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EMERGENCY NOTIFICATION

September 16, 2020

VIA EMAIL

Members of the Planning Board and
Zoning Board of Appeals
20 Middlebush Road
Wappingers Falls, New York 12590

Re: Proposed Wireless Facility at 110 Chelsea Road (Applicant: Tarpon Towers)

Dear Members of the Planning Board and Zoning Board of Appeals:

As you are aware, our office represents two of your constituents, Mr. Christopher Barclay and Ms. Denise VanBuren. It is our understanding that on September 9, 2020, the Planning Board for the Town of Wappinger issued a positive SEQRA declaration. As a matter of State Law, once a positive declaration is issued, the applicant is required to submit a complete environmental impact review pursuant to the State Environmental Quality Review Act (SEQRA).

In rendering such declaration, the Town has effectively determined that *Tarpon Towers's* application is incomplete. Specifically, the Town has found that, before it can properly determine whether the proposed facility is the least intrusive means of remedying the alleged significant gap in service *Tarpon Towers* is purporting exists, a full environmental review must be completed.

Pursuant to the FCC's Shot Clock requirements, "when a local authority requests additional information, the response time may be excluded from the 90-day or 150-day time period, but 'only if the State or local government notifies the applicant within the first 30 days that the application is incomplete.'" Up State Tower Co, LLC v. Vill. of Lakewood, 431 F. Supp. 3d 157, 170 (W.D.N.Y. 2020), appeal dismissed (Mar. 12, 2020), quoting the FCC's November 18, 2009 Declaratory Ruling.

As such, it is *critical* for the Town to issue a written notification within thirty (30) days of September 9, 2020, informing *Tarpon Towers* that, on such date, the Town determined *Tarpon Towers's* application is deemed incomplete as a matter of State Law.

Members of the Planning Board and
Zoning Board of Appeals
September 16, 2020
Page 2 of 2

It is in the Town's best interest to reach a written agreement with *Tarpon Towers* that the Shot Clock will be tolled again until the State Law required environmental review is completed.

If the Town is unable to reach such an agreement with *Tarpon Towers*, the Town should respectfully issue an interim determination that *Tarpon Towers* has failed to meet its burden in establishing that the proposed facility is: (a) necessary to remedy a significant gap in coverage, and (b) is the least intrusive means of remedying such gap in coverage.

As for the significant gap in coverage, the applicant did not provide any hard data and, *inter alia*, Verizon's own internet website shows that its wireless services are "excellent" at that proposed location. See Memorandum in Opposition and the September 4, 2020 correspondence with the Planning Board.

The Town may, then, site the lack of complete environmental review as the reason that *Tarpon Towers* has failed to meet the second part of the test articulated by the Second Circuit—meaning that the Town may issue an interim determination that until *Tarpon Towers* completes a full environmental impact review, the Town is unable to ascertain whether the proposed location is the least intrusive means of remedying the alleged gap in service that *Tarpon Towers* is purporting exists.

Sincerely,

Samuele Riva, Esq.

cc: Andrew J. Campanelli, Esq.
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James Horan, Esq.
Wallace & Wallace LLP