

LIVONIA JOINT PLANNING BOARD

June 26th, 2023

Present: Chairman R. Bennett, R. Haak, J. Palmer, K. Strauss, CEO Adam Backus, Zoning Compliance Assistant J. Holtje, Attorney J. Campbell, Secretary A. Houk

Excused: D. Andersen, A. Baranes, J. Brown,

Agenda:

- 1) *Accept and approve the meeting minutes of June 12, 2023*
- 2) *Bell Atlantic/Verizon Wireless– Niver Road, Livonia, New York – Tax # 93.-1-43.112 Preliminary Site Plan*

Chairman Rick Bennett opened the meeting at 7:00 p.m.

1) Approve Meeting Minutes for June 12th, 2023. Chairman Rick Bennett asked for a motion to approve. M/2/C (R. Haak/K. Strauss) approved as submitted. Carried 4-0.

2) Bell Atlantic/Verizon Wireless – Niver Road, Livonia, New York

Chairman Rick Bennett asked Jeffrey Twitty, Attorney of Nixon Peabody, representing Bell Atlantic/Verizon Wireless, Jackie Bartolotta, Site Acquisition Specialist, and Phillip Colantonio, RF Engineer for Verizon Wireless, to come forward for the Preliminary Site Plan review. Also present was Town RF Engineering Consultant Steven Ciccarelli. Jeffrey stated they are proposing to install a 195' Cell Tower off/near 6653 Niver Road. They are proposing the Tower to address the increasing demand for Cell service within the Town of Livonia. This new proposed Tower will help alleviate the current problems with Verizon coverage. They are looking for Site Plan approval from the Planning Board, as well as a Conditional Use Permit from the Zoning Board of Appeals. Tonight, they are looking to verify that the two submissions are considered complete and answer any questions.

Chairman Rick Bennett stated that eventually, we will have a Public Hearing, which will provide an opportunity for the Public to make their comments or any concerns. The biggest issues with Cell Towers are the fall zones. The Town looks at the Tower from the base, even though there is a hinge point where they break in half. The proposed Tower is going to be 195', and it doesn't appear that you will be infringing on any other properties. Jeffrey noted that the Tower site is pretty far back on the property. Chairman Rick Bennett noted that there looks to be an existing pathway and asked if they are planning to utilize that for access. Jeffrey stated that there would be a 30' wide accessway, but he doesn't believe that it currently exists. Jackie noted that is a path that, historically, the landowner has always mowed. CEO Adam Backus stated that the project appears to make sense, but given our history with Cell Towers, we know that there will be people who are opposed to it. We want to make sure we do our due diligence to make sure that it's the proper site location and that we have considered impacts and alternative sites. The purpose of this meeting is preliminary to ensure that the Board is engaged prior to moving to the Public Hearing.

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Chairman Rick Bennett stated that this Tower is taller than the one that was installed in the Village. In reviewing the Code, he wondered if there was another nearby Tower that they could co-locate on; the more, the merrier. He thought that Verizon did not own the Village Tower, but they leased space on it. CEO Adam Backus stated that Crown Castle owns the Tower located in the Village, and everyone on it is a vendor. But they need justification from an actual carrier for Verizon to establish that opportunity. Jackie noted that, in this case, Verizon would own the structure. They will be the anchor tenant on the top. It will be available to other carriers for co-location. CEO Adam Backus asked how many other carriers could co-locate. Jackie stated that she would have to confer with their Engineers, but a Tower of this size could probably accommodate four total.

Attorney James Campbell noted that the Planning Board should have received a copy of the preliminary Engineering report from Bill Johnson and Steven Ciccarelli. Jim asked if there were any questions. ZCA Julie Holtje noted that she wanted to wait until after the meeting, and then she would forward all information at once to the Board members. Jim noted that the report walks through a lot of information on what typical concerns would be and background information on the technical aspects of those areas. That should be helpful in terms of preparing for the review process and pending public hearings. Jim thought it would be helpful to have Steven Ciccarelli, the Town Consultant provide their preliminary thoughts. CEO Adam Backus noted that for a little background, we went through this with the Village Tower. Verizon was not the owner of the Tower; Crown Castle owned it. It didn't go so well at first, but once we brought in our consultant, things smoothed out. Even though some people didn't agree with it, we did our due diligence by having a third-party consultant review the proposal and confirm that they did everything they were supposed to do. Attorney Jim Campbell noted that having a consultant went a long way toward the justification of the Tower components.

Steven Ciccarelli, the consultant for the Town, stated that they have twelve findings. They looked at the twelve findings and summarized their summary. Findings 1 & 2 deal with the RF propagation plots provided by the applicant. They do show coverage and capacity issues and show existing gaps in coverage in that area. They also demonstrated that the capacity limits are being exceeded on three neighboring sites. Jeffrey explained how that causes problems with the other Towers. When you have people in the general area where the gap isn't covered, they ping the other Towers to try to get communication. The phone will communicate on a lower frequency band and then drop the call. The phone will try again to make the call, which ties up the Towers. That is one of the metrics/KPIs that they use. The other is how much data they can actually transmit from a cellular system to someone's handset, and back & forth. Those two metrics have been shown to be overloaded in certain cases. They have shown the capacity issues and the plots that were provided and show different color schemes which relate to different received powers. If you have a Tower that is transmitting a certain amount of power, and then you have the three sectors or the Antenna that is transmitting power out, the big Cell Tower is talking to the handsets. The received power gets lower and lower as you go away from Antenna. You will get to a certain point where you can't communicate anymore. Verizon, in this case, did a very good job with the power level. Not trying to be overly conservative or liberal, we worked on the other side of the table with Verizon in this area many times, and they are using the same power levels. From a propagation standpoint, they have shown a need for additional capacity and coverage in that area. CEO Adam Backus stated that part of the purpose for this meeting was because we weren't quite ready for a Public Hearing, but it would be an opportunity to get

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the Board involved. He felt it would be helpful to remind the Board of our role and how this all works. That will allow everyone to be on the same page when we return for the Public Hearing. Knowing what is expected and helping us know what our role is, and helping us do our due diligence. We felt it would be beneficial to have this preliminary meeting to bring the Board up to speed. Attorney Jim Campbell asked if CEO Adam Backus would prefer that Steven did not go through the findings at this time. CEO Adam Backus stated that he wanted to make sure that the goal of this meeting was to be preliminary. He would like Steven to help the Board determine what the issues of concern are and provide them with direction moving forward. Chairman Rick Bennett noted that Board did have a brief conversation prior to the start of the meeting regarding the application. From their point as a Board, they want to make sure that the need is there, that the Tower meets the need, and that this is the best location for it. In the prior Cell Tower application, the biggest issue was the need for a visual appearance so they could address any concerns. The Board also asked for them to investigate other site options. The original applicant stated they couldn't do that, but after Bill Johnson's review, it was determined that they were correct. We proceeded but moved the Tower back further away from a physical hazard, which was the propane tanks. The Board's primary goal is to know that the need is there, this fits the need, and it doesn't infringe on anyone else safety-wise. Steven noted that they could help the Board from a Consultant standpoint; the legalities will need to be worked out with the Town Attorney. Kelly Strauss noted that she has not been through the process and would like further information to know what is expected from the Board. Steven stated that the applicant had provided their application, and they have gone through it and concentrated mostly on the site selection, propagation plot, and the RF section, which is their expertise. They have also reviewed the Site Plan. They have heard some talk about how many different carriers are wanted. There would be four Carriers total, which is listed on the Site Plan. He has looked at the Telecommunication statutes for the Town of Livonia, and there are a couple of items that Verizon has agreed to modify in the Site Plan to meet those requirements. The consultants have issued a preliminary report which was issued this morning, but the Board has not had a chance yet to review that. When you do, it is 28 pages with a lot of specialized vocabulary. This includes the findings, which discuss the propagation plots, alternate sites, and whether they believe things were looked at properly. Some of those items would be if the height of the Tower is justified; if they haven't provided information that they feel would be helpful, they would request that on the Town's behalf and submit that as a part of their findings. They haven't shared those findings with the applicant yet. They would ask the Town for permission so that the applicant could respond directly. Sometimes they will meet with the FR Consultant for the applicant to discuss some of the issues, and they bring that information back to the Town. The preliminary report looks at all these issues from an RF standpoint. Once the Board receives the preliminary findings, they can ask questions and make recommendations for the applicant. Sometimes based on their findings, they will ask the applicant to go back and look at some of the sites that they have looked at before. That is the case in their findings in this report. There were four sites, A – D, in the site selections. They would request supporting documentation as to why the other sites were not acceptable. Possibly if you were at one of those sites, would the length of the Tower have to be at that height? They typically investigate what the concerns of the community would be. Their goal is to work with the Board and the community to ensure they get the best result in the end. The best site at the proper height and the right amount of coverage. Steven noted that with his experience, eventually, these types of applications for Cell Towers will be requested to be a mile apart. Carriers not only accommodate cell coverage, but they are

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also accommodating internet and video streaming. The services to be provided come at a cost in that the Tower must be a certain distance away. The Town consultants will work with the Board and answer any questions and also work with Verizon on any new materials they submit. They will issue a second report and be in attendance to answer any questions from the Board or from the public. Jackie noted that they will be providing a written response to all the consultants' questions. Robbyn Haak stated that in regards to the report that the Board hasn't received yet, will the consultant have the one-page summary included in that? Steven stated that there is a one-and-a-half-page summary that is included. Attorney Jim Campbell addressed Kelly's questions regarding the process. From a legal standpoint, there are two different fundamental things going on at the same time. The Planning Board has the Site Plan approval process, which will have a Public Hearing. The Zoning Board of Appeals has jurisdiction to issue a Conditional Use Permit. This would be a slight sense of a heightened review that allows them to grant subject to certain conditions. Attorney Jim Campbell encouraged the Board to review Code Section 150-103, which has the general requirements for Cellular Communication Towers. It talks about finding the most important findings that a lot of the consultant's report is built around. The Planning Board's role in Site Plan is going to be to look at those requirements. The Public Hearing will be an opportunity for the Public to provide the Board with comments. It is encouraged for the Public Hearing not to be a questions and answer session. Kelly commented that she wanted clarification on what is expected of the Board during the Public Hearing. Attorney Jim Campbell stated that it could be hard when you are not an expert with a technical background. That is why the Public Hearing is an opportunity for the public to voice their position either in favor or against the application. If there are questions, they can be looked at by the Board, but the Public Hearing is not the time dedicated to answering questions. The applicant and their attorney will be present, along with the consultants from both sides. The Board should be there to listen to the dialog and, for the most part, let the consultant and the Attorney answer any questions. Chairman Rick Bennett noted that with the Public Hearing, the Board is trying to accomplish more fact-finding to make a decision. In any Public Hearing, there is no immediate demand for the Board to answer any questions or to make a decision. Attorney Jim Campbell noted that the Board can always hold the Public Hearing open if additional information needs to be obtained by the applicant or our consultant. After the Public Hearing is concluded, there is a SEQR process, which is the environmental review. The applicant would then be referred to the Zoning Board of Appeals for their consideration of the Conditional Use Permit. The application would then come back to the Planning Board for final approval or contingent on approval from the Zoning Board. Typically, this Board has not done it that way, but that is still an option. CEO Adam Backus stated that the application would come to the Planning Board as we are tonight for a preliminary review, then a Planning Board Public Hearing on July 10th, referred to the Zoning Board for a Public Hearing on July 17th for the Conditional Use Permit and then return to the Planning Board tentatively on July 24th for final approval. Chairman Rick Bennett stated that from the Board's standpoint, we need to provide the applicant with the consultant's findings. Attorney Jim Campbell suggested having the Planning Board review the findings prior to sending them to the applicant. That way, any questions the Board may have can be included.

Chairman Rick Bennett asked Steven to continue with the summary of the findings. The Town of Livonia's Consultant, Steven Ciccarelli, reviewed his letter dated June 27, 2023, to Julie Holtje, Zoning Compliance Assistant, Town of Livonia. The said letter is a plain language

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synopsis of their findings and is on file at the Building and Zoning Department for public review upon request. Attorney Jim Campbell noted that the last two items of the findings are regarding the Telecommunications Act. The idea that radio waves above ten meters do not pose any threat to human health is a statutory finding. The Board can't contra deem that by making your own findings regardless of how strongly you feel about what you might hear from certain members of the public. The second item is that there are some strong possibilities that you could end up with a tower that is higher if the carrier or another carrier or owner determines there is a need and is appropriate. It may trigger the FFA lighting requirements, but you could end up with something significantly higher than 195' in the not-too-distant future and have very little to say about it. Once the initial tower is established, it triggers a protective quality of the Telecommunications Act that benefits Carriers. Kelly asked how often does that happen? CEO Adam Backus stated that we ask the applicant to show their potential Carriers and what the need is so that we can get a handle on the application. In the past, we have asked the applicant to provide us with information about what the other Carriers may need so we are able to get out in front of it. Jackie noted that they showed what it is designed for, but they would have no way of knowing what another Carrier's actual network needs would be. CEO Adam Backus stated that Phillip mentioned this in his initial response but that you would have some idea of what a different Carrier would require. Attorney Jim Campbell stated, from his understanding, networks and their design of them are very much proprietary. They also have mandates to maintain their FCC licenses with the state that they have to maintain so much coverage, and that sometimes dictates where they can go next. From his experience, it's probably not likely to get very much helpful information from Carriers before they are contemplating co-locating. Jackie stated that last year Verizon was building a 195' Tower, and the same concept came up. Part of the Law that allows for the extension also states it must conform to the Zoning approval. What they did in that situation was they made part of the Zoning approval that the Tower could not be lit. This means someone can't come in and ask to be 20' higher and have it qualify under that exemption because they can't violate the Zoning approval that it can't be lit. From a practical standpoint, it is very unlikely that being below Verizon at 191' wouldn't work. CEO Adam Backus stated that one of the challenges is that we want to promote co-location and would like to make sure we're not approving a Tower where no one else could co-locate. That would result in another Tower being requested. Attorney Jim Campbell stated that the Town would rather have co-location rather than multiple Towers. Chairman Rick Bennett stated that the Town's biggest issues are not only the visual but the fall zone. If the mandatory Act allows a Carrier the ability to extend another 20', is that the maximum that they could do? Steven noted that it was his understanding that would be a one-time increase of up to 10%. Chairman Rick Bennett stated that with that in mind if we get to that point, is to consider the fall zone and make sure. If there is a possibility that it could go up another 20', it would be the fall zone plus the increase, so it would be at 215'. Attorney Jim Campbell stated that part of the reason he is suggesting that the Board think about this is not necessarily that you should be concerned, but the Board should absolutely take into consideration the fall zone process for purposes of looking at this approval. What Jackie said is absolutely true about the Zoning approval, but he has not seen that challenged in a Court of Law. He would not be so sure that a Court would sustain that limitation based on language in our earlier approval. The Board should think about things in the context of fall zones and this particular site as opposed to one of the other workable sites they have identified. If you think of a site that you are aware of that they haven't identified, it's worthy of consideration in those aspects. CEO Adam Backus noted that in this application, the Setback is currently 225'. Jackie noted that would be

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right to the nearest property line. CEO Adam Backus stated which is our fall zone. It would be nice to know if it is doable for another Carrier to come on below Verizon, or are we setting ourselves up for another Tower, and can two facilities fit in that location, or will we have another application for a different location down the road? He felt that we had discussed this with our consultant when we reviewed the Village Cell Tower about the need requirements for other Carriers. Attorney Jim Campbell stated that the Consultants might know generally appropriate heights for co-location, but they can't get specific information from other providers about what their propagation and other data would be. CEO Adam Backus said that the question would be at what point are we doing our due diligence by saying they make sense at this location, but there is no other way for another Carrier to co-locate here. Where does our co-location come into say you're not providing for co-location? Attorney Jim Campbell stated that you are providing for co-location, but you are not in a position unless there are specific Carriers that want to co-locate now on this Tower that can do the analysis; you're not going to have that information. Due diligence doesn't require you to make something up that doesn't exist or obtain something that you can't obtain; otherwise, it never happens. Realistically you could ask for an opinion from the consultants that with this specific site and the Tower being 195' with Verizon at the top, is it realistic to assume that it would allow for co-location? CEO Adam Backus stated that he would like some evidence that it is even possible for another Carrier to be able to co-locate on this Tower. Jim stated that, currently, there is no data available. Adam asked how do we provide and know if it is possible. Jim stated that you don't, and you let it go. You are providing for co-location in the fact that the Code allows it. The Tower is designed for it, and they are telling you they are making provisions from an engineering standpoint to allow up to three co-locations on the same Tower. Possibly the consultants would be able to provide a non-specific to any particular Carrier in the sense that co-location can happen. Chairman Rick Bennett suggested that you go back to the last Tower we had because someone provided an opinion for that; based on what was seen before, the possibility is there. We know we can't confirm that until another Carrier says they want to go there. Attorney Jim Campbell stated that you can't stop another Carrier from saying that no matter what your assumptions were, our situation now is different from what your assumptions at the time were, and we need something different. You can do the best you can by encouraging co-location; you can't mandate it if it doesn't work. One of the things that Steven mentioned is that when this Tower goes up, it impacts because towers communicate with one another and the whole network, and it changes Verizon's network. Every time another Carrier puts up a tower in another community, it will change the network as it relates to coverage. Co-location may have worked prior to a new tower going up, may not work now, or may even be better. It's, unfortunately, a moving target. Unless you have other Carriers engaged in the process simultaneously way, it's pretty hard to get any assurances that it's going to work. Jackie stated that from a practical perspective, Carriers prefer to co-locate. It would be much cheaper and easier than trying to navigate through a Town's Zoning laws. Even if it only gives the Carrier 60%- 70% of their objective, that is a much easier process for them.

Kelly Strauss stated that when looking at page 3 of 11 on the Site Plan, it shows the neighbor next door who is Mark Moody. It shows his dwelling being 225' from the center of the Tower. On page 5 of 11, Mark Moody is not shown anymore, and it goes up to the next property. Jackie noted that it might be something when the engineer zoomed in on the properties that it just not showing the first parcel anymore. She stated that they have plenty of room, and if the tower did fall, it would not be within the distance of hitting anyone's property. Jackie said that she would

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speak to the engineers that created the map for clarification. She is confident that they are meeting all of the Setbacks because they have plenty of room. Chairman Rick Bennett stated that both maps show the same Setbacks, just different properties. Jackie noted that she would investigate and provide clarification and a corrected map.

Chairman Rick Bennett asked if anyone had any further comments or questions. Attorney Jim Campbell stated that from the Board's perspective, they would like to review the findings from the Town consultants before it is sent to the applicant. The Board will make sure it is complete as far as their inquiries are concerned. Once that is completed, the Building & Zoning office will forward the findings to the applicant. If the Board has any questions or comments, they can be sent to the Town's consultants for clarification.

CEO Adam Backus noted that the next meeting would be a Public Hearing with the Planning Board on July 10th. That would be followed by a Public Hearing with the Zoning Board of Appeals for a Conditional Use Permit. A final Site Plan approval meeting with the Planning Board would be scheduled after those Public Hearings.

With no further questions, Chairman Rick Bennett asked for a Motion to adjourn the meeting at 8:37 p.m... Motion to adjourn: M/2/C (J. Palmer/R. Haak) Carried 4-0

Respectfully Submitted,
Alison Houk, Recording Secretary