached that is specific to southern Dutchess County in the Hopewell Junction hamlet of the Town of East Fishkill for a Verizon Wireless facility consisting of a 150 foot tall monopole in a R-1 zoning district approximately 500 feet away from the nearest neighboring residential structure. Lane Appraisals inspected the subject property to consider the effect of the proposed facility upon the value of the surrounding properties. It then concluded that there is no diminution in the value of homes with a view of a telecommunications facility. In fact, Lane Appraisals noted that in no instance did it find that views of such communication facilities had any detrimental effect on property values. There was a normal range of value with typical increases or decreases in value according to the market for homes regardless of whether or not they had views of communications facilities. As a result of this analysis, its expert opinion was that the installation, presence, and/or operation of the proposed facility will not result in the diminution of property values or reduce the marketability of properties in the immediate area. This Opinion was upheld at both the federal Southern District of New York Court level and the Second Circuit Court of Appeals levels as noted above in Orange County-Poughkeepsie Limited Partnership v. Town of East Fishkill, 84 F.Supp.3d 274 (2015), affirmed in 632 Fed.Appx. 1 (2015).

As discussed in the Fisher Market Study, the only contrary evidence in the record consists of a few form letters from real estate brokers stating that the presence of cell sites would depress real estate values of nearby property, but offering no evidence to prove how this wholly unsupported conclusion was reached. As for the few residents who made statements fearing declining property values, it is clear that it is an impermissible proxy for a fear of health effects.

Accordingly, the Applicant's significant expert testimony is uncontroverted by generalized and unsubstantiated concerns about a potential decrease in property values, and its proposed wireless facility presents a minimal intrusion, if any, on the community.

Verizon and Airosmith Further Substantiate the Lack of Reasonable Alternatives

In the aforementioned July 24, 2020 Planning Board Chairman's letter under Section 3, a request is made for the Applicant to consider alternative sites.

First and foremost, it is important to note 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

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").

rejections that collectively substantiated that there were neither co-location opportunities in the vicinity, nor viable large-lot alternative locations. This Site Selection Analysis was prepared jointly by Verizon Wireless through Radio Frequency (RF) Design Engineer Michael Crosby and AiroSmith Development through Real Estate Site Selection Consultant Nicholas Smith. This September 2019 report submitted in October 2019 concluded after studying numerous alternative locations that the subject Property of 110 Chelsea Road was the best location for the proposed Wireless Facility. The 4 other properties considered and rejected, included:

(1) Chelsea Ridge multifamily property a/k/a Chelsea DHC LLC;
(2) Chelsea Farms LLC;
(3) AIMCO Chelsea Land LLC; and
(4) the Veterans Administration Water Tank at the end of Castle Point Road.

Although not listed in that report, the Applicant also considered and rejected the New York State owned 1000 +/- acres holdings to the east of the Booth Boulevard properties and the west of the Taconic State Parkway, known as the Stony Kill Farm and Environmental Center because these lands are outside the Search Area Ring and have been listed since 1980 on the National Register of Historic Places. Thus, the Applicant selected the 110 Chelsea Road Property ultimately among these 6 possible candidates because it was located in the center of the Search Area Ring, afforded the largest setbacks to existing dwelling units, and provided significant natural screening.

Nonetheless, the Applicant is now being asked to evaluate a 7th and a 8th location namely, the A W Scrap Processors Inc property located at 1980 Route 9D (Tax Map No. 6056-02-721673) and the Castle Point Park located adjacent to the American Heritage Rivers designated Hudson River at 312 South River Road (Tax Map No. 135689-5956-04-985355), nine(9) months after submitting this Site Selection Analysis,. Both of these locations are outside the Search Area Ring.

Yet, Verizon Wireless through Radio Frequency (RF) Design Engineer Michael Crosby has prepared on behalf of the Applicant the attached July 24, 2020, RF analysis for these 7th and 8th alternative locations. Indeed, the analysis substantiates that both of these alternate locations are not properly situated, they are not within the search ring, and are not within a reasonable distance of the project area to provide benefit in resolving the identified coverage objectives. Both of these locations are about one-half of one mile away from the area where they would need to be situated in order to be capable of providing useful benefit. Reference to the included radio frequency signal propagation plots substantiate that both of these alternate locations are extremely substandard and significantly failing in the needed coverage area.

The Applicant has also been asked to redouble its efforts as to the previously ruled out Chelsea Farms property. As such, AiroSmith Development has revisited its previously submitted September 17, 2019 Site Selection Analysis and issued the enclosed Supplemented iteration dated August 5, 2020. Reference to the Supplemented Site Selection Analysis prepared by Real Estate Site Selection Consultant Nicholas Smith reveals that the property owner previously provided a copy of the attached Chelsea Farms Overall Subdivision Plan, prepared by Hudson Land Engineering, with the property owner's annotation as to whether and where a cell tower could be located. See Attachment 6. AiroSmith in consultation with Tectonic Engineering has overlaid that subdivision design onto a vicinity map with tax parcels shown and incorporated a 750-foot radius from the tower. Reference to that drawing as Attachment 7 reveals that this wireless facility location at Chelsea Farms would require the **same variance** from Section 240-81G(4)(c)(2) for existing dwelling units within 750 feet on a horizontal plane and to a **much greater extent** because **11** of the multifamily buildings totaling an estimated **198** dwelling units would be closer than 750 feet on a horizontal plane with dozens of those dwelling units within 375 feet of the tower. In contrast, at 110 Chelsea Road Property, the Applicant needs this variance relative to the 6 identified, single-family dwelling units only, and the closest dwelling unit would be more than 550 feet away. Plus, the Chelsea Farms property tower location would need an **additional variance** because the owner identified location sites the wireless facility approximately 150 feet from the existing property line. At this location, such a wireless facility would **NOT** comply with Section 240-81G(9)'s standard that towers shall be located at least 1 and 1/2 times their maximum structural height within the outer boundary of the site on which the tower is located for a 150 foot tall height with an associated 225 foot setback. It is further important to note that the Chelsea Farms property is currently undeveloped such that development of the wireless facility would require the construction of an access road, significant associated tree-clearing, and the pulling of utilities approximately 1000 lineal feet into the property, such as for power and communications. See Attachment 4. In contrast, construction of the wireless facility proposed for the 110 Chelsea Road Property would only require the felling of 20 trees greater than 10 inches in diameter at breast height (dbh). Therefore, the Chelsea Farms property is not a viable alternative for all the reasons previously stated and certainly given the greater variance required as to the number of units within the limiting distance itself and the total number of dwelling units within that distance (i.e., 6 versus approximately 198 dwelling units, and approximately 375 feet versus 550 feet). Plus, the Chelsea Farms property location would require a variance from an additional zoning code provision – Section 240-81G(9).

It is also worth noting that the Town retained RF Engineering Consultant – Mr. Douglas Fishman – has issued several Reviewing Memorandum, including those dated March 6, 2020 and April

20, 2020, commenting on the Verizon Wireless RF Report (dated September 17, 2019), the RF Compliance Certification (dated October 31, 2019), and an RF Non-interference Letter (dated October 15, 2019) as well as additional information Michael Crosby, a Verizon RF Design Engineer, provided on April 14, 2020 and April 15, 2020, 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. Doug Fishman further issued a Reviewing Memorandum dated June 24, 2020 directly refuting the Memorandum of Opposition submitted by Campanelli and Associates, dated June 3, 2020, on behalf of several neighbors. Uniformly, Doug Fishman has 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; (iv) this site will easily meet the FCC guidelines for RF exposure; and (v) in his professional opinion, Verizon's response was thorough and complete.

Lastly, even if the Federal Court were NOT to strike down any attempt by the Town to rely on aesthetic and property value concerns, the Planning Board's denial of the application would amount to an effective prohibition of wireless services. As enunciated by the 9th Federal Circuit Court of Appeals in T-MOBILE USA, INC. v. City of Anacortes, 572 F.3d 987 (9th Cir. 2009), once an applicant makes a *prima facie* showing of effective prohibition by submitting a comprehensive application, which includes consideration of alternatives, showing that its proposed wireless facility is the least intrusive means of filing a significant gap, then a locality cannot deny the application, regardless of substantial evidence, unless there is an actually available and technologically feasible alternative.

Accordingly, the Applicant and Verizon respectfully submit that anything other than approval of this application at this time would constitute a prohibition of wireless services because the Town's Wireless Consultant has confirmed the need for this wireless facility at this height and the Applicant has satisfied its obligation to make an effort to evaluate alternative locations having demonstrated the want of viable equivalent alternatives after studying 8 possibilities inside and outside the Verizon issued Search Ring Area. See SMSA Ltd. P'ship, 2013 WL 4495183, at *18 (noting that "[t]he law only requires a plaintiff to engage in a good faith effort to evaluate alternative sites" and that such requirement was met when the plaintiff submitted reports that discussed eight alternative locations).

Conclusion

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 Town RF Consultant has confirmed the need and the minimum height. The Applicant's application also 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.

As such, the Applicant looks forward to appearing before the Planning Board in an expedient manner through a special meeting on notice during the month of August 2020. The Applicant also hereby extends the 2nd 45 day Shot Clock extension set to expire on August 19, 2020 with 3rd Shot Clock Extension of 12 days to August 31, 2020 in order to adopt a determination of significance (i.e., the Negative Declaration it instructed staff to prepare and which was prepared for the July 20th meeting). The Applicant also respectfully submits that, based on all the materials submitted to date, it is warranted now and the Planning Board should approve the Applicant's applications for site plan, special permit, and wetlands permits in addition to the adoption of a SEQRA Negative Declaration during the above-requested special meeting before August 31st. 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,

Neil J. Alexander

Enclosures
cc: Barbara Roberti, ZEO
Beatrice Ogunti, Secretary to the Planning Board and to the ZBA
James Horan, Esq., Town Attorney
Paul Ackermann, Esq., Town Planning Board Attorney

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