

PLANNING BOARD of the TOWN OF CHESTER
ORANGE COUNTY, NEW YORK

In the Matter of the Application of

ORANGE COUNTY-POUGHKEEPSIE LIMITED PARTNERSHIP d/b/a Verizon Wireless

Premises: Lands n/f of Kings Estates LTD Partnership
Water Tank n/f of Warwick Water Corp.
Kings Highway, Chester, New York
Section 17, Block 1, Lot 51

STATEMENT OF INTENT and
APPLICATION FOR SITE PLAN REVIEW and
SPECIAL USE PERMIT

I. Introduction

ORANGE COUNTY-POUGHKEEPSIE LIMITED PARTNERSHIP d/b/a Verizon Wireless ("Verizon Wireless" or the "Applicant") proposes the collocation of an unmanned public utility/personal wireless service facility (a "communications facility"), which includes equipment located within a 16.5' x 20' ground lease area and installation of antennas on an existing water tank located off Kings Highway, in the Town of Chester, Orange County, State of New York. The property is located in Suburban Residential (SR-1) zoning district. The land is owned by Kings Estates LTD Partnership and the water tank is owned by Warwick Water Corp. (Tax Map Parcel No. 17-1-51).

Verizon Wireless is considered a public utility for land use purposes under New York decisional law (*Cellular Telephone Company v. Rosenberg*, 82 N.Y.2d 364 (1993))¹ [TAB 3], and a provider of "personal wireless services" under the federal Telecommunications Act of 1996 (the "TCA") [TAB 4]. Verizon Wireless' equipment will be in operation twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year. Copies of the applicable Verizon Wireless FCC licenses are included herewith [TAB 5].

Pursuant to Chapter 89 of the Town of Chester Zoning Code, collocation of antennas on an existing structure is permitted following Site Plan and Special Use Permit approval by the Planning Board. Town Code § 89-5. Per the Town Code, the highest priority is given to the location of antennas on existing tall structures or telecommunications towers. Town Code § 89-6(A)(1). Verizon Wireless respectfully submits this Statement of Intent in support of its

¹ In *Rosenberg*, this State's highest Court determined that the ordinary variance standard is inapplicable and that a cellular telephone company applying for a variance need only show: (1) the variance is "required to render safe and adequate service;" and (2) there are "compelling reasons, economic or otherwise," for needing the variance. *Cellular Telephone Company v. Rosenberg*, 82 N.Y.2d 364, 372 (1993). For the reasons stated herein, Verizon Wireless believes that this project complies in all material respects with the provisions of the Town of Chester Zoning Ordinance, and that no additional approvals or relief are required. To the extent that additional approvals or relief is required, Verizon Wireless submits these materials in support of such approval(s).

application for Site Plan Review approval.

II. Purpose of the Silvertail Communications Facility

This project is a necessary and critical upgrade of the Verizon Wireless communications network in the Town of Chester. Upon completion, new, advanced emergency and non-emergency 4G Verizon Wireless communication services will be provided to the Town of Chester in a manner consistent with all applicable technological and land use requirements.

More specifically, the facility will offer significant improvements in both capacity (ability for the network to adequately satisfy the demand for high speed wireless services) and in-building coverage to the residential area south of the water tank, traffic along Kings Highway north and south, as well as portions of the residential Sugarloaf area. Existing 4G/LTE service in the area is limited and originates from several existing Verizon Wireless communications facilities in the Town of Chester. See, Site Selection Analysis prepared by Verizon Wireless' Radio Frequency (RF) Design Engineer, detailing the purpose and need for this facility [TAB 6].

III. Description of Land Use

The communications facility will consist of the following general components: collocation of twelve (12) panel antennas at the 100± ft. AGL centerline on the existing 95± ft. tall water tank; an unmanned equipment platform measuring 11.5± ft. x 16± ft. in size; and all related ground equipment and utility services (power and telephone) [see, Zoning Site Plan at TAB 9].

The total project area is only a minimal portion within the existing fenced compound, including all associated site improvements. The equipment platform and associated installations will be located within a 16.5± ft. x 20± ft. (330± sq. ft.) section of the premises, and a 30± ft. wide easement area will provide access and utility services to and from the project site. The existing access drive from Evan Road will be utilized in its current location for access and utility purposes and no improvements are proposed.

The proposed communications facility is unmanned, and will be visited for routine maintenance purposes approximately 2 - 3 times per year. As such, the project will not have any impact on existing water and sewage services. In addition, neither pedestrian nor vehicular access will be significantly impacted.

IV. Compliance with the Town of Chester Town Code

The proposed communications facility complies in all material respects with applicable site design requirements in the Wireless Telecommunications Facilities Regulations and the Town of Chester Zoning Ordinance:

A. PUBLIC NEED FOR COMMUNICATIONS FACILITY

1. **Facility Satisfies Coverage Objectives:** The Applicant has provided expert proof, in the form of a report and propagation studies prepared by its Radio Frequency (RF) Design Engineer, depicting the service that will be provided to the Town of Chester. This information clearly

demonstrates that location of this communications facility on the existing water tank off Kings Highway will provide advanced emergency and non-emergency 4G communications coverage to this area. See, Site Selection Analysis prepared by Verizon Wireless' Radio Frequency (RF) Design Engineer, detailing the purpose and need for this facility [TAB 6].

2. **Height Justification:** A propagation analysis showing the new in-building and mobile 4G coverage that will be achieved from this location is included at TAB 6. As this analysis demonstrates, collocation at the 100± foot centerline level of the existing 95± foot water tank will provide new, advanced emergency and non-emergency wireless coverage to the target area, and satisfy all applicable local coverage objectives with minimal increase in overall water tank height.
3. **Minimum Visual Impact:** The Town's water tank is located on a 9.9 acre parcel (zoned SR-1), and includes undeveloped woodlands which provide a natural screening of the facility from neighboring parcels. Additionally, FAA marking and/or lighting will not be required as a result of this project. Photographic simulations of the facility are attached at TAB 9.
4. **Structural Certification:** A certification from a New York State Licensed Professional Engineer that the water tank is capable of supporting the facility is attached at TAB 10.

B. COMPLIANCE WITH LAND USE REGULATIONS and SITE PLAN REQUIREMENTS

1. **Required Site Plan Elements:** The Applicant's civil engineers (Tectonic Engineering & Surveying Consultants, P.C.) have provided a Site Plan that complies in all material respects with the Site Plan requirements of the Town of Chester Zoning Ordinance and Site Plan Review Regulations [TAB 9].
2. **SEQRA Documentation:** In accordance with the applicable provisions of the State Environmental Quality Review Act ("SEQRA"), the Applicant's consultant engineers have also provided a Full Environmental Assessment Form ("Short EAF") [TAB 1].
3. **Lot Size and Setbacks:** The existing water tank and proposed Verizon Wireless antennas, ground installations and accessory structures are located on a 9.9± acre tract of land, and will be set back from abutting parcels and street lines a sufficient distance to substantially contain on-site all ice fall or debris and/or preserve the privacy of adjoining residential properties.
4. **Existing Vegetation/Landscaping/Screening:** Verizon Wireless is proposing a site development plan that does not result in the disturbance and/or removal of existing vegetation. Given the current site development layout, additional screening is not proposed in this case.

5. **Access; Parking:** Adequate access exists at the water tank site for emergency services vehicles and routine maintenance visits [TAB 9, Sheet C-1]. As the facility is unmanned and visited for routine maintenance purposes approximately 2 – 3 times per year, access and parking requirements are minimal.
6. **Radio Frequency (RF) Emissions:** The Applicant has submitted a report by a professional engineer licensed by the State of New York, documenting that the communications facility proposed: (a) will comply by a wide margin with the requirements of the Federal Communications Commission (FCC) concerning radio frequency (RF) emissions; and (b) is categorically excluded from local regulation under applicable federal law [TAB 7].
7. **Non-Interference:** The Applicant has submitted report from a New York State licensed engineer, certifying that the proposed facility will not interfere with communications devices operating in the surrounding vicinity. [TAB 8].

C. **Waiver Requests**

Verizon Wireless respectfully requests the Planning Board to waive certain requirements in the Town's Telecommunications Law, including:

1. **Section 89-5(E)(22). Geomorphic Analysis.** This requirement is for new towers. This application involves collocation of equipment on an existing water tank and the engineer has certified that the existing structure is capable of handling the equipment.
2. **Section 89-8(B). Height Limitation.** The applicant has demonstrated the need for the proposed facility at the proposed centerline eight of 104 feet. See TAB 6. This is a minimal waiver request for the 100 foot limitation for new telecommunications facilities.
3. **Section 89-23. Insurance Requirements.** This requirement is specific to new towers, and therefore the requirements listed in this section do not apply to this application
4. **Section 89-24. Indemnification.** The Town does not have any ownership interest in the Property and, therefore, an indemnification in favor of the Town is not warranted.

Based upon the foregoing, Verizon Wireless respectfully submits that approval is appropriate in this case. In addition, Verizon Wireless notes the following:

Public Necessity

The communications facility proposed is a public necessity in that it is required to provide advanced 4G communications coverage to a significant area of the Town of Chester.

These factors, combined with the federal mandate to expeditiously deploy advanced wireless services across the nation and Verizon Wireless' FCC licenses to provide such services in the Town of Chester, demonstrate that Verizon Wireless' facility is a public necessity. Absent location of the communications facility as proposed, the public would be deprived of an essential means of communication, which, in turn, would jeopardize the safety and welfare of the community and traveling public.

Compelling Reasons for Approval

As is demonstrated by the Applicant's Site Selection Analysis, the area within which Verizon Wireless proposes to locate its facility is the highest priority location per the Town of Chester zoning code. Collocation on the existing 95± ft. tall water tank structure will satisfy applicable coverage needs, with minimal increase in water tank height and without the need for the construction of an entirely new tower facility.

Existing conditions will serve to buffer and shield views of the Verizon Wireless' ground installations from public view. The collocation of wireless antennas, cabling and appurtenances on the water tank will not result in significant visual impact to surrounding residential or commercial land uses. In this context, the communications facility proposed is being sited to have the least practical adverse effect on the environment (in particular, local residential areas), and any resulting impact(s) may properly be considered as minimal in nature and scope.

As set forth above, the Applicant has proposed a facility that will enable Verizon Wireless to provide adequate and safe wireless services to a significant area of the Town of Chester in accordance with its FCC licenses. In this regard, the proposed communications facility will not give rise to an undue visual impact.

V. Conclusion

Approval of this project will enable Verizon Wireless to provide new, advanced 4G communications services to a significant area of the Town of Chester, within the confines of applicable technological limitations and all land use regulations. Such approval will also be in the public interest, in that it will allow Verizon Wireless to comply with its statutory mandate to build out its network and provide local businesses, residents and public service entities with safe and reliable wireless communications services. For the reasons set forth herein, Verizon Wireless respectfully submits that this project complies in all material respects with the requirements of the Town of Chester Zoning Ordinance and Wireless Telecommunications Regulations, and any potential impact on the community created by the approval may properly be considered to be minimal and of no significant adverse effect.

Attached to this Application and Statement of Intent are the following:

1. A completed Full Environmental Assessment Form;
2. A redacted copy of the partially executed Lease Agreement between VZW and the Warwick Water Corp.;
3. Documentation of VZW's public utility status and an overview of relevant law;

4. An overview of the Telecommunications Act of 1996;
5. Copies of Verizon Wireless' FCC Licenses for Orange County;
6. Site Selection Analysis and Radio Frequency (RF) Engineering Propagation Studies prepared by the Verizon Wireless Network Engineering Department;
7. Radio Frequency (RF) Safety Report of Millennium Engineering, P.C. (Paul Dugan, P.E.);
8. Non-Interference certification prepared by Paul Dugan, P.E.;
9. Photographic simulations of the proposed facility;
10. Structural Design Letter prepared by Tectonic Engineering; and
11. Site Plan Drawings prepared by Tectonic Engineering & Surveying Consultants, P.C.

Kindly place this matter on the agenda for discussion at the next meeting of the Town of Chester Planning Board. If you should have any questions or require any additional information concerning this project, I can be reached at (518) 438-9907.

Thank you for your consideration.

Respectfully submitted,

ORANGE COUNTY-POUGHKEEPSIE LIMITED PARTNERSHIP
d/b/a Verizon Wireless

A handwritten signature in black ink, appearing to read "Scott Olson".

Scott P. Olson, Esq.
Regional Local Counsel

Dated: December 19, 2017