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December 28, 2022

Via Federal Express

Lee Bergus, Chairperson
Town of Goshen
41 Webster Ave
Goshen, NY 10924

RE: Eligible Facilities Request for Existing Tower Facility at 261 Phillipsburg Road
Application of Verizon Wireless of the East LP d/b/a Verizon Wireless
(VZW Site Name: Owens Rd)

Dear Chairperson Bergus:

I write to address an issue raised at the recent Town of Goshen Planning Board workshop meeting concerning the above-referenced application.

As you know, Verizon Wireless proposes to collocate its antennas and equipment on the existing tower at the referenced property. The collocation includes the installation of a total of three (3) antennas to be located on the alpha sector of the tower as well as ground equipment within a 360 square foot lease area. The antennas are proposed to be located at an antenna centerline height of 77' on the 100' tower.

The proposed antenna modification is an "eligible facilities request" under Title IV of the Middle-Class Tax Relief and Job Creation Act of 2012 (the "Spectrum Act"). A request to modify an eligible facility is deemed an "eligible facilities request" if such request includes collocations on and/or modifications to existing equipment that do not substantially change the physical dimensions of the existing tower or structure. See, 47 CFR §1.6100. The proposed collocation, which involves the installation of antennas well below the maximum height of the existing tower, will not substantially change the physical dimensions of the existing tower. Such collocation is, therefore, deemed an eligible facility request and is subject to the requirements of the Spectrum Act.

During the Planning Board's December 15, 2022 workshop meeting, the Planning Board's Engineer, Sean Hoffman, P.E., advised that an existing communications tower which was in

existence at the time the wireless communications regulations were adopted (circa 1998) are permitted to remain in operation until such use and facility is altered, at which time compliance with the regulations is required.

Mr. Hoffman suggested that if the existing tower was built prior to 1998 (the date of adoption of the wireless communications regulations), then the existing use may be subject to the need for a special use permit. *See* Goshen Code, §97-95(B)(2). We believe that the existing tower was constructed prior to the adoption of the 1998 Goshen wireless communications regulations.

Although §97-95(B)(2) purports to require communications facilities existing at the time of the adoption of the Goshen wireless communications regulations to potentially obtain a special use permit, we believe that the subsequently enacted Spectrum Act and its implementing regulations provided in 47 CFR 1.6100 expressly overrides any such local requirement. For example, 47 CFR 1.6100(b)(5) defines “existing” as follows:

“[a] constructed tower or base station is existing for purposes of this section if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.”

(Emphasis added).

While the Goshen zoning law may characterize the existing tower as a non-conforming use, the fact that the tower may not have been approved under the current wireless communications regulations (due to the fact that the tower was constructed prior to the adoption of the local regulations) is not material for purposes of the Spectrum Act. Moreover, in light of Congress’ express intention to exclusively regulate certain aspects of the deployment of national wireless infrastructure – including the collocation on existing structures - we believe that the Federal regulations in 47 CFR 1.6100 are control and that further review pursuant to §97-95(B) is not mandated.

Thank you for your attention to this matter.

Very truly yours,
YOUNG/SOMMER, LLC

By: 
Scott P. Olson

Enclosures

C: Sean Hoffman, P.E. (via email)
Jacki Bartolotta (Tectonic Engineering; via email)