

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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**NEW YORK SMSA LIMITED PARTNERSHIP  
d/b/a VERIZON WIRELESS, and HOMELAND  
TOWERS, LLC,**

Plaintiffs,

-against-

**THE VILLAGE OF, THE VILLAGE OF  
NELSONVILLE VILLAGE BOARD, THE  
VILLAGE OF NELSONVILLE ZONING  
BOARD OF APPEALS, THE VILLAGE OF  
NELSONVILLE PLANNING BOARD,  
MINDY JESEK, FOIL OFFICER AND  
VILLAGE CLERK (in her official capacity),  
and WILLIAM BUJARSKI, BUILDING  
INSPECTOR (in his official capacity),  
“191”, “192”,**

Docket No. 18-cs-5932

Defendants.

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**EXPERT REBUTTAL REPORT OF BONNIE FRANSON, AICP CEP, PP**

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- A. Resume of Bonnie Franson, AICP CEP, PP.
- B. Cold Spring Zoning Excerpt – Article VII, Commercial Communications Towers.
- C. JMC Cross Section Showing Tree Heights.
- D. Sabre Industries Letter re: Branching Height and Branch Length.
- E. NP&V Map of Historic and Scenic Resources within ½-Mile Area of Potential Effect (APE) of Proposed Tower.
- F. NP&V Map of Historic and Scenic Resources within 2-Mile Area of Proposed Tower
- G. Letter from John A. Bonafide, Director, Technical Preservation Services Bureau, Agency Historic Preservation Officer, dated November 22, 2017.
- H. Letter from the Putnam County Historian, Sarah Johnson, Ph.D, dated October 31, 2017.
- I. Letter from the Cold Spring Historic District Review Board, dated November 8, 2017.
- J. Letter from Liz Campbell Kelly, ASLA, Principal, Hudson Garden Studio, LLC, dated November 27, 2017.
- K. Philipstown Cell Solutions Group, dated November 28, 2017, addressing impacts to scenic and historic resources.

List of Exhibits (continued)

- L. Letter from Michelle Smith, Director, Hudson Highlands Trust, dated December 29, 2017.
- M. Letter from Dr. Robin Hoffman and Mr. Connor Neville, Department of Landscape Architecture, State University of NY College of Environmental Science and Forestry, dated January 5, 2018.
- N. Letter from Liz Campbell Kelly, ASLA, Principal, Hudson Garden Studio, LLC, dated January 9, 2017.
- O. Email from NYSDOS Department of Coastal Programs, November 29, 2017.
- P. Letters from Erin Muir, Landscape Architect, and Ethan Timm, dated January 12, 2018.
- Q. Letter from Philipstown Cell Solutions dated February 20, 2018.
- R. Letter from Philipstown Cell Solutions dated February 19, 2018.
- S. Letter from Philipstown Cell Solutions dated February 9, 2018.
- T. Letter from Philipstown Cell Solutions dated April 16, 2018.
- U. Letter from John A. Bonafide, Director, Technical Preservation Services Bureau, Agency Historic Preservation Officer, dated March 14, 2018.
- V. JMC Site Plan:
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  - V2 5-Foot Elevation Above Grade.
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- W. Hudson River Valley National Heritage Area Map, prepared by Saratoga Associates.
- X. NYS Coastal Area and SASS.
- Y. FEAF Excerpts:
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  - Y3 Visual EAF Addendum.

## INTRODUCTION AND SUMMARY

1. I am a partner of Nelson, Pope & Voorhis, LLC (“NP&V”), a land use, planning and environmental consulting firm. My primary office address is 156 Route 59, Suite C6, Suffern, NY 10901. I am a professional planner certified by the American Institute of Certified Planners, and I received an advanced certification as a Certified Environmental Planner, of which approximately 70 professionals have been certified nationally. I have a Bachelor of Arts cum laude and Departmental Honor in Biology with a Minor in English from Bucknell University, and a Master of City and Regional Planning from Rutgers University. I have close to 33 years of significant community planning experience in New York and the Hudson River Valley. I have been retained by numerous municipalities as a professional planner to prepare comprehensive plans and zoning documents which often include historic and scenic elements. I have written zoning law for a ridgeline and precipice overlay zoning district to protect the scenic and historic qualities in the Village of Tuxedo Park, listed as a historic district on the National Register, as well as a ridgeline overlay zoning for the Town of Monroe to protect its scenic assets. I regularly review site plan, subdivision, and special permit applications on behalf of municipal planning boards and zoning boards of appeals, and review the SEQRA documentation, including environmental assessment forms and environmental impact statements, disclosing the potential environmental impact of a project on the municipality and its environs. I review activities that are proposed to alter buildings and properties on the National Register of Historic Places. I was retained by the Cold Spring Historic District Review Board to review and commented on the proposed alterations to the National Register-listed Kemble House located in the Village of Cold Spring. I have reviewed proposed expansions to Mohonk House and Hasbrouck House, listed on the National Register, on behalf of the Marbletown ZBA. I have regularly reviewed applications proposed within the Stone Ridge, the High Falls and Rest Plaus National Register Historic Districts in Marbletown. I am familiar with reviewing historic and visual impact assessments for a variety of projects in accordance with the regulations implementing SEQRA. My professional resume is attached as **Exhibit A**.

2. My testimony is offered on behalf of the Village of Nelsonville, inclusive of the Nelsonville Village Board of Trustees, the Nelsonville Zoning Board of Appeals (“ZBA”), the Village of Nelsonville Village Clerk, the Nelsonville Planning Board, and the Nelsonville Building

Inspector. On July 20, 2017, the co-applicants Homeland Towers, LLC, as landlord, and New York SMSA Limited Partnership d/b/a Verizon Wireless and AT&T as tenants (“Plaintiff”), submitted applications to the ZBA and Nelsonville Planning Board for approval of a Special Permit, Site Plan, and a site access variance pursuant to 7-736 of New York State Village Law (the “Application”) necessary to construct a “commercial communications tower” (“tower”) in accordance with Chapter 188, Zoning, of the Village of Nelsonville Code (“Zoning Chapter”). This affidavit supports the decision of the Nelsonville ZBA to deny an application for a commercial communications tower to be located at 15 Rockledge Road in the Village of Nelsonville, Putnam County, New York, also referred to on the Nelsonville tax maps as Tax Map/Section/Lot Parcel 49.6-1-7. This affidavit is based on my review of the extensive and voluminous record associated with the ZBA decision.

3. Based on my review of the voluminous record associated with this the Application, I conclude that the Village of Nelsonville ZBA rightfully denied the special permit and did not act in a manner that was arbitrary or capricious. The ZBA’s denial of the special permit was due to the Applicant’s failure to meet the standards set forth in the Zoning Chapter, and a determination that the tower will have a significant aesthetic impact on a National Register-eligible historic property. Specifically, the application failed to meet the zoning regulations (188-70), which in subsection (6) states: “That the proposed antenna installation or tower will not have significant adverse impact on scenic or historic resources. If a significant adverse visual impact is identified, the applicant shall demonstrate that suitable landscaping, buffering or other techniques will be used, and that they are able to minimize such impacts to a level of insignificance...” (emphasis added) Refer to **Exhibit B**, Article 188-68 of the Zoning Chapter. I conclude that the tower will have a significant adverse impact on the Cold Spring Rural Cemetery, a National Register-eligible historic site. Further, the Visual Resource Assessment was incomplete and did not assess all historic and scenic resources as required by the various federal and state guidances applicable to assessing visual impacts for telecommunication towers.

4. Contrary to the assertions in the affidavit prepared by Matthew Allen of Saratoga (“Allen Affidavit”), the firm that prepared the Visual Resource Assessments, and based on my technical analysis of the record, the Visual Resource Assessments are inaccurate, incomplete and even inconsistent with other submissions made on behalf of the Plaintiff. The tower height, including the proposed grading to accommodate the pole will result in a tower that is 115 feet

above existing grade, not the 110 feet which was modeled in the June 2017 Visual Resource Assessment upon which the Plaintiff relies. Note that even a difference of 5 feet is significant when a tower is surrounded by scenic and historic properties from which it could be visible. According to specific LiDAR information provided by the Plaintiff's engineer, JMC, which is depicted on the site plan, the trees in the foreground of the tower between it and the Cold Spring Cemetery are mostly 55 feet in height (**Exhibit C**). Therefore, 50 percent of the tower will be visible and will tower above the Cemetery. Further, the Plaintiff's tower designer, Sabre Industries, in a letter states that the branching on the tower that camouflages the pole and equipment covers only the top 40 feet of the pole (**Exhibit D**). Thus, at least 15 feet of the pole will be visible above the tree line. Nowhere is the bare tower pole modeled in the Visual Resource Assessments, especially of those that show the imposing tower in close proximity to and within the viewshed of the Cold Spring Rural Cemetery. It will be highly incongruous and in stark contrast to the surrounding deciduous (non-evergreen) tree line.

5. The submissions regarding historic and visual impact analyses were piecemeal and avoided any comprehensive representation of the significant and scenic viewshed within which the tower would be sited – the Plaintiff did not comply with the Zoning regulations when it presented the June 2017 Visual Resource Assessment without any input or review by the ZBA. It did not disclose that the tower is being sited in the federally designated Hudson River Valley National Heritage Area, the state-designated Hudson River Valley Greenway, or the New York State Coastal Area and only gave passing reference and no evaluation of the impacts to the Hudson Highlands Scenic Area of Statewide Significance (“SASS”) and the scenic components of HH-20, Garrison Four Corners Subunit, within which the tower is located. Rather than evaluating the impacts of the tower on the specific resources documented in the HH-20 Subunit, a Saratoga Letter dated December 19, 2017, compares the project to the New York Coastal Management Plan (“CMP”) Policy 24. Even a cursory review of the Subunit documentation and the reasons for its inclusion in the Hudson Highlands SASS would find that the “There are no discordance features.”<sup>1</sup> Further, the tower, being located in the New York State Coastal Zone, should be evaluated against other policies of the CMP, including Policy 23 which states: “Protect, enhance and restore

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<sup>1</sup> <https://www.dos.ny.gov/opd/programs/HudsonSASS/Hudson%20River%20Valley%20SASS.pdf>, p. 347

structures, districts, areas or sites that are of significance in the history, architecture, archeology or culture of the State, its communities, or the Nation.”

6. In summary, the various Visual Resource Assessments (“VRA”) did not disclose or minimized the importance and significant historic and scenic landscape within which the proposed tower would be located. The 110-foot monopole, proposed to be designed as a pine tree, would extend approximately 50 percent above the deciduous tree line according to the tree line shown on the site plan. The branches on the tower, proposed within 110 feet and 70 feet above ground level, would not visually screen the tower from the adjoining historic property. The tower would be located no more than 239 feet from the shared lot line of the Cold Spring Rural Cemetery and the land would be graded and trees removed within 160 feet of the shared property line with the Cemetery in order to accommodate stormwater infrastructure, opening up views of the tower as a result of tree removal.

7. Because the defining element of the cemetery is its visual landscape, the viewshed of this National Register-eligible property would be irretrievably ruined by the introduction of the tower. The record supports the conclusion that the tower would have an adverse impact on significant historic and scenic resources, including the National Register-eligible Cold Spring Rural Cemetery (“Cemetery”), which have not been mitigated so as to result in an insignificant impact. Given its obligation to act within the 150-day shot clock (as was mutually extended by agreement of the Plaintiff) and the lack of bona fide efforts (e.g., Plaintiff offers only design alternatives that do not meet the Village’s zoning regulations) to redesign, relocate or reduce the tower’s visual impacts to historic and scenic resources, the ZBA denied the application.

8. Courts that have addressed whether proposed telecommunications facilities present more than a minimal intrusion on a community have considered factors such as whether “(1) the proposed facility would affect the aesthetics of the community; (2) the proposed facility would affect property values in the community; (3) [the provider] failed to fully consider less intrusive alternatives; and (4) the impact of the proposed facility on the health and safety of the community.” *Cellco P’ship v. Town of Clifton Park*, 365 F. Supp. 3d 248, 257 (N.D.N.Y. 2019) (quoting *New York SMSA Ltd. P’ship v. Town of Oyster Bay*, 2013 WL 4495183 at 14 (E.D.N.Y. 2013)). In this instance, it is demonstrated that the tower will extend 50 percent over the existing deciduous tree line and will not be fully camouflaged, thus being in stark contrast to the visual landscape of the Cemetery. The tower top will be at a height of 115 feet above existing grade and based on trees

that are 55 feet in front of the tower as represented on the site plan, will result in 60 feet of the tower being visible. The simulated branches of the tower will only cover 40 feet of the tower extending above the tree line, leaving the monopole uncamouflaged and exposed.

9. Objections on aesthetic grounds must ‘articulate specifically how the proposed cell sites would have an adverse aesthetic impact on the community.’ ” *T-Mobile Northeast LLC v. Town of Islip*, 893 F.Supp.2d 338, 358 (E.D.N.Y. 2012) (quoting *Cellular Telephone Co. v. Town of Oyster Bay*, 166 F.3d 490, 495 (2d Cir. 1999) ). Thus, “[t]o deny a siting application on aesthetic grounds, there must be substantial evidence: (1) that ‘residents will be able even to see the antennae’ and (2) there will be an actual ‘negative visual impact on the community.’ ” *Id.* (quotation omitted). Moreover, “[i]t is well-settled that a ‘few generalized expressions of concern with “aesthetics” cannot serve as substantial evidence on which the Town could base the denials.’ ” *Cellco P’ship*, 365 F. Supp. 3d at 259 (quoting *T-Mobile Northeast*, 893 F.Supp.2d at 358). In this instance, in addition to the ZBA, the NYS State Historic Preservation Office (“SHPO”) has stated that there is a “significantly high concentration of National Register listed properties within one-half mile radius of the communication tower project site.” (**Exhibit G**). The SHPO stated that the tower, albeit camouflaged to be less obtrusive, will be a visual anomaly on the landscape, and thus, impacting the setting of the historic resources.” The SHPO altered its previous No Adverse Effect finding and applied the following conditions: “the tower will employ an appropriate visual camouflage method to allow it to blend more effectively into the landscape” and “the height of the tower will be capped at 110 feet. Any increase over this height in this location will create a significant visual impact.” As explained above, the tower has not employed an appropriate visual camouflage as portions of the bare tower will be visible based on the data provided by the Plaintiff’s engineering consultant and tower designer. It also is effectively 115 above ground level due to the change in grade which is not accounted for in the VRAs and thus not reviewed by the SHPO.

10. Under the Telecommunications Act, a reviewing court “can find that aesthetics qualify as a permissible ground for a denial of [an application] only if [it] can conclude that there was ‘more than a mere scintilla’ of evidence, *Universal Camera [Corp. v. N.L.R.B.]*, 340 U.S. [474] at 477, 71 S.Ct. 456 [95 L.Ed. 456 (1951) ], before the [Town] Board on the negative visual impact of the [proposed facility].” *Town of Oyster Bay*, 166 F.3d at 495 (footnote omitted); *see also Omnipoint Commc’ns, Inc. v. City of White Plains*, 430 F.3d 529, 533-34 (2d Cir. 2005)

(finding that the City's denial of the plaintiff's application to construct a 150-foot communications tower on aesthetic grounds was supported by "reasonable and substantial evidence" because the proposed "tower would rise to three times the height of the tallest evergreen tree and would be half again as tall as any other tree in the area" and the "aesthetic objections raised by the neighbors who know the local terrain and the sightlines of their own homes"). *Cellco P'ship*, 365 F. Supp. 3d 258). The record shows definitively that the tower will be over half as tall as the tree line above which it rises, the tower will be non-camouflaged for at least 20 feet above the tree line and clearly visible from the national Register-eligible Cold Spring Rural Cemetery (and which was never modeled) and the evergreen design is discordant with the deciduous tree line backdrop of the Cemetery. This conclusion relies on the extensive record including the testimony of many local professionals and experts who work and live in the Nelsonville/Cold Spring area and know well the terrain of the community and the historic and scenic resources surrounding the tower.

## **BACKGROUND AND ZBA DECISION**

11. The historic Village of Nelsonville is a very small municipality in New York State, located in the nationally-acclaimed Hudson River Valley landscape, and is approximately 652 acres<sup>2</sup> in size, or approximately one square mile. Land uses within the Village are controlled by Chapter 188, Zoning, of the Village of Nelsonville Code. Chapter 188 explicitly allows commercial communications towers by special permit approval of the Nelsonville ZBA in accordance with Article VII of the Zoning Chapter. Despite the Village's very small size, commercial communication towers are allowed by special permit in the following zoning districts: MR, HR, MF, and SR, as shown on the Nelsonville zoning map. The area within which commercial communication towers are allowed totals 617 acres, or 95 percent of the Village. Within and surrounding this small Village is a rich concentration of historic and scenic resources, including a large number of properties listed on the National Register of Historic Places. The entire village is situated within the Garrison Four Corners (HH-20) subunit of the New York State designated Hudson Highlands Scenic Area of Statewide Significance (SASS). "The subunit is recognized through the designation of NY Route 9D as a Scenic Road under Article 49 of the Environmental Conservation Law and through the inclusion of twenty structures and their estates on the State and

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<sup>2</sup> Putnam County GIS Data, 2019.

National Registers of Historic Places, most as part of the Hudson Highlands Multiple Resource Area. The subunit is free from discordant features."<sup>3</sup>

12. As per 47 USC 332 (c) (7) of the Federal Telecommunications Act (“TCA”): “... nothing...shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.” Here, the special permit for a commercial communication tower is regulated by Chapter 188, Article VII, of the Village of Nelsonville Code. The regulations require, among other standards, that the “proposed antenna installation or tower will not have a significant adverse impact on scenic or historic resources. If a significant adverse visual impact is identified, the applicant shall demonstrate that suitable landscaping, buffering or other techniques will be used, and that they are able to minimize such impacts to a level of insignificance.”

13. The Plaintiff, in July 2017, submitted a special permit, site plan, and variance application to construct a 110-foot tower adjacent to the National Register-eligible, historic Cold Spring Rural Cemetery. The ZBA conducted its review in accordance with the Village’s zoning regulations governing the siting of the tower and the regulations implementing the New York State Environmental Quality Review Act “SEQRA”). The ZBA considered the extensive and voluminous record of submissions offered by the Plaintiff’s consultants, consultants retained by the Village, and various experts who submitted testimony documenting the tower’s impact. Ultimately, after careful review and consideration of the extensive record, the ZBA denied the special permit. Contrary to the Complaint’s allegation that the decision is not in writing and not supported by the record of the decision (§ 34), the decision of the Defendant was provided to the Plaintiff in writing as shown in Exhibit 1 of the Complaint.

14. The ZBA decision concludes that the Plaintiff failed to comply with the Village Zoning Code and found that the proposed installation was not minimized to a level of insignificance; there was a negative aesthetic impact of the proposed installation in an area of scenic and historic significance; and the Plaintiff failed to locate the proposed tower where the visual impact is least detrimental. The ZBA decision culminated a review of the extensive written and oral record concerning the application. Of the four reasons set forth in the denial of the special permit, three reasons were based on the ZBA’s determination that the project would have a

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<sup>3</sup> <https://www.dos.ny.gov/opd/programs/HudsonSASS/Hudson%20River%20Valley%20SASS.pdf>

significant historic and aesthetic impact, and the inability of the Plaintiff to minimize the impacts to a level of insignificance.

15. As a utility regulated by the Federal Communications Commission (“FCC”), the tower is subject to the requirements set forth in the Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings approved by the Federal Communications Commission - FCC 04-222 – September 2004 (“Programmatic Agreement”). In accordance with the Programmatic Agreement, a proposed tower will be determined to have a “visual adverse effect on a Historic Property if the visual effect from the Facility will noticeably diminish the integrity of one or more of the characteristics qualifying the property for inclusion in or eligibility for the National Register.” Construction of a Facility will cause an adverse visual effect where visual setting or visual elements are character-defining features of eligibility of a Historic Property within the Area of Potential Effect (“APO”).

16. The APO, for purposes of the Programmatic Agreement is defined as the area within a half-mile of a tower with a height of 110 feet. The area within 1/2-mile of the tower is rich with historic properties and historic and scenic significance (see **Exhibit E**) not shown in Figure 2 of the June VRA. Consistent with the 2-mile radius boundary shown in Figure 1 of the June VRA, significant scenic and historic resources not shown in the June CRA are provided in **Exhibit F**. The conclusion that the tower is located in a significant scenic and historically rich landscape is supported in a letter issued by John A. Bonafide, Director, Technical Preservation Services Bureau, Agency Historic Preservation Officer (“SHPO”), dated November 22, 2017, stating that the APE contains 13 individually listed resources as well as a portion of one historic district, which is a significantly high concentration of National Register listed properties within one-half mile radius of a communication tower project. His letter also acknowledged the tower’s adjacency to and its location within the viewshed of the Cold Spring Rural Cemetery, eligible for listing on the National Register of Historic Places (**Exhibit G**).

17. Despite the significant acreage within the Village that can accommodate the tower, and additional lands located within the unincorporated area of the Town of Philipstown, the Applicant chose to pursue an application on a parcel located immediately adjacent to the National Register-eligible Cold Spring Rural Cemetery. Given the significant adverse impact that the tower would have on this historic property, the ZBA, among other reasons, denied the application. The Plaintiff has argued that the regulations prohibit the provision of personal wireless services. The

record shows that the Plaintiff did not research exhaustively alternative sites within the Village of Nelsonville or in the immediate vicinity that could accommodate a cell tower and cannot conclude that no other site is capable of remedying the alleged gap in service (see Exhibits **Q, R, and S** regarding the Butterfield, McKeel Corners and other sites). Further, the adjoining lands in the Town of Philipstown which immediately surround the Village and which allow commercial communication towers were not comprehensively evaluated in lieu of placing the tower within a historically-rich and significant scenic landscape.

18. The Complaint (at ¶ 187) argues erroneously that the Village Zoning Code does not require that the proposed installation be minimized to a level of insignificance for the issuance of a special permit. Section 188-68(A)(11) states the an application must meet the following siting objectives: “If a visual impact is identified, the applicant shall demonstrate that suitable landscaping, buffering or other techniques will be used and that they are able to mitigate such impacts to a level of insignificance.” (**Exhibit B**)

19. The Complaint argues erroneously (¶ 194 and 197) that the Zoning Code does not require that it be demonstrated that the tower will not have a negative aesthetic impact in an area of scenic and historical significance for the issuance of a special use permit, or to locate the tower where the visual impact is least detrimental. Section 188-70, entitled “Standards for issuing special permits”, states at subsection A.(6) that the “proposed antenna installation or tower will not have a significant adverse impact on scenic or historic resources.” (**Exhibit B**) Locating a tower in a manner that will not have an adverse impact on scenic or historic resources will result in a tower that is the least detrimental to significant scenic resources.

20. The Complaint argues incorrectly that the ZBA failed to make a SEQRA determination finding that the tower would have a significant adverse impact. It is established by New York State case law that a board is not required to render a SEQRA determination where it has decided to deny an application – SEQRA determinations are required when an Applicant proposes to approve an application only.

21. Contrary to the Complaint’s assertions, the ZBA decision is supported by a substantial record, which includes numerous opinions from various experts that offered testimony regarding the impact of a tower in this location. As per NYS Public Officers Law, Article 6, the “record” is defined as “any information kept, held, filed, produced or reproduced by, with or for an agency...in any physical form whatsoever including, but not limited to, reports, statements,

examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes.” In its decisionmaking, the ZBA must consider and evaluate the entire record. The record is not limited to those opinions prepared by consultants for the Plaintiff or those hired directly by the Village of Nelsonville boards, but all submissions made by the various experts and agencies that provide testimony in the review of the tower application.

22. The testimony that was relied upon by the ZBA in its determination that the tower would have a significant aesthetic impact on properties, including the Cemetery, includes but is not limited to submissions made by:

- Letter from John A. Bonafide, Director, Technical Preservation Services Bureau, Agency Historic Preservation Officer, dated November 22, 2017, stating that the APE contains 13 individually listed resources as well as a portion of one historic district, which is a significantly high concentration of National Register listed properties within one-half mile radius of a communication tower project (**Exhibit G**);
- Letter from the Putnam County Historian, Sarah Johnson, Ph.D, dated October 31, 2017, advocating for an alternative, less historic location for the Homeland Towers cell tower (**Exhibit H**);
- Letter from the Cold Spring Historic District Review Board, dated November 8, 2017, indicating that the tower would mar the visual character of the Cold Spring Historic District, and that it would be visible from the Cold Spring National Register Historic District and its contributing buildings as well as the Cold Spring Cemetery (**Exhibit I**);
- Letter from Liz Campbell Kelly, ASLA, Principal, Hudson Garden Studio, LLC, dated November 27, 2017, regarding the marred landscape that will be created at the Cold Spring Cemetery by the addition of the cell phone tower (**Exhibit J**);
- Statement in Opposition to the Homeland Towers Application for 15 Rockledge Road, Nelsonville, NY, prepared by Philipstown Cell Solutions Group, dated November 28, 2017, addressing impacts to scenic and historic resources (**Exhibit K**);
- Letter from Michelle Smith, Director, Hudson Highlands Trust, dated December 29, 2017, documenting the tower’s location within the NYS-designated Scenic Area of Statewide Significance, and its close proximity to NYS Route 9D, a designated scenic road. The letter

concludes that the tower is discordant with the landscape because of inappropriate scale and form (**Exhibit L**);

- Letter from Dr. Robin Hoffman and Mr. Connor Neville, Department of Landscape Architecture, State University of NY College of Environmental Science and Forestry, dated January 5, 2018, supporting the significance of the historic and scenic landscape within which the tower would be located (**Exhibit M**);
- Letter from Liz Campbell Kelly, ASLA, Principal, Hudson Garden Studio, LLC, dated January 9, 2017 [sic], in opposition to opinions of AKRK, Saratoga Associates, and CBRE regarding characterization of impacts to the Cold Spring Rural Cemetery, with attachments (**Exhibit N**);
- Email from the NYS Department of State Coastal Zone Program, dated November 29, 2017, regarding SASS Review Framework (**Exhibit O**);
- Letters from Erin Muir, Landscape Architect, and Ethan Timm, Architect, dated January 12, 2018, stating that the proposed cell tower will have a significant adverse aesthetic impact on the Cold Spring Rural Cemetery (**Exhibit P**);
- Letter from Philipstown Cell Solutions dated February 20, 2018, regarding the availability of alternative locations, including the former Butterfield site; and discussion of the impacts to the Cold Spring Rural Cemetery site (**Exhibit Q**);
- Letter from Philipstown Cell Solutions dated February 19, 2018, regarding the inadequate alternative site analysis of 50 Fishkill Road, McKeels Corner, and other private properties; and visual impacts associated with the monopine design (**Exhibit R**);
- Letter from Philipstown Cell Solutions dated February 9, 2018, regarding various siting comments (**Exhibit S**);
- Letter from Philipstown Cell Solutions dated April 16, 2018, regarding the Plaintiff's inability to provide viable alternative design (**Exhibit T**).

23. Ultimately, the ZBA denied the application on the basis of its historic and visual impact, and specifically its significant impact on the Cold Spring Rural Cemetery. The tower will rise approximately double the height of the adjoining deciduous tree line above the historic property. As per the determination of eligibility made by the NY State Historic Preservation Office ("SHPO") on November 14, 2017, the Cold Spring Rural Cemetery is significant under National

Register Criterion C, in the areas of Landscape Design and Funerary Art – “The property is a representative example of a ‘romantic landscape’ cemetery reflecting the shift in attitude towards death and nature that had developed as part of the rural cemetery movement. The Cold Spring Rural Cemetery exhibits many of the landscape features associated with this mid-nineteenth century movement, including curvilinear roadways and paths, plantings of cedar and spruce trees and the orientation of stones to all points rather than westward as found in the earlier cemeteries. In addition to its landscape, the cemetery contains numerous representative examples of grave markers illustrating funerary art from the mid-nineteenth through the early twentieth century.” Today, the Cold Spring Rural Cemetery retains a high degree of integrity of setting, design, craftsmanship, feeling and association. The visual setting of the Cold Spring Rural Cemetery is explicitly identified as the character-defining feature for eligibility. Construction of a 110-foot tower which is within the immediate viewshed to the cemetery, results in the placement of a major modern feature that is in stark contrast to and incongruous with its visual landscape. As stated in the March 14, 2018, letter from the SHPO (**Exhibit U**), the tower is a visual anomaly in the landscape and thus, will impact the setting of the historic resources. The SHPO determined that if the tower met several conditions, it would result in No Adverse Effect. However, the tower, by its design, will not meet these conditions, as further detailed in this affidavit.

## **OPINIONS**

### SEQRA Process is Valid

24. Contrary to the Complaint, the ZBA acted properly with regard to its SEQRA obligations. Both the complaint (at ¶ 21) and the Allen Affidavit (at ¶ 19) assert incorrectly that the ZBA’s failure to finalize the EAF, prepare a Part 2 EAF, or render a SEQRA determination resulted in a flawed SEQRA process.

25. First, the Environmental Assessment Form, Part 1, and Visual EAF Addendum prepared by the Plaintiff were submitted and reviewed by the ZBA consistent with the requirements of the Zoning Chapter and SEQRA. As explained later in this affidavit, the FEAF and Visual Resource Addendum failed to identify the significant historic and scenic planning districts within which the tower is located.

26. Section 617.3(a) of the regulations state: “No agency involved in an action may undertake, fund or approve the action until it has complied with the provisions of SEQRA.” When a project is denied, adherence to or completion of the SEQRA process is not required (see Matter of Loguidice v Southold Town Board of Trustees 50 A.D.3d 800, 855 N.Y.S.2d 620 (2d Dept. 2008)). The SEQRA regulations require that where an approval is anticipated, the lead agency must not approve an application without first completing SEQRA’s obligation to take a hard look at potential significant environmental impacts and eliminating or mitigating those impacts. Here, the ZBA denied the application. In upholding the denial of an application, the Appellate Division has noted: “Finally, because the Board determined to deny the petitioner's application, "no action having a significant effect on the environment was undertaken . . . [and, as such], it was unnecessary for the Board, as lead agency, to comply with the requirements of the State Environmental Quality Review Act". As the Nelsonville Zoning Board of Appeals denied the special permit application, it was unnecessary for it to comply with the requirements of SEQRA.

#### Plaintiff Intentionally Minimizes the Significance of Historic Impacts

27. Throughout the entire review process, the Plaintiff (at ¶ 83 of the Complaint) and its consultants, in its reports and letters, have endeavored to minimize the significance of historic properties surrounding the subject property and the tower’s impact to same. The Complaint states that “SHPO found that the Cemetery was merely eligible for listing” (emphasis added) on the National Register of Historic Places. It is misleading to characterize an eligible property in this manner. The very first paragraph of the Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings approved by the Federal Communications Commission - FCC 04-222 – September 2004 (“Programmatic Agreement”) states: “WHEREAS, Section 106 of the National Historic Preservation Act of 1966, as amended (“NHPA”) (codified at 16 U.S.C. § 470f), requires federal agencies to take into account the effects of certain of their Undertakings on Historic Properties...included in or eligible for inclusion in the National Register of Historic Places...” (emphasis added). The Programmatic Agreement explicitly defines a “Historic Property” as “Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register maintained by the Secretary of the Interior.” (emphasis added) A property that is eligible for inclusion is on an equal footing with a

historic property listed on the National Register of Historic Places. The historical significance of the Cold Spring Rural Cemetery is evidenced by its National Register eligibility.

### The Tower Height and Design is Incorrectly Modeled

28. The most important aspect of the tower application review is to ensure that the proposed tower is modeled correctly when simulating its appearance in the landscape, in order to objectively evaluate its potential historic and scenic impacts. I conclude, based on review of the ZBA record, that the tower was modeled incorrectly and does not represent the actual appearance of the tower in the various Visual Resource Assessments conducted by Saratoga Associates. The resulting analyses are flawed and do not support the conclusion that the tower will not have a significant adverse impact on historic and scenic resources. The ZBA rightfully denied the application, as the Plaintiff failed to provide accurate simulations of the tower, and the simulations do not reflect the true aesthetic impact the tower's location and design will have on the exceptional scenic and historic resources in the ½-mile APE.

29. The June VRA is flawed as it did not consider key aspects of the tower height, design and tower site. As required by the DOS Manual, a tower must be modeled taking into account any change in the tower's elevation that results from grading activities. Specifically, the first site plan, prepared by JMC and dated July 11, 2017, shows an existing spot grade of the land immediately adjoining the tower base at an elevation of 263 feet above mean sea level (msl) and the tower base at an elevation of 268.15 feet (**Exhibit V-1**). Also, per the cross section shown in Sheet ZD-13 (**Exhibit V-2**), the base of the pole is shown as being 5 feet above the existing grade. As per the DOS Manual, to accurately model the cell tower's height, it must take into account the additional 5 feet in height, i.e., modeled as if it is 115 feet, that it will rise above the existing grade condition. Thus, the June VRA is rendered incorrectly as it did not measure or model the tower's height accurately. Figure 1, 2-Mile Radius Map, and Figure 2, ½-Mile Radius Map (Exhibit C of the Allen affidavit) are also inaccurate as the Bare Earth and land cover viewshed areas underestimate the locations from which the tower may be visible based on the incorrect tower height of 110 feet.

30. Saratoga Associates supplemented the June VRA with additional analyses that resulted from the ZBA's request that the applicant follow the procedures set forth in the Zoning

Chapter and conduct a balloon test in accordance with Article VII requirements. The results are included as Exhibit D of the Allen affidavit. The report, dated November 15, 2017 (“November VRA”), states that although the tower height will be 110 feet, the Village Engineer requested an additional 6 feet of tether line. This additional height, not evaluated in the June VRA, accounts for the change in grade which will result in the tower being taller than modeled in the June VRA. The balloon was raised an additional four feet to a total of 120 feet. An additional photo was taken from Montrest, which property is clearly within the ½-mile radius, and not previously examined in the June VRA. In addition, photos from within the Cold Spring Cemetery were taken, but the report indicates the Cold Spring Cemetery is not listed on the National Register. In fact, the Cold Spring Cemetery was determined to be eligible for listing on the National Register of Historic Places on November 14, 2017, and thus the impact to the scenic and historic character of the cemetery is a relevant area of environmental concern. Even though the photos show a balloon elevated to 120feet, each of the photos attached to the November 17 Saratoga are annotated to specifically point out a tower height of 110 feet which is misleading, rather than showing a tower height of 115 feet above grade. The Visual Resource Assessments continue to model an incorrect tower height, and do not remedy the inaccurate information presented in the June VRA.

31. Importantly, the monopole will be much more visible than modeled in the Saratoga Associates June VRA and its visual addenda, and it will be readily perceived by a viewer as a man-made structure in stark contrast to the surrounding landscape when viewed from the National Register-eligible Cemetery and other vantage points, because the height of the branching is shown incorrectly. The site plan cross section prepared by JMC completely misrepresents the appearance of the cell tower, which is proposed to be camouflaged as a pine tree (referred to also as a “monopine”). The Visual Resource Assessments and the JMC report do not model the limited amount of branching that is proposed at the top of the monopile. As per the Sabre Industries letter dated September 25, 2017 (**Exhibit D**), the letter states that “Attached hereto is a branch receptor chart showing the different branch lengths, with shorter branches at the top and longer branches at the bottom of the requested branch start height. Non-uniform branch lengths will be used throughout the structure creating a non-conical or non-pyramid effect for the Monopine. The branches will range between 9' and 14' lengths and will extend from 110-ft AGL<sup>4</sup> all the way down to 70-ft AGL, which is a large area of coverage.” **Exhibit V-3** provides a measurement of the

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<sup>4</sup> AGL = above ground level.

tower and the area between 70 feet AGL and 110 feet AGL which will only cover 40 feet of the overall 110-foot tower.

32. Based on the Sabre Industries design, the branching will not extend below the tree line and the monopole will be visible above the tree line. Further, ZD-13 and ZD-14 misrepresent the branch length of the proposed monopine – the maximum length of the branch is 14 feet – see also **Exhibit V-3. Exhibit V-4**, by editing the site plan cross section and removing the branching below 70 feet AGL and branching beyond 14 feet, illustrates a significantly less camouflaged tower which is what the Plaintiff proposed to construct. In conclusion, the site plan and Visual Resource Assessments submitted to the ZBA as well as the SHPO for review completely misrepresent the visual appearance of the proposed tower, and thus fail to accurately document the significant visual adverse impact the tower will have on the adjoining National Register-eligible Cemetery and the significant scenic and historic landscape within which the tower is to be located.

33. The Visual Resource Assessment and supplemental addenda fail to model the elimination of trees around the pole and within the proposed access drive. The site plan illustrates an access drive that is approximately 393 feet in length, and up to 23 feet in width which will be cut mostly perpendicular to the existing slope. Cuts perpendicular to a slope are more visible than those that follow the slope contour and will remove important landscape backdrop against which the tower would be viewed. This results in additional, unevaluated visual impacts.

34. Based on the foregoing, the Visual Resource Assessment does not model and accurately represent the correct tower height which should be evaluated at a height of 115 feet above existing grade, to account for the 5 feet in grade change. The Visual Resource Assessment does not model the tree removal associated with the access drive, which will remove critical backdrop against which the tower would be made less visible. The Visual Resource Assessment does not model and does not accurately reflect the visibility of the non-branch portion of the tower, wherein branches will only camouflage the uppermost portion of the “monopine” tower between 70 feet and 110 feet of the pole, leaving the base of the monopole uncamouflaged and visible, and in stark contrast to the deciduous tree line and landscape within which it is located.

Plaintiff Analyses Do Not Disclose the Tower Location in the Hudson River Valley National Heritage Area or the Coastal Area Boundary and Minimizes the Importance and Relevance of Tower’s Location in the Hudson Highlands SASS

35. The New York State Department of Environmental Conservation (“DEC”) has promulgated policies for purposes of determining when a project will have a significant visual impact on the State’s historic, scenic and recreational resources, as set forth in the Policy Guidance DEP-00-2 entitled “Assessing and Mitigating Visual Impacts” (“DEC Policy”). As described therein, significant historic, scenic and recreational resources include the Hudson River<sup>5</sup>, Scenic Areas of Statewide Significance, and other resources described below. “The cornerstone of the DEC guidance document is its inventory of aesthetic resources of statewide or national significance. The scenic and aesthetic resources identified in the guidance have all been protected by law or regulation and are therefore special places that the public has deemed worthy of protection due to the inherent aesthetic value associated with the resource.”<sup>6</sup>

36. The ZBA was provided with various Visual Resource Assessments prepared by Saratoga Associates and documented in the Allen affidavit at paragraph 6. The Visual Resource Assessments are flawed in that they do not comply with various visual impact policies promulgated by New York State agencies including the DEC Policy and do not comply with the guidelines contained in the New York State Department of State (“DOS”) “Planning and Design Manual for the Review of Applications for Wireless Telecommunications Facilities - A Practical Guide for Communities Managing Wireless Telecommunications Facilities Siting in New York State” (“DOS Manual”). The June VRA and its supplements do not provide any narrative context describing the significant historic and scenic landscape within which the tower is proposed. The Visual Resource Assessments fail to disclose that the proposed tower is located within the federally-designated Maurice D. Hinchey Hudson River Valley National Heritage Area which is managed in partnership with the U.S. National Park Service. The Hudson River Valley National Heritage Area was designated by Congress in 1996 and is one of only<sup>7</sup> fifty-five federally-recognized National Heritage Areas throughout the United States. Ironically, the Hudson River National Heritage Management Plan includes a map identifying the area on a map prepared by Saratoga Associates (**Exhibit W**).

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<sup>5</sup> The 2000 Guidance identifies the Hudson River as being designated as an American Heritage Area by Presidential Order. The revised draft 2018 Guidance specifically identifies National Heritage Areas, e.g. Hudson River Valley National Heritage Area of 1996.

<sup>6</sup> SEQR Handbook, 4th edition [http://www.dec.ny.gov/docs/permits\\_ej\\_operations\\_pdf/dseqrhandbook.pdf](http://www.dec.ny.gov/docs/permits_ej_operations_pdf/dseqrhandbook.pdf)

<sup>7</sup> <https://www.hudsonrivervalley.com/>

37. The Hudson River Valley Greenway Council manages the Hudson River National Heritage Area<sup>8</sup>. Its mission is to “continue and advance the preservation, enhancement and development of the world-renowned scenic, natural, historic, cultural and recreational resources of the Hudson River Valley...” According to the Hudson River Valley National Heritage Area Management Plan, approved by the U.S. Secretary of the Interior on April 17, 2002: “*The National Park Service recommended National Heritage Area status for the Hudson River Valley in a 1996 Special Resource Study and characterized the valley as ‘an exceptionally scenic landscape that has provided the setting and inspiration for new currents of American thought, art and history.’*”<sup>9</sup> The Villages of Nelsonville, Cold Spring, and the Town of Philipstown are all Hudson River Valley Greenway communities. By omitting any references to this nationally recognized scenic and historic region, the June VRA fails to establish an accurate context for the historic and scenic visual environment within which the tower is proposed. The submissions to the Nelsonville ZBA and the NY State Historic Preservation Office fail to objectively represent the tower and its relationship to this exceptional scenic landscape.

38. The tower will also be located within the New York State Coastal Area Boundary (**Exhibit X**), and state and federal actions and activities requiring state and federal permits must be reviewed to determine the action’s consistency with the policies contained in the New York State Coastal Management Program (“CMP”). Policy 23 specifically states that actions will “Protect, enhance and restore structures, districts, areas or sites that are of significance in the history, architecture, archeology or culture of the State, its communities, or the Nation.” The policy specifically states that a “specific adverse change” includes: “All proposed actions within 500 feet of the perimeter of the property boundary of the historic, architectural, cultural, or archeological resource and all actions within an historic district that would be incompatible with the objective of preserving the quality and integrity of the resource. Primary considerations to be used in making judgment about compatibility should focus on the visual and location relationship between the proposed action and the special character of the historic, cultural, or archeological resource. Compatibility between the proposed action and the resource means that the general appearance of the resource should be reflected in the architectural style, design material, scale, proportion, composition, mass, line, color, texture, detail, setback, landscaping and related items of the

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<sup>8</sup> <https://www.ny.gov/agencies/hudson-river-valley-greenway>

<sup>9</sup> National Heritage Management Plan, p. 19.

proposed actions: With historic districts this would include infrastructure improvements or changes, such as, street and sidewalk paving, street furniture and lighting.” (emphasis added) The tower is within 500 feet of the property boundary of a historic property. The ZBA correctly denied the Application as it would have a significant adverse impact on the scenic and historic character of the Cemetery as per the Policy 23 of the CMP review, a review omitted from the Plaintiff’s submissions.

39. The Village of Nelsonville's inclusion with a New York State as a Scenic Area of Statewide Significance (“SASS”) (**Exhibit X**) compelled the ZBA to give special consideration when evaluating impacts to this significant public scenic landscape. Tasked with determining impact by Zoning Chapter (§188-70 (a) (6)), the ZBA has the discretionary authority to utilize the SASS guidelines in reaching its conclusion. The SASS manual details examples of scenic impairment: “The Hudson Highlands SASS is generally free of discordant elements. The failure to blend new structures into the natural setting, both within the SASS boundaries and in the viewshed of the SASS, would impair the scenic quality of the SASS.”<sup>10</sup> The Plaintiff’s hired expert Matthew Allen (Saratoga Associates) provides a cursory reference to the Village's inclusion in the Hudson Highlands SASS. Allen does not refer to the Policy 24 Guidelines in the June VRA that provide municipalities in SASS regions with a non-binding framework for evaluating development proposals. Allen only considers the Policy 24 Guidelines in the Saratoga letter dated December 19, 2017, and only in response to the testimony offered by the various expert testimony that criticized this significant omission. Policy 24 defines impairment in a SASS region as: "... impairment of a landscape’s scenic quality can occur in two principle ways: 1) through the irreversible modification or destruction of landscape features and architectural elements which contribute significantly to the scenic quality of the coast, and 2) through the addition of structures which reduce views or are discordant with the landscape because of their inappropriate scale, form, or construction materials."

40. Expert testimony is provided to the ZBA in reference to the significance of the tower’s location in a SASS. The letter from Dr. Robin Hoffman, Professor and Chair, SUNY Landscape Architecture, provides expert testimony in the record attesting to the visual impact a “mono pine tower” would have in a SASS location (**Exhibit M**). Liz Campbell Kelly's letter of Jan 9, 2018 in the public record does the best at outlining the inadequacies of Homeland's expert

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<sup>10</sup> <https://www.dos.ny.gov/opd/programs/HudsonSASS/Hudson%20River%20Valley%20SASS.pdf>

opinions and shows that in their assessments they failed to demonstrate any knowledge of the character-defining features of cemeteries in the important Rural Cemetery Movement, of which Cold Spring Cemetery is an unusually well-preserved example (**Exhibit N**). It would be impossible for Homeland's experts to have assessed the "significance" of the visual impact on the cemetery without demonstrating which character-defining features of the cemetery are, or are not, impacted by the addition of a tower at the proposed site. A November 29, 2017 email from Jennifer Street, Coastal Resources Specialist, Consistency Review Unit, New York State Coastal Management Program who offered her personal expert opinion that "[the SASS guidelines are] a helpful management tool that the Board can use, if they so choose, to inform their decision when considering visual impacts. Many impacts have already been evaluated and described within the framework of the SASS document and can aid significantly in a municipality's review. The SASS's were developed with the help of all of the interested communities in the planning areas and it would be a shame not to use them as a visioning document at every level of government." (**Exhibit O**)

41. These significant omissions are evident from the outset and at the time the application is first submitted, and these omissions continue through the entire process. The Full Environmental Assessment Form ("FEAF"), Part 1, dated July 17, 2017, and the subsequent revised FEAF (dated August 30, 2017) do not acknowledge that the subject property is located in a "regional special planning district" despite the fact that the FEAF form itself provides, as specific examples, a project's location in a Greenway or a state or federal heritage area. The Plaintiff, in the FEAF, fails to identify that the tower is to be located within the nationally-renowned Hudson River Valley National Heritage Area, and that the Village of Nelsonville is a designated-Hudson River Valley Greenway community. The FEAF fails to identify that the tower will be located in the Hudson Highlands Scenic Area of Statewide Significance (**Exhibit Y**).

#### Errors in the Visual Resource Assessment and CBRE Historic Report Evaluation Process

42. The June 2017 Visual Resource Assessment, and its supplements, were not prepared in a manner consistent with DEC policy nor was it prepared in accordance with the Section 188-68.A.(12) of the Village Zoning Chapter. Further, it does not follow the recommended visual impact analysis process included in the DOS Manual.

43. 188-68.A.(12) of the Zoning Chapter set forth the required submissions for conducting a visual impact analysis for a tower: “A long-form EAF, including an analysis of visual impacts. The applicant shall submit a view-shed analysis to determine the visual impacts of the proposed tower's siting. The analysis shall include a completed SEQRA visual EAF addendum, assessment of the tower's siting from significant vantage points and/or historic and scenic resources, by balloon testing or similar methodology, as well as visual simulations of the proposed tower's siting by means of photomontage or architectural renderings.” The regulation specifically states that “significant vantage points shall be determined by the Zoning Board, such as views from state and local roads adjacent to the proposed site, recreation areas, housing developments and local, state or national historic and scenic resources.” Also, the “methodology, date and time of all testing related to prescribed view-shed assessments shall be approved by the Zoning Board prior to preparation.”

44. Despite the clear standards set forth in the regulations which requires consultation with the ZBA in determining potential locations that are to be analyzed, the Plaintiff short-circuited the process by submitting the June VRA without any ZBA or community input – the June VRA was finalized one month before the application was submitted to the ZBA. Regardless, the ZBA required that the Plaintiff conduct two balloon tests to adhere to the Village’s zoning regulations, in an attempt to acquire meaningful data regarding the tower’s potential impact on historic and aesthetic resources which were not presented in the June VRA.

45. The Village Zoning Chapter requires that a balloon test or similar methodology be employed to determine the potential visual impact on the community’s significant historic and aesthetic resources. This requirement is consistent with state policy - the DOS Manual recommends field verification as a required step by which a visual impact assessment shall be conducted. Specifically: “A brightly colored balloon (preferably yellow) is the best tool to use as a visual target. The balloon should be raised to a height above the existing grade that approximates the finished elevation of the structure. Weather conditions should be favorable throughout most of the day. Clear skies and bright sunshine are the days with the best visibility. Calm winds result in relatively stationary balloon heights.”<sup>11</sup> The June VRA was prepared absent a balloon test to field verify the photosimulations contained therein. The VRA narrative does not state when the photos were prepared, but the photo images show that they were taken on April 18, 2017 - it is evident

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<sup>11</sup> [https://www.dos.ny.gov/lg/publications/Wireless\\_Telecommunications\\_Facilities\\_Manual.pdf](https://www.dos.ny.gov/lg/publications/Wireless_Telecommunications_Facilities_Manual.pdf)

from the photographs that trees are coming into bloom and the photos do not represent off-leaf conditions. As result, the photosimulations do not fully represent the worst-case scenario of off-leaf conditions.

#### Errors in the Visual Resource Assessment and CBRE Historic Report Inventories

46. As set forth in the DEC Policy, the first step in conducting a visual impact assessment is to inventory the aesthetic resources that may be impacted by a proposed project. The DEC policy specifically lists various properties that are to be included in the assessment. First, no such comprehensive list is provided in any of the Visual Resource Assessment. Rather, the June VRA states generally and without specific identification that there are 19 cultural resources within the 2-mile study area, and 11 of those sites fall out of the ½-mile tower site (i.e., 8 resources are within the APE). A simple check of the New York Cultural Resource Information System (“CRIS”) website database managed by the SHPO shows that there are 23 properties listed on the National Register of Historic Places, and one that has been determined eligible within the ½ mile area around the tower (**Exhibit E**). The June VRA states simply that there are 8 cultural resources are within the ½-mile of the tower site and makes no attempt to identify them, even though the information is available from the Plaintiff’s Consultant, CBRE, and readily available from the CRIS system.

47. Within the 2-mile study area (**Exhibit F**), there are 289 properties that are listed on the National Register of Historic Places, and 4 properties that are eligible for listing. A major cultural resource that is entirely excluded from discussion or evaluation is the National Register-listed U.S. Military Academy at West Point. The list of historic resources alone is significantly misrepresented. By design, the viewshed maps minimize the significant number of historic properties by not illustrating the entirety of parcels within the viewshed. The Cold Spring Historic District is shown only as a tiny small single symbol on the map, despite the fact that it contains approximately 227 buildings listed on the National Register of Historic Places as per the CRIS system. See **Exhibits E and F** for an accurate representation of the historic resources within 2-miles and a ½-mile of the tower.

48. The June VRA, on p. 5, includes a list of locations from which photos were taken. A review of the list provides mostly street locations, and only five of the map ID photos are labeled

in a manner to identify the photo as taken from a historic resource – the Boscobel House and Gardens, Cold Spring Baptist Church and the Cold Spring Rural Cemetery. One scenic road, NYS Route 218, which is located on the west side of the Hudson River is also identified. However, in a Saratoga letter dated December 19, 2017, that responded to expert comments that were raised regarding the Plaintiff’s failure to document all National Register buildings, the Saratoga response now discloses, nearly 5 months later, that other photos listed in the Visual Resource Assessment were also taken from National Register sites, although not labeled as such. For example, the December 2017 letter states that the National Register Hustis House is represented by VP15. VP15 is identified as “NY Route 301 (Main Street) near Billy’s Way” in the June 2017 VRA. The VRA avoids naming the National Register properties and thus downplays the high number of these buildings/properties in the APE. In fact, except for Boscobel and the Cold Spring Cemetery, the only time Saratoga Associates discloses the names of the resources are in the December 19, 2017 response letter.

49. A review of data available from the web-based New York Cultural Resource Information System (“CRIS”) managed by SHPO indicates the following historic properties are omitted from the June VRA based on a review of Figure 2<sup>12</sup> of that report – **Exhibit E** identifies these sites by number and keys them to a list on the Exhibit: the E. Todd Residence at Lane Gate Road National Register listed (263); the Montrest E. Todd Residence National Register listed (262); the Boscobel Restoration Inc Residence National Register listed (260); the H.D. Champlin & Son National Register listed (234), and the Gallagher Residence National Register listed (233). The June VRA excludes an identification of the following National Register listed buildings within the Cold Spring Historic District which are within the ½-mile APE: the Hearney Residence (28), Talanco Residence (39), Sullivan Residence (77); Egan Residence (81), Phalen Residence (87), Baricevic Residence (92), Timmons Residence (93); and the West Point Foundry National Register site. The June VRA also places Montrest outside the ½-mile radius of the APE, based on the location of the symbol shown on Figure 2 of the Saratoga Report, when the property is clearly within the APE.

50. Other omissions in the FEAF and June 2019 Visual Resource Assessment with regard to the listing of all historic and scenic resources within the tower’s ½-mile APE include: NYS Route 9D is not identified as a NYS-designated scenic road; NYS 9D/Peekskill Road/NYS

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<sup>12</sup> The June VRA shows the sites as a building symbol on the map.

Route 301 is not identified as a designated Hudson River Valley Greenway Trail; the Undercliff and Nelsonville Trails extend into the Village, where the VRA assessment is limited to visibility from scenic outlooks. Lastly, the Hudson River Valley Greenway Trail is also a NYS-designated bike route. It is only after public testimony and inquiries by the Village Engineer that a few of the missing significant resources are considered in the submissions subsequent to the June VRA.

51. The Plaintiff retained CBRE, Inc., a Telecom Advisory Service firm to evaluate the historic properties that may be impacted by the proposed tower project. An opinion letter attached to the FEAF and provided by Laura Mancuso, Director of Cultural Resources of CBRE, dated May 19, 2017, concluded that there would be no impact on the Cold Spring Rural Cemetery gatehouse. Inexplicably, the June VRA is not coordinated with the analysis done by CBRE, which evaluated the potential adverse effects that the tower project may have on historic resources. Appended to the FEAF is an attachment entitled “Historic Properties for Visual Effects”. A comparison of the historic resource consultant list to the Visual Resources maps contained in the June 2, 2017 Visual Resource Assessment shows various inconsistencies between the submissions, including omissions of significant historic resources in the June VRA. For example, the June VRA places Montrest outside the ½-mile radius even though the property is clearly within it. The West Point Foundry, the Boscobel Restoration Site are not included in the June VRA viewshed map, although identified in the CBRE FEAF attachment as historic properties.

52. The June VRA includes a Figure 2 which is a viewshed map with ½ mile radius around the tower location. Although it documents 23 locations from which photos were taken, the photo log in fact includes 25 locations, of which two are not shown on the viewshed map. The viewshed map documents that the tower will be visible from the following locations: 3, 4, 11, 12, 14, 16, 19, 20 and 22. The report shows the existing and simulated condition for locations from which the tower would be visible. Yet, the following locations are not simulated, and no rationale is provided for the exclusion: 12, 19, and 22. The sites which may be potentially visible include: 2, 10, 15, and 18. However, the viewshed analysis shows only existing and simulated conditions for Photo Location 18 only.

53. The November 15, 2017, Visual Resource addendum that provided the results of the first balloon test conducted on November 4, 2017, included one of the two National Register listed buildings on the Montrest site. A photo was taken from the Cold Spring Gatehouse, a

National Register listed building, which was not done prior in the June VRA although the building had been identified as historic in the June VRA report.

54. The balloon test did not include photos or a narrative describing whether the tower would be visible from any of the historic and scenic resource vantage points shown in the June VRA, to assess the visibility of the balloon as viewed from the identified scenic and historic resources within the ½-mile radius. The Viewshed Map does not include a revised Land Cover Viewshed Area which would have expanded the potential area from which the tower could be visible as a result of the additional 5 feet in height of the proposed tower due to changes in the existing grade. The Viewshed map includes photos to document the visibility of the balloon from the following locations: 1, 4, 5A, 11, 11A, 14, 18, 19, 20, 22. Photos from Locations 1, 4, 14, 19, 20, 22 are not representative of any photographs taken from the historic and scenic sites within the Village. Only 5A (Montrest), 11 and 11A (Gatehouse), 18 (Cold Spring Church), present photos taken from historic properties during the balloon test. The omission of various National Register properties from the June VRA evaluation, except for the inclusion of one of the Montrest residences, are still not addressed.

55. The November 15, 2017 VRA addendum, despite the fact that the balloon was flown at 120 feet, only provides images calling out the the height of a 110-foot tower, when it will be elevated 115 feet over the existing grade. The land cover data on Figure A1 continues to erroneously use the 110-foot tower elevation, rather than 115 feet to account for the 5-foot increase in the proposed changes to the existing grade. Despite the fact that the tower will clearly be visible from the Cold Spring Cemetery gatehouse, as shown in VP 11 and VP11a of the addendum, no such simulation was conducted to determine the visual impact to this historic resource. Further, these images are taken from Peekskill Road, which is a designated Hudson River Valley Greenway Trail route, and the document fails to omit the significance of views from this well-traveled and NYS-designated road.

56. The December 19, 2017, Saratoga letter Figure B3, attempts to show the errors in the simulation prepared in a report submitted by Philipstown Cell Solutions (“PCS”). Ironically, Figure B3, which is intended to “correct” a simulation prepared by PCS, is incorrect. As described in detail previously, the height is incorrect (should have been modeled at a height of 115 feet to account for the total height including grade changes), and the unbranched portion of the mono pine design will be visible at least 20 feet above the existing deciduous tree line.

57. The February 7, 2018, Saratoga Letter summarizes the results of the 2<sup>nd</sup> balloon test conducted on January 31, 2018, which includes an obvious subjective evaluation of the views from the Cold Spring Cemetery. The balloon was raised to an incorrect height of 110 feet, and should have been raised to 115 feet, for the reasons set forth above. Figure 8A shows locations where additional photos were taken. Even a cursory review of the photo location map demonstrates that the locations selected are highly subjective, and not based on an objective evaluation of potential viewpoints within the Cemetery. The land cover map (Exhibit F of the Allen affidavit) clearly shows the extensive areas from within and adjoining the Cemetery from which the tower is more likely to be visible (shown in red). Further, the Allen affidavit indicates that the tower will be more visible from the north end of the Cemetery, and not the southerly portion of it. Yet, only one photo, C3, is taken from the northerly section of the Cemetery. Seven (7) photos are taken from the southerly section, even though Saratoga already disclosed that the tower would be less visible from this section. In no way can these highly selective images adequately document the impacts of the tower's visibility on the Cemetery's viewshed and landscape. The tower will clearly be visible from ½ of the Cemetery's land area, portions of Peekskill Road (A designated Hudson River Valley Greenway Trail), and the National Register listed Gatehouse. In the absence of an objective analysis, the Saratoga report can readily and erroneously conclude that the tower will not have a significant visual impact on the environment. Again, given the facts that the tower is modeled incorrectly, its height is underestimated, the uncamouflaged portion of the monopole will be clearly visible, and the tower will be highly visible from at least half of the cemetery (based on the faulty 110-foot tower height assumed in the land cover – the impact is actually worse), and that the Peekskill Road is a designated Hudson River Valley Greenway Trail is marked for the benefit of the public and visitors for purposes of touring and viewing the scenic and historic resources of the Hudson River Valley region, the conclusion that there will not be a significant visual and scenic impact is entirely unsupported. The ZBA rightfully denied this application based on the standards set forth in the Zoning Chapter.

58. Compounding all of these inaccuracies is that the Visual Resource Assessment conclusions are inconsistent even with the historic report commissioned by the Plaintiff. The Cultural Resource Report prepared by CBRE and appended to the FEAF contains a list of historic properties and evaluation of visual effects, completed on August 1, 2017. In assessing the visual impacts, it makes reference to a "Visual Assessment" in determining whether there will be an

impact – it can only be presumed that the CBRE report is referring to the June VRA prepared by Saratoga Associates. CBRE renders conclusions with regard to properties which are not discussed, evaluated or modeled in the June VRA. For example, Fair Lawn, a National Register site, is not marked on the viewshed map or described in the June VRA. Yet, the Cultural Resource Report states that with regard to the Fair Lawn National Register site, “the visibility of the tower...may be partially visible from the property, the proposed installation will not adversely affect this historic resource.” Its conclusion relies on Photos 40 and 41 which are not part of the June VRA as well as “VP 9 in the Visual Report”. VP 9 in the June VRA document is described as “NY Route 9 at Gilbert Lane” – it is not identified as “Fair Lawn”, the National Register site. Based on review of the CBRE historic report, it appears that over 43 photos were taken during preparation of the June VRA and used by the historic consultant to render determinations that the cell tower would not have a significant impact on historic resources. None of the photos used by CBRE to render its conclusions as per the attachment were submitted to the ZBA. Both the Visual Resource Assessment and Cultural Resource Report, by omission of critical photos referenced in the FEAF attachment, are incomplete. The ZBA was within its rights to deny approval of the tower based on the inability of the Plaintiff to submit a complete record.

59. In summary, the Visual Resource Assessments prepared by Saratoga Associates are incomplete and based on faulty assumptions regarding the tower’s design. The height of the tower is modeled incorrectly and the branching system of the “mono pine” design tower is rendered incorrectly by not correctly showing the limited branching which will occur only at the top 40 feet of the pole. It omits an evaluation of significant historic and scenic resources in the ½-mile and 2-mile APE. The ZBA rendered a denial decision as the Plaintiff did not demonstrate, based on the Visual Resource Assessments, that the project would not have a significant adverse impact on scenic and historic resources.

#### Failure of AKRF to Identify the Visual Resource Assessment Errors and Magnitude of Visual Impacts

60. The ZBA retained AKRF to review the Visual Resource Assessment prepared by Saratoga Associates dated June 2017 and the balloon test dated 11/15/17 as set forth in a letter proposal dated December 1, 2017. As per the proposal, the scope of work was strictly limited to

consideration of the tower's location in the Hudson Highlands SASS, and adjacency to the National Register-eligible Cemetery and the National Register listed Gatehouse associated with same. AKRF's first failure is to not research and acknowledge that the Cold Spring Cemetery maintains its frontage on a Hudson River Valley Greenway designated trail, i.e., Peekskill Road. Consistent with DEC Policy, it is an aesthetically significant place as it is a formally designated and used and visited by recreationists and others for the express purpose of enjoying its beauty. The Greenway Trail routes have been specifically established and signed to lead recreationists along these trails to view the significant resources of the Greenway region and have been mapped.

61. A fundamental task of any project review process is to conduct a field survey of the surroundings within which a project is proposed and to visit the site itself. Inexplicably, a site visit to understand the project site's landscape and its surrounding environs was not conducted.

62. The AKRF review memo fails to recognize that the tower is located in the Hudson River Valley National Heritage Area for proper context. Given the fact that the FEAF forms specifically include a question as to whether a project is in a "designated state or federal heritage area", it is perplexing that neither AKRF's representative or Matthew Allen disclose this fact.

63. The AKRF memo fails to identify that the Visual Resource Assessments prepared by Saratoga Associates are missing data on the numerous scenic and historic resources which are readily available from online domains and within the ½-mile radius of the tower.

64. The AKRF memo fails to recognize the modeled height errors associated with the analysis and fails to reveal that the pole will not be entirely camouflaged by artificial branches. It fails to provide any technical measurements relative to the tower's visibility to make its conclusions.

65. The Allen affidavit fails to disclose that the interpretations of the SHPO's No Adverse Effect contained in the AKRF memo were superseded by the March 14, 2018, memo which reversed and altered the finding of No Adverse Effect, and conditioned its findings on specific requirements with regard to camouflaging the tower and restricting its height.

66. The Allen affidavit mischaracterizes the AKRF memo conclusions as the memo specifically found that the stealth monopine would have the "unintended effect of drawing greater attention to the installation" and recommended that alternative flagpole installation be installed. The SHPO rejected the alternatives designed presented by Saratoga Associates in its April 16,

2018, letter. Thus, the AKRF comment of the “unintended effect of drawing greater attention to the installation” still stands.

67. The Allen affidavit is dismissive of public comments which go against his conclusions or those of AKRF. In fact, the professional critiques offered by Dr. Robin Hoffman and Mr. Connor Neville (**Exhibit M**) from SUNY ESF, and Liz Campbell Kelly (**Exhibits J and N**), a registered landscape architect, refute AKRF’s findings as well. These submissions were part of the record upon which the ZBA relied in its decisionmaking.

68. In conclusion, the AKRF review of the tower was generic, was not fact-based, did not vet the actual data presented, and cannot be relied upon as a representation of the potential impact of the tower on the Cemetery or other historic and scenic resources.

Plaintiff’s Failure to Alter the Tower Design to Mitigate the Significant Adverse Visual and Historic Impacts that will Result

69. The Plaintiff, in a letter dated February 7, 2018, offers potential alternative tower designs to address the comments raised by AKRF, i.e., that the “mono pine design” would have the “unintended effect of drawing greater attention to the installation” and recommended that alternative flagpole installation be installed. The alternatives include:

- The construction of two flag poles that would meet the 110-foot limit.
- An obelisk that was rendered at a height of 125 feet.

70. To simulate these designs is misleading and pointless. The Zoning Chapter specifically states that there shall be “no more than one commercial communications tower on any lot” and in a “residential zone, a tower shall not be placed closer than 500 feet to any existing commercial communications tower”. Lastly, the Zoning Chapter states that the “height of a freestanding tower shall be 110 feet from ground elevation to the top of any antenna projecting above the tower.” Neither of these alternatives would be approvable absent variances, and do not represent a good faith effort to find compliant alternatives to minimize the significant visual impact that will result to the National Register-eligible Cemetery.

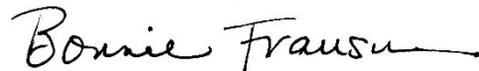
Summary

71. In summary, for the various reasons set forth above, it is my expert opinion that the Plaintiff did not demonstrate that the Homeland Tower 110-foot commercial communications tower proposed to be located at 15 Rockledge Road in the Village of Nelsonville, will not have a significant adverse impact on scenic and historic resources. This finding is one of the many standards upon which the ZBA must rely on rendering its decision. The ZBA rendered the proper decision to deny the application.

My compensation for the services provided or expected to be provided in this matter are as follows:

- Visual impact analysis and planning and zoning review services related to reviews, conference calls, preparation of exhibits and report preparation shall be billed at the rate of \$150.00 per hour.
- Expenses associated with travel, lodging, and meals reimbursed at cost.
- Expert testimony at trial or by deposition shall be billed at \$1,200 per day.

Date: May 10, 2019

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## **Exhibits**

**EXHIBIT A.**

**Resume of Bonnie Franson, AICP CEP, PP**

## Title

Partner

## Education & Training

- Master of City and Regional Planning, Rutgers University Graduate Scholars Award
- B.A. cum laude, Biology, Bucknell University
- GIS Graduate Certificate, Pennsylvania State University

## Professional Affiliations, Certifications & Training

- Professional Planner, NJ
- American Institute of Certified Planners, Certified Environmental Planner
- American Planning Association, Metro NY Chapter
- National Charrette Institute
- Form Based Code Institute
- Rockland County Municipal Planning Federation, Introductory Course Instructor
- Chairwoman, Monroe Planning Board
- Former Member, Monroe Environmental Conservation Commission

## Articles/Papers

- Pediatric Cancer Mortality Rates in New Jersey and the United States: 1950-1985. *New Jersey Medicine*, 1990
- Promoting Craft Breweries in NYS, *Talk of the Towns & Topics* (Volume 26, Number 5)

## Professional Experience

Bonnie Franson has 32 years of experience in the environmental and municipal planning field. Her experience includes comprehensive planning, site plan and subdivision reviews, land use and zoning regulation preparation, environmental impact statements, assisting municipalities in the application review process, preparing and advising on all SEQRA documents, and providing representation at municipal meetings. She has significant experience working for communities and developing plans and zoning regulations which balance development with the protection of environmental resources. Ms. Franson has conducted environmental, demographic, land use, fiscal impact and community facility analyses, and overseen mapping and geographic information system analyses. While employed at previous firms, Ms. Franson managed and prepared comprehensive plans and/or comprehensive zoning amendments for the **Towns of Tuxedo, Wawayanda, Cornwall and Mamakating, and the Villages of Greenwood Lake, Montebello, Suffern, and Sloatsburg.**

## Project Experience

### Project Experience

- **Village of Hillburn Comprehensive Plan and Zoning Amendments.** Ms. Franson is managing preparation of a comprehensive plan for this Rockland County community. The baseline inventory of land use and zoning, demography, transportation, environmental resources, historic and scenic resources is almost complete. Issues and opportunities have been identified, the Comprehensive Plan Committee is advancing recommendations, and zoning amendments are being identified.
- **Town of Monroe Comprehensive Plan and Zoning Amendments.** Ms. Franson managed the update of the Town's comprehensive plan and zoning. As part of Phase I, she prepared a report evaluating inconsistencies between the existing Plan Update and the Town's zoning. Phase II of the process – a draft comprehensive plan update, was completed, revisions made to the zoning, and SEQRA review of the documents completed. Issues that were addressed include accessory apartments, economic development of nonresidentially zoned properties, and implementation of environmental measures, including ridgeline protection, scenic road protection, aquifer protection and tree preservation.
- **Village of Wurtsboro Comprehensive Plan and Zoning Amendments.** Ms. Franson managed preparation of the comprehensive plan and zoning amendments for the Village of Wurtsboro. The Village desires to protect and enhance its traditional main street thoroughfare, and improve its appearance, and capture the economic benefits of the visitors who travel to Sullivan County to vacation and recreate within the area. The Plan and zoning amendments are adopted.

- **Town of Tuxedo Municipal Retainer**

As Town Planner, she is responsible for all site plan, subdivision, and SEQRA reviews of applications before the Planning Board and Town Board. She has been involved in the ongoing SEQRA review of a 2,450-acre, 1,195 dwelling unit planned new community, Tuxedo Reserve, and was involved in guiding the Town and applicant to create a more cohesive development with meaningful expanses of open space. Over 1,200 acres are being protected and are being gifted to the Town and Village. She is presently working with the Town on a zoning update, including creation of a new “Conservation” zone, to protect the sensitive and historic Arden area from overdevelopment, and a Tourism Business zoning district to promote sustainable economic development.

- **Town of Marbletown Retainer**

Ms. Franson has represented Marbletown for some eight (8) years, and she conducts SEQRA, special use permit, site plan and subdivision review of applications before the Planning Board and Zoning Board of Appeals and is thoroughly familiar with the natural resource characteristics of Ulster County communities which share Shawangunk Ridge, the Rondout Creek Valley, and Catskill foothills physiography.

- **Town of Shawangunk Retainer**

Ms. Franson has represented Shawangunk since 2003, and she conducts all SEQRA, site plan and subdivision reviews of applications before the Planning Board in this Ulster County community. She is aware of the sensitivity of lands proposed for development, whether in the Wallkill River Valley agricultural lands, or atop Shawangunk Ridge. She regularly reviews properties to determine which lands will be preserved as part of the Town’s mandatory cluster subdivision provisions. She provides general support to the Town on other matters including zoning amendments, and prepared SEQRA responses during NYSDEC review of a Town recreational project adjoining the Wallkill National Wildlife Refuge.

- **Town of Hyde Park- Albany Post Road Planning Study and Zoning Amendments**

For the Town of Hyde Park, she prepared a comprehensive land use and zoning study to evaluate and recommend revisions to its land use regulations to allow and stimulate development that could capture tourism demand within the hamlet. After comprehensively evaluating the land use and building patterns, Ms. Franson prepared amendments to the Town’s zoning regulations to create a Crossroads Core zoning district, which would regulate the form and design of uses and properties, rather than focus upon conventional bulk requirements. The zoning district was supported by local businesses and property owners and has been adopted. She is now assisting the Town Board on the preparation of zoning for the Pinewoods area.

- **Town of Pine Plains Zoning Law**

Ms. Franson prepared this rural Dutchess County’s first zoning law which was adopted in 2009. The zoning includes an Agricultural Overlay zone which is intended to protect agricultural properties in the Town, and an Aquifer Overlay zone which limits development within the Town’s sensitive aquifer area. She continues to work with the Town to further refine the zoning to ensure it protects the rural character of the community. She has subsequently worked with a group of municipal officials to review the zoning with regard to ridgeline protection.

- **Village of South Blooming Grove**

NP&V is retained by the Village of South Blooming Grove, an Orange County community, as planning consultant. Ms. Franson prepares zoning amendments, reviews local law amendments, and conducts site and subdivision plan review.

- **Town of Blooming Grove**

Ms. Franson is overseeing comprehensive plan and zoning amendments for the Town of Blooming Grove. To date, she has prepared an Economic Development report which established the basis for a new industrial district which was subsequently adopted, new wellhead protection regulations, and amendments to the Town’s solar facility regulations.

- **New Rochelle Downtown Overlay Zones District GEIS**

The City of New Rochelle adopted a new Downtown Overlay Zone which broadens the land uses allowed in these zones, increase the residential density and nonresidential intensity of uses, and guides development in accordance with a form-based code. Ms. Franson evaluated the theoretical development program which could result from adoption of the proposed zoning amendments. She performed land use and visual field surveys, and assessed the impacts to water resources, geology, soils, topography, visual resources, land use and zoning, and prepared an alternatives analysis for the No Action scenario which considered development in accordance with the existing zoning.

- **Major Environmental Impact Statements:**

DGEIS and FGEIS for the City of New Rochelle adoption of DOZ amendments; DEIS and FEIS for Buena Vista Teutoria waterfront residential high-rise project in Yonkers; Generic Environmental Impact Statement for Pine Plains Zoning Adoption; DEIS and FEIS for Peekskill Middle School Project; DEIS, FEIS and Supplemental EIS for mixed use residential and commercial project in Towns of Ramapo/Haverstraw, NY.

- **Brownfields**

She managed preparation of the Northwest Hicksville Step I BOA, which was so comprehensive the Town could slip to Step 3 for this project; she worked on the Southeast Hicksville BOA Step I, the Riverhead BOA, the Glen Cove BOA, and the Riverside BOA.

- **Major Municipal Project Reviews**

Conducted SEQRA and/or site plan reviews for the Town of Tuxedo's Sterling Forest Corporation Planned Integrated Development, Tuxedo Reserve and Sterling Forest Casino; Village of Suffern's Good Samaritan Hospital Master Site Plan, Ciba-Geigy Expansion, and Avon Research and Development Center; Village of Sloatsburg's Highland Homes Multifamily Residential Development.

- **Municipal Retainers**

Attended Planning Board meetings and conducted site plan, subdivision plan, and SEQRA reviews of projects proposed in the Villages of Sloatsburg and Suffern in Rockland County.

- **Municipal Comprehensive Planning**

Consulted to Comprehensive Plan Committees and prepared background data, goals, objectives and policies associated with comprehensive plan development for the Towns of Cortlandt, Wawayanda, Cornwall, Hyde Park, Mamakating, Stony Point; and Villages of Greenwood Lake, Suffern, Wurtsboro, Bloomingburg, Sloatsburg, Montebello.

- **Municipal Zoning Code Preparation Revisions**

The Drafted comprehensive zoning amendments for the Towns of Mamakating, Tuxedo, Stony Point, Wawayanda and Hyde Park; and Villages of Suffern, Greenwood Lake, Montebello, Sloatsburg Cities of Newburgh and Poughkeepsie.

- **Miscellaneous Municipal Projects**

Drafted the Cortlandt Housing Action Plan; prepared the adopted City of Newburgh LWRP; prepared and administered the Montebello Affordable Housing Program; drafted the adopted Stony Point Watershed Protection Plan; drafted design guidelines for Colonial Terraces in the City of Newburgh; prepared the adopted Suffern Conservation Central Business District Plan; conducted student projections and prepared the Ramapo Central School District Demographic Study; conducted demographic projections for the western Ramapo Buildout Study. Rockland County District No. 1.

**EXHIBIT B.**

**Cold Spring Zoning Excerpt – Article VII,  
Commercial Communications Towers.**

1) § 188-66. Validity; conflict with other provisions.

- A. If any article, section, paragraph or provision of this chapter is declared by a court of competent jurisdiction to be invalid, the effect of such decision shall be limited to the article, section, paragraph or provision expressly stated in the decision to be invalid, and all other articles, sections, paragraphs or provisions of this chapter shall continue to be valid and fully effective.
- B. If any article, section, paragraph or provision of this chapter is declared by a court of competent jurisdiction to be invalid as applied to a particular building, structure or lot, the effect of such decision shall be limited to the particular building, structure or lot, and the general application of such article, section, paragraph or provision to other buildings, structures or lots shall not be affected.
- C. It is the specific intent of this chapter to supersede the provisions of New York State Environmental Conservation Law § 17-0509 and any rules and regulations enacted by the New York State Department of Environmental Conservation in accordance therewith to the extent that they may authorize a lesser degree of treatment than required in this chapter. This chapter is enacted pursuant to the provisions of the Municipal Home Rule Law. [Amended 7-13-1992 by L.L. No. 2-1992]

#### ARTICLE VII

#### Commercial Communications Towers [Added 4-3 2000 by L.L. No. 1-2000<sup>2</sup>]

) § 188-67. Collocation on eligible building or structure.

- A. Structures eligible for placement of additional antenna installations. The following structures are eligible for collocation, if such collocation is permitted by the use schedule and by the other applicable provision of this article:
  - (1) Towers receiving all necessary approvals under § 188-67B of the Zoning Law to allow commercial communications activity. Any proposed alterations to the tower to accommodate additional antennas, including any alteration or expansion of the tower base, and any increase heights, shall require special permit approval as part of the review on the application for the special permit for the antenna installation. Noncommercial towers, including facilities used for private citizen's bands, amateur radio and other private residential communications, are not eligible for collocation. Commercial towers which did not receive approvals under § 188-67B are not eligible for collocation unless the tower first received approvals under this article.
  - (2) Commercial communications towers lawfully placed after the enactment of this article, provided that the structure can safely support the additional antenna installations as set forth in this article.

<sup>2</sup> Editor's Note: This local law stated that it was intended to supersede any inconsistent provision of state or local law, including Village Law §§ 7-702, 7-706, 7-708, 7-709, 7-710, 7-7U, 7-712(a), 7-712-(b), 7-72S(a), 7-725(b); 239 m and 239-n of the General Municipal Law; and the provisions of the Nelsonville Code which are inconsistent therewith, including the schedule of uses showing public utilities structures as permitted uses.

- (3) Other tall structures, including buildings, water towers, salt sheds, roadway maintenance facilities, recreation facilities, scoreboards, lighting at recreation fields and similar facilities; or water towers, power transmission lines, public utility poles and other similar structures or buildings, as interpreted by the Zoning Board of Appeals.
- B. Application for proposed collocated antenna installation on existing tower; placement on eligible structure.
- (1) An applicant proposing to collocate a commercial telecommunications antenna installation on an existing tower or to place same on an eligible structure, as allowed in the use schedules, shall apply to the Zoning Board for special permit approval. The review shall generally follow the procedures and standards set forth in §§ 188-68, 188-69, 188-70 and 188-71 of the Village Code. The applicant shall submit the following information:
    - (a) A completed application for a building permit.
    - (b) All applicable requirements for a special permit under § 188-68 of the Village Code.
    - (c) An engineer's report describing the proposed changes, expansions or modification to the existing tower or other structure and certifying that the proposed collocation will not diminish the structural integrity and safety of the existing tower or other structure upon which collocation is proposed.
    - (d) Proof of compliance with the New York State Fire Prevention and Building Code.
    - (e) Documentation of consent by the owner of the structure upon which the antenna is to be located.
    - (f) Where collocation is proposed on a building or structure, the applicant shall provide architectural elevations and perspective illustrations of the proposed commercial telecommunications antenna installation at appropriate scales, but no smaller than one inch equals 10 feet. Elevations shall be provided for the building front and the side nearest the proposed antenna installation. For collocation on structures, two significant perspective vantage points shall be presented by the applicant as part of its submission to the Zoning Board. The Zoning Board may, during its consideration of an application, require perspective and other visual evaluations of other significant vantage points as are necessary to evaluate the visual impacts of each installation.
    - (g) A completed long-form environmental assessment form (EAF) with visual addendum.
  - (2) The application shall be reviewed by the Zoning Board in accordance with the standards and criteria set forth in § 188-70.

§ 188-68. Application for special permit to place new tower.

- A. In addition to site plan approval from the Planning Board, an applicant proposing to construct a new commercial communications tower, as pennitted in the use schedules, shall apply to the Zoning Board for special permit approval. It shall contain, at a minimum:
- (1) A report providing documentation of an actual need by an actual provider of communications services or the construction of the tower in order to provide communications services. Special permits are to be based on actual need and not on speculation of possible future needs which may or may not materialize.
  - (2) Radial plots depicting the anticipated radio frequency levels and coverage for the proposed site.
  - (3) Radial plots depicting evidence that the proposed area to be provided coverage by the proposed new tower is currently deficient in radio frequency coverage.
  - (4) The frequency spectrum (output frequency) to be used at the proposed site (cellular, personal communications systems, broadcast frequency, analog or digital, etc.).
  - (5) A map depicting the applicant's network of towers within 10 air miles of the proposed site, including planned or proposed towers or antenna installations to be erected within the next 24 months of the date of the application.
  - (6) A copy of a current Federal Communications Commission (FCC) license that authorizes the applicant to provide service.
  - (7) The type, manufacturer and model number of the proposed tower.
  - (8) The height of the proposed tower, including the height of any antenna(s) structure above the supporting structure of the tower.
  - (9) The number of proposed antennas, type, manufacturer, model number, dB gain, size and orientation of the proposed tower.
  - (10) Proof of compliance with all the provisions of this section.
  - (11) A statement of how the application meets the following siting objectives for new towers:
    - (a) A new tower and ancillary buildings and parking shall, to the extent possible, be sited where their visual impact is least detrimental. If a visual impact is identified, the applicant shall demonstrate that suitable landscaping, buffering or other techniques will be used, and that they are able to mitigate such impacts to a level of insignificance. Such mitigation shall include, in the discretion of the Board, fencing, berms, trees, shrubs and other landscaping, together with the requirement that they shall be maintained in a vigorous growing condition.
    - (b) A new tower shall, to the extent possible, be sited distant from residential properties and where visual impacts upon residential properties can be minimized.
    - (c) Collocation.

- [1] Antenna installations shall, when possible, be collocated either on existing towers or on eligible structures, unless it is clearly shown that shared use of existing tall structures and existing or approved communications towers is undesirable or unattainable due to:
- [a] The absence of existing towers or eligible structures for collocation;
  - [b] The technical infeasibility of collocation in light of the applicant's system requirements, frequency incompatibilities or engineering limitations;
  - [c] The existence of physical constraints that render the collocation infeasible;
  - [d] The inability to secure permission to collocate, in spite of good faith efforts; or
  - [e] The applicant's proposed collocation on the site would result in impacts on the surrounding area which exceed that of a new tower or would create a need for a greater number of towers to provide service, which, when considered together, would have a cumulative adverse effect on surrounding areas which exceed that of a new tower.
- [2] The application shall include a report with an inventory of all existing eligible tall structures and existing or approved communications towers eligible for collocation within a two-mile radius of the proposed site. The site inventory shall include a map showing the exact location of each site inventoried, including latitude and longitude (degrees, minutes, seconds), ground elevation above sea level, height of the structure and/or tower and accessory buildings on the site. The report shall outline opportunities for shared use of these facilities as an alternative to the proposed new communications tower. The report shall demonstrate good faith efforts to secure shared use from the owner of each potential existing eligible tall structure and existing or approved communications tower. The report shall document the physical, technical and/or financial reasons why shared usage is not practical in each case. Copies of any written requests for collocation, and the responses thereto, shall be submitted to the Board.
- [3] The application shall include an agreement to accept reasonable collocations on the proposed tower in the future. An applicant proposing to place a new commercial communications tower, or modify an existing tower to accept a new antenna installation, shall commit, on behalf of itself and its successors, to negotiate in good faith for reasonable shared use of the tower by other providers, should same be proposed in the future, and to rent or lease available space under the term of a fair market lease, without discrimination to other providers. A letter documenting the applicant's intent to negotiate in good faith for such use shall be part of the application for any special permit or site plan approval and shall be filed with the Building Inspector as part of any building permit application. Where the applicant is other than the owner of the site, the applicant shall provide

assurance to the Board that the owner will also consent to the collocation in the future.

- (d) Towers and antenna installations shall be sited to minimize the total number of towers and antennas to the extent possible within the limits of technology and economic feasibility.
- (12) A long-form EAF, including an analysis of visual impacts. The applicant shall submit a view-shed analysis to determine the visual impacts of the proposed tower's siting. The analysis shall include a completed SEQRA visual EAF addendum, assessment of the tower's siting from significant vantage points and/or historic and scenic resources, by balloon testing or similar methodology, as well as visual simulations of the proposed tower's siting by means of photomontage or architectural renderings.
- (a) Significant vantage points potentially impacted by the proposed facility shall be determined by the Zoning Board, such as views from state and local roads adjacent to the proposed site, recreation areas, housing developments and local, state or national historic and scenic resources. The view-shed assessment should be performed, when possible, in the winter months to ensure a thorough examination of potential impacts. Even if this is not possible, the view-shed analysis should include an evaluation of anticipated visual impacts during the winter months when leaves are not on the trees. Findings presented shall include color photography illustrating the prescribed assessments and a key map which identifies the project site, photographic locations and target points.
  - (b) The methodology, date and time of all testing related to prescribed view-shed assessments shall be approved by the Zoning Board prior to preparation. The Zoning Board shall direct the applicant to provide public notification in the village's official newspaper, of the assessment, including date, time and testing location, at least seven and no more than 14 days in advance of the test date, together with such other notification as the Board may deem appropriate.
- (13) A report, by a qualified engineer, regarding nonionizing electromagnetic radiation for the proposed site. Such report shall provide sufficient information to detail the amount of radio frequency radiation expected from the proposed site. The report will comply with FCC reporting criteria for a cumulative report, reporting levels of anticipated exposure from all users on the site. The report shall indicate whether or not the proposed tower will comply with FCC emission standards.
- (14) The applicant must show that the property on which the proposed tower is located is in compliance with any previously approved site plan. If the site does not comply, it must be brought into compliance prior to any approval of the cell tower application.
- B. The Zoning Board may also, during its review of an application, request such other and further information as it finds necessary to make a thorough evaluation of the applicant's proposal.

## § 188-69. Notice and public hearing.

- A. A public hearing shall be held pursuant to the provisions of Village Law for any applicant under §§ 188-67 and 188-68 above.
- B. Notice.
- (1) In addition to any other notice requirements imposed by these sections, the Board may direct the applicant to send notice of such public hearing to:
    - (a) All owners of any land within 250 feet of any property line of the lot on which the tower is to be located, or such further distance as it deems appropriate in light of the anticipated visibility of the tower.
    - (b) The administrator of any local, state or federal parklands within 1/2 mile of the proposed tower.
  - (2) Additionally, the Board Secretary shall send notice to any of the following agencies which have requested notice of such applications:
    - (a) The legislative body of each town or village that borders the Village of Nelsonville.
    - (b) The County Planning Department

## § 188-70. Standards for issuing special permits.

- A. No special permit for a communications tower or a communications antenna installation shall be granted absent a finding by the Zoning Board that the applicant has met the following criteria:
- (1) That the application complies with all requirements of New York State Fire Prevention and Building Code, as well as all applicable state and federal regulations.
  - (2) That the application meets the requirements of § 188-67 for collocation or placement on an eligible building or structure or § 188-68 for a new tower, including the siting objectives.
  - (3) That, where a new tower is proposed, the applicant has shown an actual need for construction of the new tower.
  - (4) That, where a new tower is being proposed, the applicant has demonstrated that shared use of existing tall structures and existing or approved communications towers is undesirable or unattainable due to:
    - (a) The absence of existing towers or eligible structures for collocation.
    - (b) The technical feasibility of collocation in light of the applicant's system requirements, frequency incompatibilities or engineering limitations.
    - (c) The existence of physical constraints that render the collocation infeasible.
    - (d) The inability to secure permission to collocate, in spite of good-faith efforts.

- (e) The adverse impact of the applicant's proposed collocation on the site on the surrounding area which exceeds that of the proposed new tower, or the creation of a need for a greater number of towers to provide service, which, when considered together, would have a cumulative adverse effect on surrounding areas which exceeds that of the proposed tower.
- (5) That the tower owner, and its agents, if applicable, have agreed to rent or lease available space on the tower, under the terms of a fair-market lease, without discrimination to other providers.
- (6) That the proposed antenna installation or tower will not have a significant adverse impact on scenic or historic resources. If a significant adverse visual impact is identified, the applicant shall demonstrate that suitable landscaping, buffering or other techniques will be used, and that they are able to minimize such impacts to a level of insignificance.
- (7) That the proposal shall comply with applicable FCC regulations regarding emissions of electromagnetic radiation and that the required monitoring program is in place and paid for by the applicant.
- B. Conditions on special permits. Special permits may be issued subject to conditions, as authorized by law, including the following:
- (1) The Board may require the use of camouflage communications towers where necessary to minimize visual impacts and to blend the communications tower and/or its accessory structures into the natural surroundings. "Camouflage" is defined as the use of materials incorporated into the communications tower design that give communications towers the appearance of tree branches and bark coatings, church steeples and crosses, sign structures, lighting structures or other similar structures.
- (2) The Board shall require testing and inspection.
- (a) RF emission standards.
- [1] Pretransmissions testing. Any building permit, site plan or special permit shall be deemed to be issued subject to the condition that, prior to the issuance of a certificate of occupancy and the commencement of transmission, the applicant shall provide adequate proof to the Village Zoning Administrator, subject to review by the village's engineering or other consultants, that the EMF radiation around the proposed tower or antenna installation site complies with FCC requirements. All tests shall be performed by engineers or consultants qualified in the field of telecommunications and radio frequency and approved by the Village of Nelsonville. Such tests shall be conducted in accordance with the requirements of 47 CFR and shall be certified to the Village of Nelsonville.
- [2] Post-commencement testing. After transmission begins, testing and certification of EMG radiation shall be required in accordance with the requirements set forth in the preceding subsection at the time of any change or alteration of the operating characteristics of the tower. These results shall be reported to the Zoning Enforcement Officer within 30 days of the change

or alteration . If there is no change or alteration in the operating characteristics of the tower, the owner shall provide the results of such testing every three years, together with the testing required in Subsection B(2)(b) below, and shall also file, at least yearly on January 2 of each year, a written certification that the operating characteristics of the tower or installation have not changed or been altered.

[3] Any noncompliance with applicable FCC RF emission standards shall be promptly cured.

(b) Structural and safety testing. Tower owners shall cause their towers to be inspected for structural integrity and safety by an independent licensed professional structural engineer, at least every three years. The first inspection shall be within three years of the date approvals were granted. Safety inspection shall include, at a minimum, inspection of the condition of the tower, its supports, foundations, anchor bolts, coaxial cable, cable supports, ice shields, cable trays, guy wires and antennas affixed to the tower. The tower shall also be inspected for fire, electrical, natural and other man-made hazards that could pose a potential hazard to the tower or surrounding area. A report of the inspection results shall be certified and submitted to the Zoning Enforcement Officer. Any modification of an existing tower which includes changes to tower dimensions or numbers or types of antenna shall require a new structural and safety inspection. Any defects revealed in such an inspection shall be promptly cured.

(3) The Board shall require assurances regarding the removal and repair of towers.

- (a) The applicant shall submit to the Board an agreement committing the property owner, its agents and successors to keep the tower and accessory structures in good order and repair, and in compliance with any approval, and to promptly notify the Zoning Enforcement Officer within 60 days of the discontinuance of use of the tower. If there are two or more operators or users of a tower, then the notice need only be served when all have ceased using the tower.
- (b) The owner shall notify the Board within three months when any user of a communications tower has discontinued its use of the tower, regardless of whether one or more other users continue to use the tower.
- (c) The owner shall promptly remove an unused commercial communications tower within four months of cessation of operation. The failure to remove such towers in accordance with this article shall be punishable as a violation of the Zoning Law. Additionally, the village may bring proceedings to require the removal of such unused towers, at the owner's expense; and the village may also forfeit any security posted by the applicant to insure such removal.
- (d) When the Zoning Enforcement Officer has reason to believe that a tower has been unused for more than six months, but has not received notice of discontinuance from the owner, the Zoning Enforcement Officer (ZEO) may serve a notice upon the owner, at its last known address, stating the date on which the ZEO believes that the use of the tower was discontinued, requesting the owner to take responsibility for removal of the tower and stating that the

failure of the owner to take responsibility for the tower will result in a determination of abandonment of the approvals previously issued for the tower. If the owner fails to appear to assure the ZEO that he will take responsibility for timely removal of the tower, or to establish that the tower is actually in use, within 60 days of the mailing of the notice to the owner's last known address, then the ZEO may make a finding that the tower has been abandoned, and all approvals previously granted by the village of such tower shall be considered abandoned and forfeited. A copy of this determination shall be mailed to the owner and filed in the Building Inspector's office.

§ 188-71. Design and construction requirements; consultant fees; security.

All newly constructed towers, all modifications of existing towers and all newly installed antenna installations shall comply with the following design and construction requirements:

A. Towers and antennas. New or modified commercial telecommunications towers and antenna installations shall meet the following design and construction requirements:

- (1) Allow collocation in the future. An applicant proposing to place a new tower shall cause it to be designed in a manner which will accept collocation of other commercial telecommunications antenna installations in the future in accordance with this article. Commercial telecommunications towers shall be designed structurally, electrically and in all respects to accommodate shared use for at least one other user if the tower is over 60 feet in height and at least two additional users if the tower is over 100 feet in height. Towers must be designed to allow for future rearrangement of antennas mounted at varying heights. The applicant shall document the tower's capacity, including the number and type of antennas it can accommodate and potential mounting locations. Where an existing tower is being modified to accept one additional antenna, the reviewing board may require that the owner shall take reasonable steps to modify the tower so that it may accommodate another potential future user if the tower, as modified to accommodate the additional user, will be over 100 feet tall.
- (2) Color. Towers shall be painted with a flat paint in a gray or blue shade, except in instances where a different color is mandated by federal or state authorities. Any antenna component of a commercial communications antenna installation shall, when feasible, be painted in a shade which blends with the color of the host tower, building or structure to which it is attached.
- (3) Facilitation of future collocation. Where practicable, towers should be designed and constructed in a manner which will accommodate future collocation.
- (4) Structural design. Towers shall be designed structurally to collapse within themselves wherever possible in order to minimize damage to nearby structures and properties.
- (5) Compliance with state and federal law. Towers shall comply with all applicable provisions of the New York State Uniform Fire Prevention and Building Code and all applicable FAA and FCC requirements.

- (6) Noise. Towers and commercial telecommunications antenna installations, and their accessory structures and improvements, shall be designed to minimize noise generation by power generators, heating, ventilating and air conditioning, and any other noise source, particularly if there is a residence or other sensitive receptor, such as a park or other open space use or historic use, within 200 feet of the site.
- B. Accessory buildings and structures. All buildings and structures accessory to the operation and use of a commercial telecommunications tower shall meet the following requirements:
- (1) They shall be designed to blend with the surrounding natural environment and minimize the visibility of the building or structure. The building shall not be more than 12 feet high.
  - (2) They shall comply with all applicable provisions of the New York State Uniform Fire Prevention and Building Code.
  - (3) They shall be used only for housing equipment related to the particular site. Wherever possible, the buildings shall be joined or clustered so as to appear as one building.
- C. Site layout requirements.
- (1) Access.
    - (a) Adequate emergency and service access shall be provided in a manner which minimizes ground disturbance, vegetation cutting and site erosion. Road grades shall follow natural contours to minimize visual disturbance and reduce soil erosion potential.
    - (b) All network interconnections to and from the telecommunications site and all power to the site shall be installed underground, unless the applicant satisfactorily establishes that this is not possible because of the nature of the subsurface conditions, or is not desirable for environmental reasons or would have adverse visual impacts. At the initial construction of the access road to the site, sufficient conduit shall be laid to accommodate the maximum possible number of communications providers that might use the facility.
  - (2) Parking. A minimum of two parking spaces shall be provided for each commercial telecommunications tower which houses a commercial telecommunications antenna installation.
  - (3) Fencing. Towers and any accessory structures ancillary thereto shall be adequately enclosed by a fence and gated for aesthetic purposes, screening and security purposes. All proposed guy wires shall be located within any required fencing. The Zoning Board shall approve the height and design of the fence.
  - (4) Signs and advertising. The use of any portion of a commercial telecommunications tower for other than warning or equipment information signs is prohibited. Commercial telecommunications towers or antennas shall not be used for advertising by the provider. A sign no greater than two square feet may be placed, indicating the name of the facility, its owners and a twenty-four-hour emergency phone number. "No Trespassing" or other similar warning signs may also be placed on the fenced border of the property.

## (5) Lighting.

- (a) Commercial telecommunications towers shall not be illuminated by any artificial means, including strobe lighting, unless lighting is required by the Federal Aviation Administration (FAA), the Federal Communications Commission (FCC) or other federal or state authority. If a tower is within two miles of an airport, the applicant shall provide written documentation by the FCC as to whether or not it will require lighting of the tower.
- (b) Lighting of the grounds of the facility shall be in keeping with the needs of safety and the surrounding neighborhood. No light shall spill from the site onto surrounding properties.

## (6) Screening.

- (a) To the extent possible, the applicant shall preserve existing vegetation in a band at least 50 feet deep along the borders of the property which screen views of a commercial communications tower and accessory structures from nearby properties.
- (b) The reviewing board may require the applicant to provide supplementary landscaping to screen views of the base of the tower and accessory buildings or structures in situations where adverse visual impacts are identified. In such cases, landscape screening shall be provided to screen views from such property, around the perimeter fencing of the tower and around all accessory structures. At a minimum, screening shall include evergreen plantings and/or fencing and berms, as determined by the Zoning Board, to ensure that views of accessory structures are suitably screened from neighboring uses and that views of the base of the tower are screened to the extent reasonably practical.

D. Locational placement requirements . Commercial communications towers and antenna installations shall meet the following minimum requirements in any zone where they are permitted. These criteria are in addition to the bulk requirements applicable in the zone. Where the bulk regulations and these regulations impose different requirements, the more restrictive will control.

- (1) Permissible number of towers on a lot There shall be no more than one commercial communications tower on any lot, together with any permitted ancillary buildings, structures and parking facilities.
- (2) Required separation from nearest habitable structure.No tower shall be placed closer than 300 feet, on a horizontal plane, to the nearest house or other residential habitable structure or proposed house or other residential habitable structure.
- (3) Required separation between towers in residential zones.Ina residential zone, a tower shall not be placed closer than 500 feet to any existing commercial communications tower,whether such existing tower is in a residential zone or any otherzone.
- (4) Minimum lot size.
  - (a) Freestanding new commercial telecommunication s tower as primary use: one acre or the underlying minimum lot size in the zone, whichever is greater.

- (b) Collocated commercial telecommunications antenna installation placed on existing building, structure or tower: one acre or the underlying minimum lot size in the zone, whichever is greater.
- (5) Minimum yards/setback.
- (a) Freestanding new commercial telecommunications tower or collocation on existing tower.
- [1] The minimum front setback to a tower in all zones shall be 150 feet or 125% of the height of the tower, whichever is greater.
- [2] The minimum side setback in all zones shall be 50 feet or 125% of the height of the tower, whichever is greater.
- [3] The minimum setback from Route 301 shall be 500 feet.
- (b) Collocated commercial telecommunications antenna installation on existing building or structure other than tower. The building or other structure must comply with the applicable setback for commercial communication towers as provided in the chapter. Antennas shall not be placed on buildings or structures that do not comply with applicable setbacks.
- (c) Accessory structures.
- [1] No buildings or other structures accessory to the operation of a commercial telecommunications tower or commercial telecommunications antenna installation may be constructed in any required front yard and must provide at least 50 foot side and rear setback from the property line.
- [2] No guy wires shall be located within fifty-foot side and rear setback.
- [3] On any lot line abutting a residential district, the required setback shall be 100 feet.
- (6) **Maximum** height of freestanding commercial telecommunications tower and collocated antenna installation. The maximum height of a freestanding tower shall be 110 feet above ground elevation. In all cases, the permissible height is measured from ground elevation to the top of any antenna projecting above the top of the tower.
- E. Engineers' and consultants' fees. The Planning Board or Zoning Board may request a review of the application at the applicant's expense by a qualified engineer and/or consultant selected by the village in order to evaluate the application and/or test and certify radiation emissions around the proposed tower and the structural integrity of the tower as well as any ancillary structures. Fees for the review of the application by a qualified engineer and/or consultant are in addition to the application fee, shall be the responsibility of the applicant and shall be deposited with the Village Clerk.
- F. Financial security. The applicant shall, as a condition of final approval, provide the village with financial security acceptable to the village sufficient to provide for the removal or repair of the tower as described in § 188-70 above and to maintain any of the site improvements, including screening and landscaping. Acceptable financial security

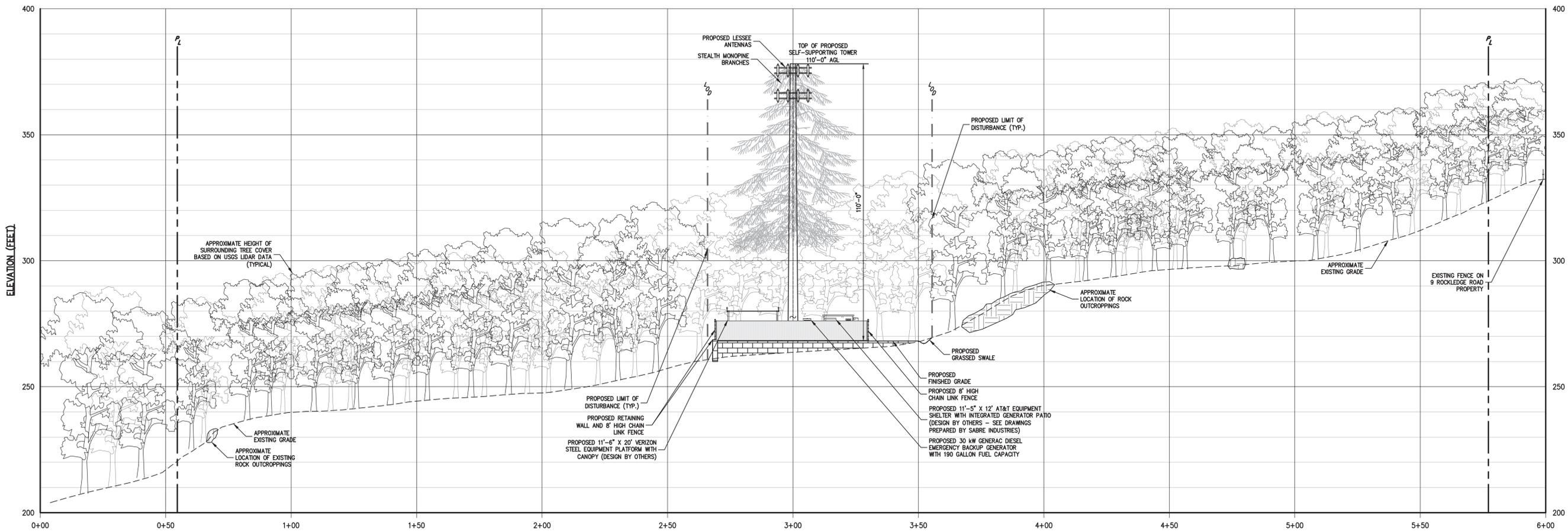
includes, but is not limited to, irrevocable bank letters of credit, escrow accounts and bonds issued by insurance companies.

§ **188-72**. Fees.

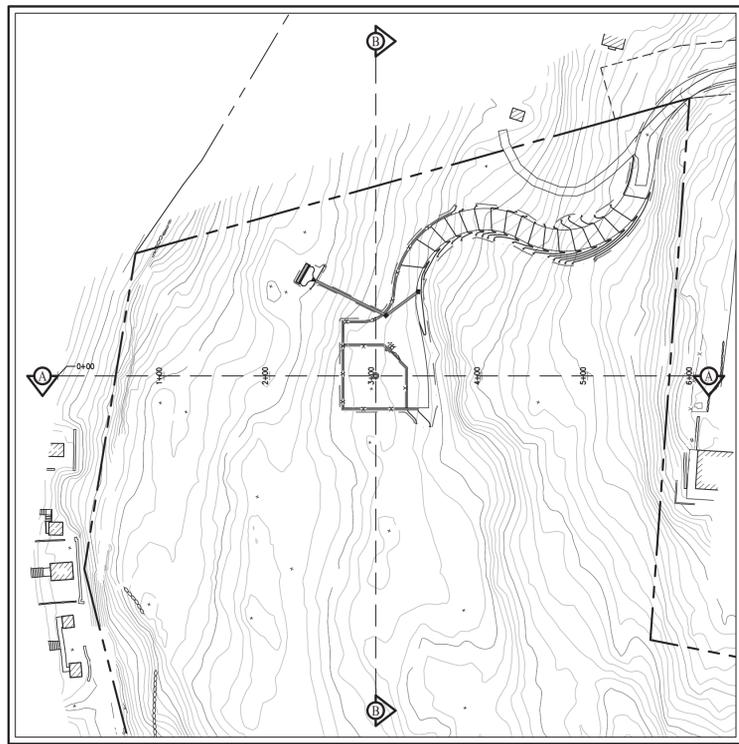
All fees associated with applications for commercial communications towers shall be set forth from time to time by resolution of the Board of Trustees.

)

**EXHIBIT C.**  
**JMC Cross Section Showing Tree Heights.**



STATION (FEET)  
**SITE SECTION A-A**  
 SCALE: 1" = 20' HORIZ. 1" = 20' VERT.

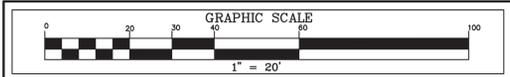


**SITE GRADING PLAN**  
 SCALE: 1" = 80'

**NOTES:**

- APPROXIMATE TREE CANOPY HEIGHTS SHOWN HAVE BEEN OBTAINED FROM AVAILABLE UNITED STATES GEOLOGICAL SURVEY LIGHT DETECTION AND RANGING (LIDAR) DATA.
- FOR CLARITY, EXISTING VEGETATION IN THE FOREGROUND/BACKGROUND OF THE SECTIONS IS NOT SHOWN.

ANY ALTERATION OF PLANS, SPECIFICATIONS, PLATS AND REPORTS BEARING THE SEAL OF A LICENSED PROFESSIONAL ENGINEER OR LICENSED LAND SURVEYOR IS A VIOLATION OF SECTION 7209 OF THE NEW YORK STATE EDUCATION LAW, EXCEPT AS PROVIDED FOR BY SECTION 7209, SUBSECTION 2.



SITE NAME: NELSONVILLE  
 SITE NUMBER: NY170  
 TAX PARCEL: 49.6-1-7

NO.	REVISION	DATE	BY

DRAWN: PD    APPROVED: JS  
 SCALE: AS SHOWN  
 DATE: 12/19/2017  
 PROJECT NO: 16237  
 DWS:    PAR:    SDR:    3, GRAD-UTIL-SE  
 1837-D    SECTION A  
 DRAWING NO: **ZD-13**

**JMC**

JMC Planning, Engineering, Landscape Architecture & Land Surveying, PLLC  
 JMC Site Development Consultants, LLC  
 John Meyer Consulting, Inc.  
 120 BEDFORD ROAD - ARMONK, NY 10504  
 voice: 914.273.5225 • fax: 914.273.2102  
 www.jmcplc.com

**HOMELAND TOWERS, LLC**  
 9 HARMONY STREET, 2ND FLOOR  
 DANBURY, CT 06810

**SITE CROSS SECTIONS**  
**HOMELAND TOWERS**  
 NELSONVILLE (NY170)  
 15 ROCKLEDGE ROAD  
 VILLAGE OF NELSONVILLE, NY

NOT FOR CONSTRUCTION

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**EXHIBIT D.**

**Sabre Industries Letter re: Branching Height and  
Branch Length.**

September 25, 2017

Members of the Zoning Board  
Village of Nelsonville  
258 Main Street  
Nelsonville, NY 10516

**RE: Homeland Towers, LLC, New York SMSA Limited Partnership d/b/a Verizon Wireless and New Cingular Wireless PCS LLC d/b/a AT&T, Proposed Public Utility Personal Wireless Communication Facility at 15 Rockledge Road, Nelsonville, NY**

Dear Hon. Chairman Rice and Members of the Zoning Board of Appeals:

Every Monopine is custom engineered for the specific proposed antenna and line loading. A branch receptor chart is prepared by drafting and engineering calculations for each branch length, elevation and attachment flat. There are also branch receptors that are welded at different degrees of pitch. All of this accounts for the custom nature of each Monopine to provide the end-user with the best possible concealment value and overall aesthetic.

Attached hereto is a branch receptor chart showing the different branch lengths, with shorter branches at the top and longer branches at the bottom of the requested branch start height. Non-uniform branch lengths will be used throughout the structure creating a non-conical or non-pyramid effect for the Monopine. The branches will range between 9' and 14' lengths and will extend from 110-ft AGL all the way down to 70-ft AGL, which is a large area of coverage. Moreover, Homeland Towers has specified a higher branch density for this project to provide the greatest concealment value. Please note that the diagram on the Monopine profile is not to scale and is not intended to illustrate the exact site-specific branch lengths as detailed in the chart. A photograph of the branches is below. The color of the pole and the branches will be Thunder Gray.

Sincerely,

Tim Hornbeck

North Region Sales Manager  
Sabre Industries Towers & Poles  
7101 Southbridge Drive  
Sioux City, IA 51102  
d.712-224-1606  
c.712-204-4626  
f.712-279-0814

**EXHIBIT E.**  
**NP&V Map of Historic and Scenic Resources within**  
**1/2-Mile Area of Potential Effect (APE) of Proposed**  
**Tower.**

# Village of Nelsonville

Franson Affidavit  
in Support of the  
Village of Nelsonville

## Exhibit E 1/2-Mile Radius APE Historic and Scenic Resources

### Legend

- ★ Proposed Cell Tower
- Buffers**
- ⋯ 1/2 Mile
- ▭ 1 Mile
- ▭ 2 Mile
- NYS Historic Buildings**
- Eligible ◆
- Listed ●
- ▭ National Register Sites
- ▨ NYS Historic Districts
- ▭ Local Recreation
- ▭ State Park
- ▭ State Park Preserve
- Scenic Byway/ Designated Scenic Road
- Trails**
- Trail
- Hudson Valley Greenway/ Bike Route

### National/State Historic Buildings: 1/2 Mile

28 HEARNEY RESIDENCE - 3 MAPLE TERR
39 TALANCO RESIDENCE - 1 MAPLE TERR
77 SULLIVAN RESIDENCE - 7 MAPLE TERR
81 EGAN RESIDENCE - 56 PAULDING AVE
87 PHALEN RESIDENCE - 44 PAULDING AVE
92 BARICEVIC RESIDENCE - 46 PAULDING AVE
93 TIMMONS RESIDENCE - 64 PAULDING AVE
231 FARRELL RESIDENCE - 249 MAIN ST
232 SCELSO--DENNING RES - 11 MAPLE TERR
233 GALLAGHER RESIDENCE - 3 CROWN ST
234 H.D. CHAMPLIN AND SON - 286 MAIN ST
235 DUNCAN RESIDENCE - 328 MAIN ST
237 FISH & FUR CLUB/NELSONVILLE JUSTICE COURT - 258 MAIN ST
238 J.Y. DYKMAN'S - 255 MAIN ST
239 THE COUNTRY STORE - 289 MAIN ST
253 PLUMBUSH RESTAURANT - NY 9D
255 FIRST BAPTIST CHURCH OF COLD SPRING - MAIN ST
256 FAIR LAWN / PATTERSON RESIDENCE - NY 9D
257 COLD SPRING CEMETERY GATEHOUSE - PEEKSKILL RD
260 BOSCOBAL RESTORATION INC. RES - NY 9D
262 MONTREST E. TODD RESIDENCE - LANE GATE RD
263 E. TODD RESIDENCE - LANE GATE RD
291 COLD SPRING RURAL CEMETERY- PEEKSKILL RD

Source: ESRI Web Mapping Service;  
Putnam County GIS  
New York Clearinghouse 2019

Note the location of Trails and Greenways are approximate, based on the following sources:  
Putnam County Greenway Trail Development Draft map- 2011  
22 Hikes in Philipstown. Prepared by the Philipstown Greenway Committee- 2005  
Trails & Open Space Map. Putnam County. Accessed 2019

Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community



0 0.1 0.1 0.2 Miles



**EXHIBIT F.**

**NP&V Map of Historic and Scenic Resources within 2-  
Mile Area of Proposed Tower.**

# Village of Nelsonville

Franson Affidavit  
in Support of the  
Village of Nelsonville

## Exhibit F 2-Mile Radius Historic and Scenic Resources

### Legend

- ★ Proposed Cell Tower
- Buffers**
  - ⋯ 1/2 Mile
  - ▭ 1 Mile
  - ▭ 2 Mile
- NYS Historic Buildings**
  - ◆ Eligible
  - Listed
- National Register Sites
- ▨ NYS Historic Districts
- Local Recreation
- State Park
- State Park Preserve
- Scenic Byway/ Designated Scenic Road
- Trails**
  - Trail
  - Hudson Valley Greenway/ Bike Route



0 0.2 0.3 0.7 Miles



Source: ESRI Web Mapping Service,  
Putnam County GIS  
New York Clearinghouse 2019

Note the location of Trails and Greenways are approximate, based on the following sources:  
Putnam County Greenway Trail Development Draft map- 2011  
22 Hikes in Philipstown. Prepared by the Philipstown Greenway Committee- 2005  
Trails & Open Space Map. Putnam County. Accessed 2019

**EXHIBIT G.**

**Letter from John A. Bonafide, Director, Technical  
Preservation Services Bureau, Agency Historic  
Preservation Officer, dated November 22, 2017.**



**Parks, Recreation  
and Historic Preservation**

**ANDREW M. CUOMO**  
Governor

**ROSE HARVEY**  
Commissioner

November 22, 2017

Ms. Laura Mancuso  
CBRE  
Director, Cultural Resources  
4 West Red Oak Lane  
White Plains, NY 10604  
*(via email)*

Re: FCC  
New Cellular Communications Tower/Stealth Mono-Pine/110 Feet/NY170  
15 Rockledge Road, Nelsonville, Putnam County  
17PR06164 / 0007902925

Dear Ms. Mancuso:

As you know, this undertaking has raised several questions concerning perceived unassessed potential impacts to historic resources within the project's area of potential effect (APE). To date our office has received several calls from local officials concerned about our Section 106 review.

Although we had previously concurred with your finding of No Adverse Effects for this undertaking, these questions required me to re-evaluate the project file. In my review, I noted that the APE contains 13 individually listed resources as well as a portion of one historic district. This is a significantly high concentration of National Register listed properties within a one-half mile radius of a communication tower project site. We have also noted that at least one property, the Cold Spring Rural Cemetery had not been previously identified in our survey data during the review process. We have formally identified the cemetery as eligible for inclusion in the National Register of Historic Places. We also note that you had already considered this resources in your visual analysis.

At this point in time our office is not prepared to seek to reopen the review process with the FCC. However, we would ask that any alternatives analysis that was done for this site location be provided to us for further review. We are particularly interested in any documentation of other sites that had been considered as well as alternative lower heights that may have been evaluated for the proposed tower.

If you should have any questions regarding our request, please do not hesitate to contact me at (518) 268-2166 or [john.bonafide@parks.ny.gov](mailto:john.bonafide@parks.ny.gov).

Sincerely,

John A. Bonafide  
Director,  
Technical Preservation Services Bureau  
Agency Historic Preservation Officer

cc: Jill Springer, FCC, Acting APO *(via email)*  
Hon. William O'Neill *(via email)*

**EXHIBIT H.**

**Letter from the Putnam County Historian, Sarah  
Johnson, Ph.D, dated October 31, 2017.**



**SARAH JOHNSON**  
COUNTY HISTORIAN

**THE PUTNAM COUNTY HISTORIAN  
& PUTNAM COUNTY ARCHIVES**  
68 Marvin Avenue Brewster, New York  
10509

**SALLIE SYPHER**  
DEPUTY COUNTY HISTORIAN

October 31, 2017

Nelsonville Village Office  
Zoning Board of Appeals  
William Rice, Chairman  
258 Main Street  
Nelsonville, NY 10516

Dear Mr. Rice:

The Putnam County Historian's Office has been asked to advocate for the integrity and historic preservation of the Cold Spring Cemetery on Peekskill Road and Rockledge Road in Nelsonville. As you know, the Neo-Gothic Gatehouse is on the National Register of Historic Places. The cemetery itself is the final resting place of many influential citizens of Garrison, Cold Spring, and Nelsonville. This cemetery embodies the historic period integrity of location, Neo-Gothic design, bucolic setting, period workmanship, as well as the importance of this cemetery to the community and community awareness of our shared cultural heritage. As a result of these considerations, we would advocate for finding an alternative, less historic location for the Homeland Towers cell tower.

We hope you will give this historic advocacy all due attention and consideration.

Sincerely yours,

Sarah Johnson, Ph.D.  
Putnam County Historian



(PHONE) (845) 808-1420  
(FAX) (845) 808-1962  
HISTORIAN@PUTNAMCOUNTYNY.GOV

[WWW.PUTNAMCOUNTYNY.COM/HISTORIAN](http://WWW.PUTNAMCOUNTYNY.COM/HISTORIAN)  
[WWW.PUTNAMNY200.COM](http://WWW.PUTNAMNY200.COM)

**EXHIBIT I.**

**Letter from the Cold Spring Historic District  
Review Board, dated November 8, 2017.**



# VILLAGE OF COLD SPRING

85 MAIN STREET, COLD SPRING, NY 10516

TEL: (845) 265-3611

FAX: (845) 265-1002

WEB: WWW.COLDSRINGNY.GOV

**DAVE MERANDY, MAYOR**

mayor@coldspringny.gov

**MARIE EARLY, TRUSTEE**

trustee.early@coldspringny.gov

**LYNN MILLER, TRUSTEE**

trustee.miller@coldspringny.gov

**FRANCES MURPHY, TRUSTEE**

trustee.murphy@coldspringny.gov

**STEVE VOLOTO, TRUSTEE**

trustee.voloto@coldspringny.gov

**JEFF VIDA KOVICH, CLERK/TREASURER**

vcsclerk@coldspringny.gov

**MICHELLE ASCOLILLO, ACCOUNTANT**

treasurer@coldspringny.gov

**JOHN W. FURST, ATTORNEY**

**GREGORY R. PHILLIPS, WATER SUPERINTENDENT**

vcswater@bestweb.net

**CHARLES NORTON, HIGHWAY DEPARTMENT CREW CHIEF**

highway@coldspringny.gov

November 8, 2017

The Village of Nelsonville

258 Main Street

Nelsonville, NY 10516

Mayor O'Neill and members of the Nelsonville Village Board of Trustees:

The members of the Cold Spring Historic District Review Board are compelled by our conscience to express our opposition to the plan for a new cellular tower dominating the viewshed of the Cold Spring Cemetery, as well as the alternate plan for a tower immediately overlooking the Mountain Avenue Cemetery, the Cedar Street Cemetery, and the Nelsonville preserve. This site is adjacent to the National Historic District, so recognized for its unique contributions to the history of New York State, and would be visible from Town Hall and the Methodist Church, two important buildings contributing to our District, as well as dozens of individual homes. The tower will also be visible from the Cold Spring Baptist Church, which is listed on the National Register, in addition to several other individually listed properties. We as a board are charged with protecting the character of the District, and the community is invested in protecting it as well.

Tourism is a driver of our local economy. Just a few months ago, The Highlands Current reported that tourism added nearly \$65 million to Putnam County's economy, contributing \$4.5 million to local taxes alone. This is not money that should be left on the table. Tourists come here because of our Villages' architectural and scenic beauty, and their distinct character — unlike most places, this character remains intact. It makes Philipstown a place that all people, residents and visitors alike, cherish. The installation of this cellular tower would mar the visual character of the Historic District.

This is not an overreaction to modernity or change. In our capacity as a board, we frequently (and enthusiastically) review applications seeking to incorporate necessary modern materials, forms, or technologies into our historical context. We are not opposed to making space in a historic setting for such advancements, and address each on its merits, benefits, and sensitivity to their surroundings.

Our strong historic character, both inside and outside of the Historic District, is a shared resource that benefits all residents of Philipstown. It is also a shared responsibility to care for and foster its integrity. To allow such a construction without question is an abdication of this responsibility.

Respectfully,

The Village of Cold Spring Historic District Review Board

**EXHIBIT J.**

**Letter from Liz Campbell Kelly, ASLA, Principal,  
Hudson Garden Studio, LLC, dated November 27,  
2017.**

Village of Nelsonville  
Zoning Board and Planning Board

11/27/2017

To the Nelsonville Zoning Board and Planning Board:

I am writing in opposition to the cell tower at the Rockledge Site as a resident of Cold Spring and a landscape design professional. I have a Masters in Landscape Architecture from the University of Pennsylvania and own a local Landscape Gardening business.

The cemetery, designed in 1862-1865 by Peter Mead and George Woodward, is a prime example of nineteenth century cemetery design, one of the earliest form of public park.

At the time of the design, Mead and Woodward were editors of 'The Horticulturalist', an influential journal founded in 1847 by Newburgh native AJ Downing. Downing is a seminal figure in the history of landscape, a leader in ideas in the generation before Frederick Law Olmsted. Downing used 'The Horticulturalist' to popularize his ideas on "rural art and rural taste", improving ideas in agricultural and to develop a vernacular architecture and in American towns and villages.

Downing died in 1852, so it is fair to say that Mead and Woodward were his heirs in their practice of architecture, civil engineering and landscape design, and the popularization of burgeoning ideas about the role of landscape in the urban and rural context. Throughout his tenure as editor, Woodward wrote a series of essays with the theme "Landscape Adornment," covering a range of topics in the developing field of landscape design. In fact, the cemetery is contemporary to Central Park, which was begun in 1858 with the design competition won by Vaux and Olmsted. Olmsted first called himself a Landscape Architect in 1863, essentially inventing the term and the profession.

It is so remarkable that our local cemetery is at the nexus of this extraordinary moment in the history of landscape design. The land here is beautiful - a 19th century design with a beautiful collection of mature specimen trees including stunning European Beeches, Weeping Beeches, and a fine collection of coniferous trees. This designed landscape is nestled into an undisturbed woodland forest with rock outcrop and native woodland trees.

There is no doubt that this landscape would be marred by the addition of the cellphone tower. The cell tower company itself produced the rendering that shows the tower disguised as a tree, so fake it is absurd, towering above the mature trees and natural landscape immediately as you enter the cemetery. Attached to this email you will find one of Woodward's essays for the Horticulturalist, a piece on the importance of the "Approach" to rural architecture. This tower and the views it affords would certainly be an affront to these concepts.

Please do what you can to save this historically significant work of landscape and oppose the Rockledge Cell Tower.

Sincerely,



Liz Campbell Kelly, ASLA  
Principal, Hudson Garden Studio LLC  
MLA University of Pennsylvania

HUDSON GARDEN STUDIO LLC  
www.hudsongardenstudio.com  
16 Fishkill Ave  
Cold Spring NY 10516

**EXHIBIT K.**

**Philipstown Cell Solutions Group, dated November 28,  
2017, addressing impacts to scenic and historic  
resources.**

Statement in Opposition to the Homeland Towers Application  
for 15 Rockledge Road, Nelsonville, NY

Submitted to the Village of Nelsonville Zoning Board of Appeals

By the Philipstown Cell Solutions Group

November 28, 2017

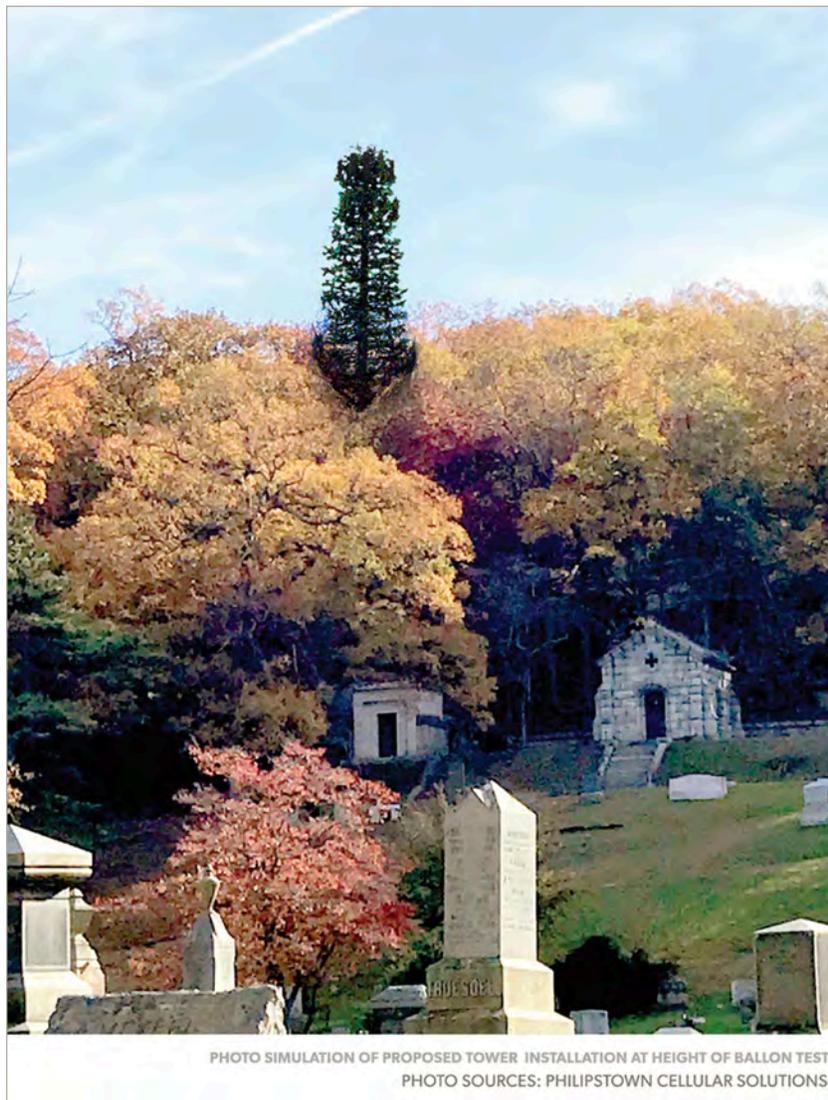


PHOTO SIMULATION OF PROPOSED TOWER INSTALLATION AT HEIGHT OF BALLON TEST  
PHOTO SOURCES: PHILIPSTOWN CELLULAR SOLUTIONS

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**188-68 Application for special permit to place new tower.**

A.1 “Special permits are to be **based on actual need** and not on speculation of possible future needs which may or may not materialize.” –Village of Nelsonville Code

**188-70 Standards for issuing special permits.**

A.6 That the proposed antenna installation or tower **will not have a significant adverse impact on scenic or historic resources**. If a significant adverse visual impact is identified, the applicant shall demonstrate that suitable landscaping, buffering or other techniques will be used, and that they are able to minimize **such impacts to a level of insignificance**.” –Village of Nelsonville Code

## **Introduction**

As neighbors, we write to provide support to the ZBA in its review of Homeland Tower’s application. Because this area of law is so complex, we joined forces to clarify the essential matters under deliberation. If the ZBA denies the application, or delays a decision indefinitely, there is a fair chance the applicant would take the Village to court. What we lay out below are reasons why you should not be worried about such a court case.

For a ZBA determination to stand upon judicial review, it must be based on the substantive criteria found in the local zoning ordinance. When evaluating a substantial evidence claim under the Telecommunications Act, courts look to the applicable substantive standards under state and local law.

Herein, we submit substantial evidence to demonstrate that Homeland Towers’ application to install a cell tower at 15 Rockledge Road is not permissible under Nelsonville Village Code.

In issuing a special permit for cell tower construction, Nelsonville Code requires the ZBA to determine that the request is “based on **actual need**” and that the structure “will not have a significant adverse impact on **scenic or historic** resources.”

As we outline below, Homeland Towers has not provided substantial evidence of “need,” nor has it demonstrated that its proposed tower at 15 Rockledge Road would have an insignificant adverse impact on the Village of Nelsonville’s legendary “scenic or historic resources.”

### **I. Impact on Scenic & Historic Resources**

Since Nelsonville Code expressly requires ZBA to consider the negative impact on scenic and historic resources by installation of a communications tower, it is within the purview of the board to consider this ground as a basis for denial of an application if supported by substantial evidence. Because terms such as “insignificance,” “significant adverse visual impact” and

“scenic or historic resources” are not defined within Nelsonville Code, it is within the ZBA’s discretion to look to outside sources to assist with defining these terms.

Nelsonville, including 15 Rockledge Road, falls within the Cold Spring Subunit of the Hudson Highlands Scenic Area of Statewide Significance (SASS) **[exhibit A]**. This New York State SASS designation seeks to protect “New York’s landscape tradition [which] includes appreciation of both the natural and the cultural landscape and its coastal scenic landscapes.” In fact, original meetings for SASS designation were held in 1990 at the Philipstown Town Hall, the same place where we have met to debate the cell tower.

To emphasize the significance of this valuable resource, the SASS states that “the region has long been recognized as a scenic area of national importance. It inspired the Hudson River School of Painting in the nineteenth century, the first indigenous American art movement, and the American Romantic Landscape Movement which subsequently spread nationwide and influenced designed landscapes and parks throughout the country.”

Clearly, the valuable scenic, historical and cultural resources that the SASS designation seeks to protect, are within the ZBA’s discretion to consider when attempting to understand and define terms such as “scenic resources” within the Nelsonville Code.

The proposed tower installation falls within the Cold Spring subunit of the Hudson Highlands SASS, and as such is subject to Policy 24 **[exhibit B]**. The primary objective of Policy 24 is to “provide for the designation and protection of scenic areas of statewide significance.” These guidelines are meant to establish whether any proposed development would “affect a scenic resource of statewide significance ... [and] ... be likely to impair the scenic beauty of an identified resource.”

To be clear, Policy 24 is not a prohibition on development outright, but rather seeks to guide development within existing scenic resources as opposed to irrevocably marring it. Ultimately, the “narratives prepared for each SASS describe the character and scenic quality of the SASS landscape, **providing guidance to the public and regulatory agencies** as to which landscape elements should be protected and which actions could impair the scenic quality of the SASS.”

And Policy 24 defines impairment:

... impairment of a landscape’s scenic quality can occur in two principle ways: 1) through the irreversible modification or destruction of landscape features and architectural elements which contribute significantly to the scenic quality of the coast, and 2) through the **addition of structures which reduce views or are discordant** with the landscape because of their **inappropriate scale**, form, or construction materials. (Emphasis added).

The NYS SASS report also identifies the significant value of cultural and historic resources of our region, corroborated by local historians **[exhibit C]**:

The Hudson Highlands SASS is a landscape rich in symbolic value and meaning, resulting from historic events, folklore, art and literature, and influencing public perception of the area. The area was at the center of the Romantic Movement that began before the Civil War and became a pervasive movement that affected all aspects of art and society in the region, including architecture, literature, painting, recreation and tourism. This has led to **a continuum of environmental and scenic appreciation concerned with the Hudson Highlands that runs through the last two centuries.** (Emphasis added).

It is important to note that while additional levels of protection for SASS area can be granted to municipalities with Local Waterfront Revitalization Programs (LWRP), a municipality's decision not to incorporate an LWRP does not prevent ZBA from considering SASS guidelines when making decisions that affect state-identified scenic resources.

Because terms such as "adverse visual impact" and "scenic resources" remain undefined in the Village Code, it is wholly within the ZBA's discretion and jurisdiction to turn to SASS and Policy 24 for guidance in interpreting and applying these terms and their meanings in reaching the development decisions before it.

It cannot be denied that the cultural, historic and scenic importance of this region is significant and can clearly be distinguished from other areas or regions where it is less so, particularly with respect to proposed telecommunications development. The site of the proposed tower falls directly within this scenic and historic landscape. As such, there must be a high degree of scrutiny of any adverse impact upon these recognized resources.

Ultimately, the standard remains whether such reliance by a ZBA on Policy 24 to inform its decision is rationally based. It is supported New York State public policy that development proposals falling within an SASS designation be scrutinized according to Policy 24 guidelines. Therefore it is rationally based for the ZBA to consider such guidelines when evaluating the potential adverse effect on identified scenic resources in this matter.

With its discordant scale, ineffective camouflage, and placement adjacent to historic landmarks which are National Register listed, National Register eligible and highly valued by our local community [**exhibit D**], Homeland fails to prove that the impact of a proposed tower at 15 Rockledge has been minimized to a level of insignificance as required under Village Code. Rather, the record clearly shows the proposed tower to be highly intrusive into one of our community's most sacred spaces.

**EXHIBIT L.**

**Letter from Michelle Smith, Director, Hudson  
Highlands Trust, dated December 29, 2017.**



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20 Nazareth Way  
Garrison, NY 10524  
  
phone: 845.424.3358  
fax: 845.424.3483  
  
info@hhl.org  
www.hhl.org

December 29, 2017

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Village of Nelsonville Planning Board and Zoning Board of Appeals  
258 Main Street  
Nelsonville, NY 10516

Dear Chairman Rice, Chairman Marino and Members of the Planning Board and Zoning Board of Appeals:

RE: Homeland Towers, Inc. Proposed Cell Tower at 15 Rockledge Road

The Hudson Highlands Land Trust (HHLT) submits the following comments in relation to the siting of a large cell tower on Rockledge Road in Nelsonville.

The mission of HHLT is to *“protect and preserve the natural resources, scenic beauty and rural character of the Hudson Highlands”*. We believe a 110-foot cell tower in the shape of a “stealth monopine” will be detrimental to the scenic beauty and rural character of our area, and we encourage the Village to consider less visually intrusive means of improving cell coverage in our area.

We urge the Village to follow the example set by the Adirondack Park Agency (APA) in ensuring that any cell towers blend into the surrounding landscape and do not detract from the outstanding scenic beauty of our area. The APA’s policy on telecommunications towers and other tall structures is attached as Exhibit A and, in particular, Section III B discusses the concept of **“Substantial Invisibility”**. We recommend the Village follow similar processes for the reasons outlined below.

The site at 15 Rockledge Road in Nelsonville is part of the Hudson Highlands Scenic Area of Statewide Significance. It is included in the HH-20 sub-unit, known as the Garrison Four Corners sub-unit. The Hudson River Valley Scenic Areas of Statewide Significance report, from the NY Department of State, says *“The subunit is recognized through the designation of NY Route 9D as a Scenic Road under Article 49 of the Environmental Conservation Law and through the inclusion of twenty structures and their estates on the State and National Registers of Historic Places, most as part of the Hudson Highlands Multiple Resource Area. The subunit is free from discordant features”*

New York's Coastal Management Program includes Policy 24, which provides for the designation and protection of Scenic Areas of Statewide Significance. This policy calls for agencies to determine if a proposed action would impair scenic quality.



The policy states that impairment of a landscape's scenic quality can occur *“through the addition of structures which reduce views or are discordant with the landscape because of their inappropriate scale, form, or construction materials.”*

Based on the viewshed and visual simulation materials submitted by the applicant and by Philipstown Cell Solutions, we believe the current proposal includes a structure that is discordant with the landscape because of inappropriate scale and form. Furthermore, we find the applicant’s scenic analysis lacking in terms of the important viewpoints that were not included, but where the Rockledge Road area is clearly visible. Examples include: many points along the Hudson River, key scenic areas in State Parks – both on Storm King Mountain and Mount Taurus trails heading up from Nelsonville, in Constitution Marsh, and various points along the designated Scenic Route 9D.

We are concerned that the current proposal would set a dangerous precedent in a rapidly evolving telecommunications environment that includes both:

- The recent reversal of “Net Neutrality” by the FCC, and
- The simultaneous application for another new cell tower in Philipstown

It is not yet known if these events signal the start of an increasing number of cell tower applications in our area. The evidence presented by Philipstown Cell Solutions shows that such large cell towers are currently not present in Scenic Areas of Statewide Significance, other than those that pre-date the designation or to support national security institutions (e.g. West Point Military Academy).

The Hudson Highlands is an area of unique, unparalleled scenic beauty that drives both our tourism industry and our attractiveness as a place to live. This, in turn, creates the need for more cell and data coverage. However, the installation of such infrastructure cannot come at the cost of what makes the Hudson Highlands so special in the first place.

We urge you to reject the current application on the basis that it impairs our scenic resources. We encourage you to guide applicants towards structures that blend in with our scenery and consider the ways in which other agencies, such as the Adirondack Park Agency, have been able to ensure that communications infrastructure fits in with the surrounding landscape.

Sincerely,



Michelle Smith, Executive Director

**EXHIBIT M.**

**Letter from Dr. Robin Hoffman and Mr. Connor  
Neville, Department of Landscape Architecture,  
State University of NY College of Environmental  
Science and Forestry, dated January 5, 2018.**

5 January 2018

To: Zoning Board of Appeals & Planning Board  
Village of Nelsonville  
258 Main Street  
Nelsonville NY 10516

Re: AKRF, INC.'s review of the Saratoga Associates Visual Resource Assessment (VRA) and related materials, prepared by Homeland Towers, LLC in relation to its application for a telecommunication tower at 15 Rockledge Road, Nelsonville, New York.

The statements of this letter are intended to inform and aid the Nelsonville Zoning Board of Appeals (ZBA) and Planning Board (PB) members in their decision-making process by providing this clarifying response to the additional VRA Review conducted by AKRF, INC ("AKRF"). Their review is hereafter considered for its validity, accuracy, and compliance with the standards of VRA best management practices and in reference to our previously submitted Review of the Saratoga Associates Visual Resource Assessment ("VRA"). All assessments and conclusions reached within this response letter are based upon the information presented, and to the best of the undersigned's knowledge and belief, that the information contained herein is true, accurate, and complete.

The AKRF review, authored by Mr. Graham L. Trelstad, AICP, provides a superb overview of the VRA in the conclusions and findings that are able to be gleaned, while offering his respectable opinion from a professional background. This response letter is intended to note some of the discrepancies between our VRA Review ("*Review of VRA\_Final\_01Jan2018*" submitted document package) and the AKRF's Review as each relates to the potential visual and aesthetic impacts of the proposed telecommunications tower ("tower") at two spatial scales:  
1) Landscape and 2) Village.

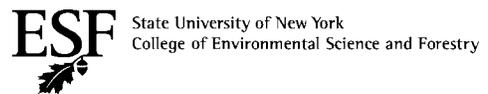
Response letter prepared by:



Dr. Robin Hoffman



Mr. Connor Neville



**Department of Landscape Architecture**

1 Forestry Drive  
Syracuse, NY 13210

## I. Landscape scale discrepancies

“I believe that both resources [Cold Spring Rural Cemetery and Cold Spring Rural Cemetery Gatehouse] can still be experienced and interpreted within an overall landscape consistent with the rural cemetery movement *and the Hudson Highlands SASS*, even if there are very few, if any, comparable modern visual intrusions, within the surrounding study area.”

–AKRF Review, Page 4

### Comments:

- This statement asserts the subjective claim that the village’s most potentially-impacted scenic resources - the views and experiences had by visitors within the nearby site of the Cold Spring Rural Cemetery and its Gatehouse - would be relatively unaffected by the imposition of a 110-foot tower within a distance of 500 feet. More specifically, the defense of this claim appeals to the likeness and preservation of the greater Hudson Highlands Scenic Areas of Statewide Significance (SASS) being unchanged. **Incidentally, this position is essentially self-refuted in the AKRF Review on page 5, where arguments are drawn from the SASS report that clearly articulate how such a tower “...would introduce discordant elements into the landscape and impair the scenic quality of the SASS’ (page 279).”**
- The Hudson Highlands region is being referenced here in connection to the character of these two significant sites. However, it should be unmistakably pointed out that **this line of argumentation does not comprise a *holistic view* of the entire region, but only speaks to the overemphasized Cold Spring Rural Cemetery site.**
- The reviewer’s professional opinion and assertion of minimal impact for this site must then be **held accountable in light of his experiences**: Does he have experience assessing impacts on community-centered historic cemeteries? Does he have knowledge of how the community alternatively uses this site for festivals and gatherings?
- **Therefore, the reductionist view of assessing and prioritizing the cemetery site to be representative of the entire study area’s experienced visual impact is a negligent misappropriation of the basic premise of a VRA: which is ideally intended to assess the proposed tower’s visual and aesthetic impacts on the entirety of the nearby area – not just the cemetery, as stressed here.**

“Similarly, the study area for analysis would vary by the context and scale of the proposed project. While DEP-00-2 identifies a “safe” study area of a five (5) mile radius for “large” projects, no recommendation is provided for “small” projects. In my professional experience assessing potential visual impacts of telecommunication towers of up to 150 feet in height, I have determined that *most visibility of such towers is within ½ to one (1) mile*, with very limited visibility beyond that due to intervening topography, vegetation, and structures. The Nationwide Programmatic Agreement between the Federal Communications Commission and the State

Historic Preservation Officers cites a study area (or “Area of Potential Effect”) for assessing visual effects of ½ mile for towers of 200 feet or less.”

–AKRF Review, Page 3

Comments:

- When referring to the entirety of nearby areas being important for assessment when conducting a VRA, the AKRF professional report **correctly mentions the best practice of using a 5-mile radius of study**. The AKRF Review’s following statements are *misdirecting*, in that they project a personal stance on the Saratoga Associates VRA which assumes the proposed Nelsonville tower is not subject to adhere to the same guidelines of surveying and analysis – but would rather be considered sufficient in studying only a narrowed area of focused impact (½-1 mile radius).
- The reviewer’s respectable and professional opinions/experiences are offered here and are supported by the claim that topographic and vegetative factors have impeded views in other circumstances and on other projects that he has reviewed. This, however, is not defensible as a universal methodology by which one could disregard best practice guidelines in all/dissimilar projects. The assumed study area of ½-mile and 2-mile radii might be sufficiently justified from past experiences elsewhere, but even the Saratoga Associates’ viewshed analysis suggested valley-vista vantage points were possible beyond those focused buffer zones.
- The narrative that is formed in the AKRF review is one that seems to narrow the area of consideration for the proposed tower’s visual impact to just the cemetery site, at large. This review’s consideration largely overlooks the fact that the Villages of Nelsonville and Cold Spring, NY, are – in their entirety – state-designated scenic resources on a greater/landscape scale that have intrinsic merit to be managed for.

## **II. Village scale discrepancies**

“I believe that the project would not have an aesthetic impact on the Cemetery or Gatehouse as the underlying historic integrity of both resources, including the setting, would not be affected in such a way as to ‘**clearly interfere with or reduce the public’s enjoyment and/or appreciation**’ of the Cemetery or Gatehouse.”

–AKRF Review, Page 4

Comments:

- Mr. Trelstad’s (AKRF reviewing author) resume documents his credentials and professional experiences in environmental assessment and community planning projects. The statement of “I believe” with respect to visual and/or aesthetic impact from the

proposed telecommunication tower – and the degree of that impact – is a matter of professional opinion, albeit well respected, Mr. Trelstad’s opinion.

- Mr. Trelstad’s recognition of the difference between visual impact and aesthetic impact is commendable. In noting that difference, his vocabulary speaks to visual impacts as those concerned with features or qualities that are experienced through the sense of sight; no such vocabulary, explanation, or definition is provided for aesthetic impacts. This is understandable as the subjects of aesthetic, scenic beauty, and visual resource management have an extensive history with discourse across multiple disciplines: philosophy, applied and fine arts, and environmental resource management. The scope of the discourse ranges from debates focused on how beauty is defined to why beauty should be protected to methods for assessing beauty.
- The definition of aesthetics grounded in the philosophy of beauty speaks to a complete sensory experience; an experience inclusive of all senses, for example, auditory, tactile, etc. Aldo Leopold<sup>1</sup> wrote that aesthetic value of the land should have less to do with its colors and shapes or its scenic expanses and picturesque proportions, but have greater concern about the integrity of its heritage and ecological processes. In this case, the aesthetics of Nelsonville, NY, is much more than what anyone sees on the surface. The aesthetic quality of this place is rooted in all of its qualities and features – for example, cultural (architecture, history, scenery), social (community), ecological (topography, vegetation, habitat, scenery) and its place within the context of the Hudson Highlands.
- The features of the Cold Spring Cemetery and Gatehouse are highly valued by the Nelsonville community and are recognized nationally by the National Register of Historic Places. These features contribute to the aesthetic value of Nelsonville in terms of historic, cultural, and social paradigms. **Therefore, from the provided evidence, it is more reasonable to determine that the proposed project would have a *negative* impact on the aesthetic value of Nelsonville, New York.**
- Community-held opinions and values are societally relevant and largely determine what is or is not enjoyable and appreciated.
- The subjectivity of professional opinions - especially within a topic such as aesthetic preference – makes deliberations over issues like the proposed tower very difficult for reviewing bodies to decide how to weight advice and expert testimonials. This, however, does not mean that a consensus cannot be reached by either the reviewing Boards or the voting body of citizens.

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<sup>1</sup> Considered by many to be the father of wildlife ecology and the United States’ wilderness system, Aldo Leopold was a conservationist, forester, philosopher, educator, writer, and outdoor enthusiast. Among his best known ideas is the “land ethic,” which calls for an ethical, caring relationship between people and nature. <  
<https://www.aldoleopold.org/about/aldo-leopold/>>

- **The recommendations and implications of a design firm or a standalone consultant are ultimately just educated suggestions, and *ought to be considered in context of all presented evidence* as well as stakeholder concerns.**

"Finally, although only a minor point on nuance, I feel that the VRA mischaracterizes the lack of an adverse visual impact by using the definition of an 'aesthetic impact' instead. In my professional opinion, **the project would have a visual impact on the Cold Spring Rural Cemetery and Cold Spring Rural Cemetery Gatehouse**, as defined by DEP-00-2, but agree that *it would not have a significant aesthetic impact on either resource*. **The visual impact is likely not avoidable given the close distance between the project and the Cemetery and Gatehouse and the visibility of the pole above treeline and the ridgeline.**"

-AKRF Review, Page 4

#### Comments:

- Mr. Trelstad's statement that the proposed tower, "...would not have an aesthetic impact on the Cemetery or Gatehouse" is a contradiction to his conclusion that the public's experience of this place, "...would not be affected in such a way as to 'clearly interfere with or reduce the public's enjoyment and/or appreciation' of the Cemetery or Gatehouse."
- This concession of visual impact is, in itself, verification that there could possibly be aesthetic impact. The definition of each term ('visual impact' and 'aesthetic impact') is almost inseparable from one another, being that there must be a *perceived visual impact* in order to *experience decreased enjoyment or interpretive utility of a site*, and vice versa.
- The AKRF report affirms the likelihood of expectable visual impact for a tower installation, yet it disregards the potential possibility for the public to experience decreased enjoyment or appreciation of the affected sites with vantage points of the installation. These two phenomena validate the possibility/impossibility of one another, but are nevertheless separated in the AKRF report.
- Again, this over emphasizes the Cold Spring Cemetery site/scenic resources as the principle focus for the VRA, which in no way is a comprehensive review or analysis of the Hudson Highlands SASS-designated area nor the collective villages of Nelsonville, NY and its neighboring municipalities.

“Mere visibility, even startling visibility of a project proposal, should not be the threshold for decision making. Instead a project, by virtue of its visibility, must clearly interfere with or reduce the public’s enjoyment and/or appreciation in the appearance of an inventoried resource’ (DEP-00-2, p. 9).”

-AKRF Review, Page 4

Comments:

- Likewise, any one person’s perceived degree of *aesthetic* impacts is **never fully able to be considered as a presently-creditable accounting** of what is **yet to be** actualized over the course of time as the public’s opinion is formed.
- Logically speaking, speculative expectations of value-based impact and enjoyment upon a scenic resource are **temporary predictions** unless they are undergirded by quantifiable data and *measurable* factors (which, ephemeral preferences and pleasures cannot easily yield). Thus, these personally-forecasted outcomes of enjoyment and appreciation cannot, and should not, be afforded very heavy influence upon the sway of a decision for future development, due to their inability to accurately speak to the uniqueness and context of this community’s inclinations towards aesthetic beauty. Equally so, a community’s collective opinion must not sway decision making beyond that of responsible adherence to law, code, or regulatory authority.

“I feel that, **in its current form, the VRA does not provide enough supporting evidence to document lack of visual impact or aesthetic impact** to either the Hudson Highlands State Park or the Hudson River.”

-AKRF Review, Page 2

Comments:

- With all the aforementioned discrepancies accounted for, the unmentioned portion of the AKRF review is to be regarded as acceptable by this response letter’s valuation, as agreeable in the points that it puts forward in suggesting additional supporting evidence is needed to document lack of visual/aesthetic impact, and as a thoroughly descriptive assessment of the Saratoga Associates VRA and its affiliated application documents.
- Conversely, it should also be noted that **a majority of the AKRF review was simply quoting and representing the VRA findings**, which is not confirming or denying their implications – more directly, their review was **primarily a summary of the VRA with occasional statements of critique or support.**

1 January 2018

To: Zoning Board of Appeals & Planning Board  
Village of Nelsonville  
258 Main Street  
Nelsonville NY 10516

Re: The application of Homeland Towers, LLC, New York SMSA Limited Partnership d/b/a Verizon Wireless and New Cingular Wireless PCS, LLC (“AT&T”) collectively (hereafter “Applicant”) to construct a wireless telecommunications facility at 15 Rockledge Road, Village of Nelsonville, New York (41° 25’ 20.32”N, 73° 56’ 27.56”W).

The conclusions of this assessment review are intended to inform and aid the Nelsonville Zoning Board of Appeals (ZBA) and Planning Board (PB) members in their decision-making process by providing this third-party analysis in the form of a technical report. The resultant maps, images, and simulations of the Applicant’s visual resource assessment (VRA) and additionally-submitted documents are considered in this review for their validity, accuracy, and compliance with the standards of VRA best management practices. All assessments and conclusions reached within this review are based upon the information presented, and to the best of the undersigned’s knowledge and belief, that the information contained therein is true, accurate, and complete.

This assessment of the Applicant’s VRA and design proposal is based upon the evaluation criteria, foundational concepts, and best practices described in the National Cooperative Highway Research Program (NCHRP) REPORT 741: *Evaluation of Methodologies for Visual Impact Assessments* (Churchward et al. 2013), among other respectable sources and manuals. This assessment discusses the potential visual impact of the proposed telecommunications tower (hereafter “tower”) at two spatial scales: 1) Landscape and 2) Village.

## LANDSCAPE

Example - The Hudson Highlands (Nelsonville, NY) valley has a notable, topographic change from the ridgelines down to the Hudson River corridor, affording the valley with open vistas. **What is the extent of the visual impact of the proposed tower to the open vistas of the Hudson River Valley and to the character of the surrounding areas?**

## VILLAGE

Example - The proposed installation of the tower and the associated access road will require the removal of existing trees. (JMC drawing entitled: TREE REMOVAL PLAN, ZD-4, dated 07/11/2017). **How will the proposed removal of trees impact the visibility of the tower – and associated support features – within the Village of Nelsonville?**

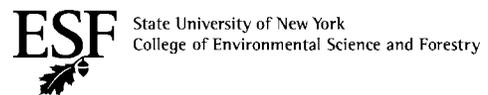
Assessment report prepared by:



Dr. Robin Hoffman



Mr. Connor Neville



**Department of Landscape Architecture**

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# Review of Methodologies for Visual Resource Assessment: Nelsonville, NY (Homeland Towers LLC application)



*Photo source: Ani Drone - [www.youtube.com](http://www.youtube.com)*

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## I. Landscape scale

### I.a Regional distinction

“The tower site is located within the Hudson Highlands **Scenic Area of Statewide Significance (SASS)** as designated by the New York State Coastal Management Program (CMP). This is a regional designation which takes into account the unique scenic characteristics of the surrounding steep terrain, dense forest and grandeur of the Hudson River itself. The **relatively minor addition of a low profile and slender stealth monopine** telecommunications tower is *unlikely to create a point of visual distinction* that would be **considered detrimental to the scenic quality of the regional landscape.**”

–Matthew W. Allen, RLA. Saratoga Associates VRA “*Proposed Wireless Telecommunications Facility. Site Name: Cold Spring Site, NY-170. 15 Rockledge Road Nelsonville, NY*”, page 7.

#### Comments:

- The designation of being a Scenic Area of Statewide Significance (SASS) is principally relevant when conducting a VRA. As a result of that determination for an area, the scenic views and resources are accordingly affirmed as valuable and important factors to consider when planning potential development within the landscape. Any development planning – be it minor or major – is then burdened with justifying its visual impact upon such a landscape with much-greater scrutiny and criticism than in a non-SASS designated area. Notably, it is inferable from the Saratoga Associates VRA that their report was completed in a predominantly-compliant way to nationally recognized templates of procedures and methodologies for conducting visual resource analyses.

However, the following comments identify some insufficient practices that are of considerable importance:

- EC1: Objectivity (See Appendix V.a Evaluation Criteria) – The term “unlikely” in the statement above represents a subjective prediction that is neither tied to statistical data (consensus of community standpoint by means of surveys), referenced standards (SASS designation guidelines for scenic quality), nor regional landscape patterns (identification of adjacent forest canopy cover or average tree height). The presumptive impact of this tower design is not mentioned in any context of previous testimonials from similarly-impacted communities, but rather, is posed here as an assumed statement of fact.

- Qualifying adjectives such as “relatively *minor* addition”, “*low profile*”, “*slender*”, and “*stealth*” are ultimately subjectively-valued descriptive terminologies that hold little credibility in the conveyance of realized scenic impacts. Ideally, to adhere to purely technical guidelines, a VRA’s results cannot wage unquantifiable aesthetic descriptions when referring to “scenic quality”; only quantifiable data would be defensible in the presentation of a VRA. Once that data is produced, the affected people, community, and representative councils may then collectively determine the aesthetic impact for their best interests (See Referenced attachments: *Salkin 2012* and *T-Mobile Ne. LLC v. Town of Islip*). In this subjectivity/objectivity-predicament, the defining responsibilities of an ‘expert opinion’ are crucial to break the tension. Here, these responsibilities are in question as to whether an offered description in a report – such as the case with Mr. Matthew W. Allen of Saratoga Associates – is able to be reinforced by supporting data and referenced standards of the profession. In this example, those descriptive terminologies are indeed *able* to be used; however, one could argue that they are not justifiable nor defensible when it comes to defined standards of best design principles and visual resource contrast ratings.

(See Referenced attachments: *BLM Visual Resource Contrast Ratings, 1986*)

#### Regional implications:

Approval/disapproval of this communications tower will inevitably set a precedent case for other municipalities along the Hudson River faced with similar development projects. Therefore, approving this application may potentially foster a cumulative negative impact on the Hudson River Valley regional landscape, due to an amassing of towers along the riparian corridor’s recognizably-valuable scenic ridgelines. Disapproving the proposed tower would likewise set a precedent example for nearby villages, in that it may afford the empowerment of communities to legally wield a greater measure of control and preservation ability towards high-visibility structures becoming introduced among the SASS-designated scenic resources.

#### I.b Vegetative Character

“As evidenced by the photo simulations, in many instances **the proposed stealth monopine tower will be seen at extended distance through intervening deciduous vegetation. Such filtered views will be substantially or completely screened during summer leaf-on season. Moreover, use of a *stealth* “monopine” tower design helps to blend the structure with the visual characteristics of the surrounding forest further reducing visual impact.”**

- Saratoga Associates VRA, page 8.

Comments:

- Pine trees, being coniferous and evergreen, make for an intelligent design basis in many settings because of how paralleled the real trees' characteristics are to the artificial branches and foliage of the synthetic tower, both of which will persist throughout the year as "ever-green". These characteristics are in direct contrast to deciduous trees, which lose their leaves annually and leave behind bare tree limbs without foliage during over half of the year in the northeastern US. This feature is of crucial concern for the design specification of this monopine tower in the Nelsonville landscape, being as the forest composition is predominantly deciduous trees. Thus, the choice of a pine-like camouflage design is scarcely minimizing visual impact, whether during leaf-on or leaf-off seasons.

**"The two-mile study area is heavily wooded and moderately populated. A mature tree canopy covers approximately 4,930 acres of the 6,590 acre of land area within 2 miles of the Project site (74.8%). The water surface of the Hudson River accounts for an additional 1,450 acres± within the 2-mile study area. Mature tree cover generally ranges from approximately 50 to 75 feet in height."**

- Saratoga Associates VRA, page 1.

Comments:

- The vertical height of the proposed tower (110 feet) will be inconsistent with the average height of most of the forest trees that encompass the landscape vegetation along the valley's hillside (<75 feet). The visual rendering in the Saratoga Associates VRA (see image right) clearly depicts this, which is misaligned with the best design principles outlined in the Planning and Design Manual for the Review of Applications for Wireless Telecommunications Facilities (see Appendix V.b).
- Additionally, the proposed removal of trees (JMC drawing entitled: TREE REMOVAL PLAN, ZD-4, dated 07/11/2017) would leave a distinct scar upon the vegetative character of the hillside landscape. This site-based impact is not portrayed in the VRA photo simulations, nor is it revealed in the statements made when referring to the visual impacts of the tower.

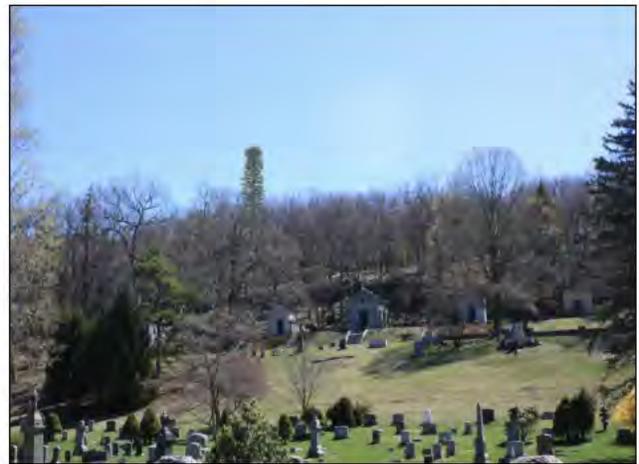


Photo source: Saratoga Associates VRA – VP11:  
Cold Spring Cemetery (near historic Gatehouse) – "Figure 5b"

“In fact, deciduous woodlands provide a substantial visual barrier in all seasons. **Since the digitized forest cover overlay generally identifies only larger stands of woodland vegetation that is clearly distinguishable from aerial photography, the land cover viewshed map is substantially representative of both leaf-on and leaf-off seasons...**

By themselves, **the viewshed maps do not determine how much of the proposed wireless telecommunications tower would be visible above intervening landform or vegetation (e.g., 100%, 50%, 10% etc. of total tower height), but rather the geographic area within which some portion of the facility theoretically would be visible. Their primary purpose is to provide a general understanding of a project’s potential visibility and identify areas where further investigation is appropriate.**”

- Saratoga Associates VRA, page 3.

Comments:

- The above statement in bold presents a logical fallacy of inconsistent reasoning, which gives way for the potentially-misleading statement that the viewshed map is accurately depicting seasonal variations of visibility. The syllogism of ‘since A then B’ does not follow in the reasoning presented, whereby “forest cover... identifying larger stands of woodland vegetation” determines that “the... viewshed map is substantially representative of both leaf-on and leaf-off seasons”. Leaf-off conditions inarguably allow for a more-visible line of sight through vegetative canopy covers, especially within hilly terrain and across valleys. The digitized forest cover overlay, due to its attributes/restrictions of what it can and cannot render, are therefore limited to only being representative of leaf-on conditions – thus, creating a viewshed map of only restricted-visibility seasons of the year with foliage, subtly lessening the illustration of how much the tower would be visible during leaf-off seasons.
- The determined areas that viewshed maps identify as vantage points are then consequently the most prioritized sites to conduct visual simulations of the proposed tower installation. The visual renderings of the VRA only identified these areas in ground-view perspectival Photoshop simulations within a ½ mile study area. Best practices suggest that additional renderings of the proposed tower be conducted from birds-eye views, orthographic sectional views, and especially from farther distances to give landscape context to the vegetative character of the site as it relates to the tower (see Appendix V.b).

### I.c Valley vistas

**"The largest area of potential Project visibility is found on the water surface of the Hudson River.** Views from the River presently include the developed coastal area in and around the Village of Cold Spring. The vast majority of the **2-mile study area** will be substantially or fully screened by intervening landform or dense forest vegetation including much of the trail network within Hudson Highlands State Park. "

- Saratoga Associates VRA, page 4.

#### Comments:

- The distance of a 2-mile study area for the VRA is not representative of the visible range of the Hudson River Valley municipalities that are upstream or downstream from Nelsonville. Guidelines would suggest an approach that is comprised of renderings from 0-5 mile distances (see Referenced Attachment: BLM Visual Resource Inventory, 1986 - pg. 5).

**"Of the 8,041 acres within the 2-mile study area,** a view of the proposed telecommunications tower is theoretically possible from approximately 518 acres (6.4%). Of the 502 acres within the 1/2-mile study area, a view of the proposed tower is possible from approximately 45 acres (9.0%)

Of the 77 miles of public roads within the 2-mile radius Study Area, potential Project views are found along approximately 1.9 linear miles (2.5%) **Of the 22.9 miles of public roads within the 1/2-mile radius study area,** potential Project views are found along less than 1.3 miles (5.7%) "

- Saratoga Associates VRA, page 4.

#### Comments

- Extending the viewshed beyond 2 miles would introduce new percentages of visible acreage surrounding the proposed tower that are currently undiscussed. The total acreage that is broken down by the VRA's summary of percentages is not necessarily indicative of every nearby vantage point of scenic significance.
- Such methodologies/word choice which constrain the study area to 2-mile and ½-mile buffer zones creates possible biases with perceived percentages of visibility. Given the dramatic topographic variation of the Hudson Valley landscape, vistas and vantage points beyond a 2-mile zone are certainly present and significant to the regional landscape.
- Given the location of the village being considered a 'river/boating community' whose scenic waterfront and marshes supply great views for watercraft-based tourism, the nearby section of the Hudson River provides an important resource area to consider for potential visual impact that cannot be omitted in a VRA.

- The SASS designation also speaks directly to the geographic passages which contain valuable cross-valley vistas from the river facing the shoreline. Below are excerpts from the Hudson Highlands SASS report supporting this theme:
  - i. "Views from one side of the river to the other unify the landscape and often make the two shores of the Hudson appear as one, since their nature is essentially the same. The SASS is generally free of discordant features. **Interruption of these views or blocking these views with highways, power lines, signs and other structures in conspicuous locations would introduce manufactured elements into a predominantly natural landscape. Such structures would constitute discordant features and would reduce the unity of the landscape, impairing the scenic quality of the views.** In certain circumstances and from certain perspectives, such structures could block views, particularly the intimate interior views and tunnel views to the Hudson along the bluffs on the eastern shore, ***destroying some of the contributing scenic components of the SASS.***"
  - ii. "Between Storm King and Breakneck Ridge [At the proposed tower site], where the high peaks drop straight to the water, the Hudson River corridor is a fjord, deepened by glacial action and filled by the rising sea as the ice melted. ***This landscape feature is unique in New York State and very rare in the eastern United States.***"
  - iii. "Cross-river views include many dramatic peaks... Viewed from the Hudson River, the wooded shore lands and cliffs of the SASS rise abruptly from the Hudson River to the mountain peaks and ridges. ***Views are confined in the narrow corridor...***"

#### I.d Topography

##### Comments:

- As stated in subsection I.c, the strong variation in hillsides and ridgelines within the Hudson River Valley provide vantage points that allow for unimpeded views of the tower site. The views that are claimed to be “**substantially or fully screened by intervening landform[s]**” (Saratoga Associates VRA, page 4) refer to the locations situated on opposing sides of mountains which were noticeably identified in the viewshed maps and do not need further consideration. What is not accounted for with visual simulations and renderings are the topographically-significant views that *have been* identified by the viewshed map (as well as those areas beyond the 2-mile buffer zone surrounding the proposed tower) which depict superior and inferior vantage angles of the tower as it relates to farther-away places.
- Topographical variations in an area provide great contrast when viewing peak structures along a horizon line or silhouetted landscape in contrast to the sky (see Appendix V.b).

## II. Village scale

### II.a Village of Nelsonville, NY

Comments:

- Using an aerial image such as the basemap layer of the VRA viewshed map and supplemental zoning boundary maps of the village, land-use interpretations of the Village of Nelsonville present an obvious mosaic of land-use types (forested, urban/suburban, wetland, mountainous, impervious roadways, etc.). This variety of nearby land-use raises concerns for the problematic imposition that the proposed tower could have on areas with residential neighborhoods, state/local parks, identified cultural resources that are only partially represented in the VRA photo simulations, and other nearby village resources. The alternative to such a potentially-imposing site would be a commercially-zoned parcel of land that is nestled within a less-developed area and is farther away from residences and cultural resources.
- The 600+ resident population of the village affords a density of need/demand – albeit through-traffic and visitor abundance are accounted for – which calls in to question the qualification of major roads and areas being designated as having a “significant need” within the presented “coverage gaps” for data service. Those arguments/conversations are somewhat beyond this review’s purview, but when pertaining to the visual resources being assessed from the installation of a telecommunications facility, minimizing/mitigating impacts must consider the necessity of such a proposed tower in its form, function, and contextual placement.

### II.b Site effects

Comments:

The *fragility* of the proposed site is concerning, as it relates to atmospheric impacts of clear cutting 50+ trees, potential construction pollution events along a residentially-sensitive hillside, creation of a forest gap thereby affecting wildlife corridors, as well as non-ecological factors such as:

- The proposed 8-foot fence defining the perimeter of the tower site would also be visibly impactful from many vantage points identified in the immediately-adjacent vicinity (cemetery, neighborhoods, roadway, etc.)
- All of the photo simulations show the ½-mile radius area *with all existing trees remaining*; the simulations do not account for trees that will be removed for road construction and tower installation.

- Removal of trees will increase visual access to the base of the tower and its associated infrastructure. For example, the chain link fence and gate at an 8-foot height would be more noticeable from certain viewpoints as well as the equipment shelter as shown in the submitted JMC Site Plan drawings.
- There would be changes to the backdrop/contextual setting of the Cold Spring Cemetery (see subsection II.c).
- Disturbances in the stability of the wooded area would persist; this relates not only to forest health as a community resource but also to visual quality. The removal of trees by cutting into the forest and reshaping the wooded area's edge would make the site more likely to experience increased tree wind-blow events due to prevailing winds whipping over the hill's ridgeline.
- Fewer trees would remain on-site to visibly screen the tower and its associated infrastructure from the viewpoint of cemetery visitors, in addition to other locations that have neighboring access to the tower site. (see Appendix V.b)

### II.c Cold Spring Cemetery

- This property is of very significant value both on the national level (National Register of Historic Places - NRHP) as well as at the community level, being designated as one of many areas of cultural and scenic importance. Coincidentally, this cemetery site would receive the most impactful view of the proposed tower due to its proximity and unimpeded sight-lines.

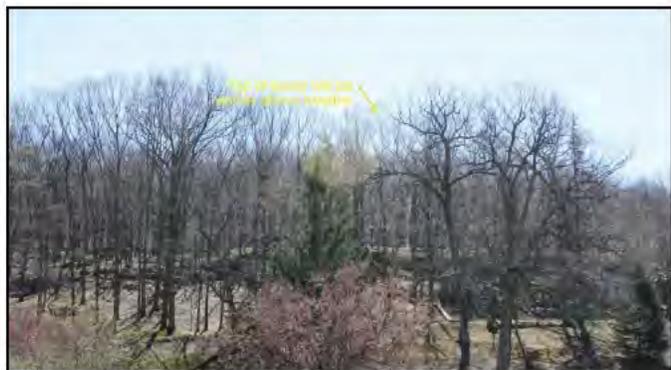


Photo source: Saratoga Associates VRA – VP12:  
Cold Spring Cemetery (north end) – “Figure A7”

- The VRA's photo simulations provide representations of the cemetery from the two identified vantage points of the viewshed analysis. However, by simply providing two main photos with only one demonstrating an actual rendering of the proposed tower, the minimum requirements to complete a VRA for the simulation/visualization section *might* be satisfied, but additional renderings would most likely need to be submitted in order to appease the obligation of providing sufficient evidence of minimal impact.

- Proof of minimal disturbance of the cemetery site during construction (noise, runoff, equipment placement/travel, etc.) was not provided in the Applicant's submission package.
- Specifically, the cemetery's Gate House building is a listed property on the NRHP. However, the entire cemetery was deemed 'eligible' for the Register by New York's State Historic Preservation Office (NY-SHPO). Additionally, the area of potential visual impact for the proposed tower site contains 13 individually-listed properties on the National Register, which amounts to a very high concentration of historically-significant properties within a ½-mile radius of the proposed 110-foot tower.

### **III. Conclusions: Saratoga Associates VRA**

This review – conducted as a third-party critique intending to objectively analyze the methodologies and overall effectiveness of the Saratoga Associates Visual Resource Assessment (VRA) and additional documents for the Homeland Towers LLC & affiliates' application to install a proposed wireless telecommunications tower/facility in Nelsonville, New York – was completed to aid in the review process as the Nelsonville Zoning Board of Appeals and Planning Boards jointly determine the outcome of the Applicant's request.

This review's emphasis on inadequacies, inefficiencies, or unsatisfactory practices demonstrated in the VRA (in light of best management practices and recognized standards of conducting VRAs) was in no way to be overly-disapproving or discouraging. In truth, the majority of the VRA was completed to an acceptable template of methodologies for satisfactorily finalizing a VRA in many other contexts and circumstances. It should be understood that the Saratoga Associates VRA report, apart from the important exceptions pointed out in this review, is exceptionally done and should be respected for its thoroughness and adherence to technical viewshed mapping protocols. Nevertheless, the uniqueness of *this* proposed site, specifically within its village and regional settings, would suggest that additional materials of submission need to be provided in order to confidently approve this VRA as an acceptable report that has appropriately assessed the scenic and visual resources of the proposed site.

### **IV. Final comments to ZBA & PB**

Again, the goal of this technical report was to provide an academically-accountable record of the aspects and nuances of the Applicant's proposal materials – namely, the Visual Resource Assessment.

The decision to accept, reject, or defer the proposed application is completely outside of this review's intention and ability, and will inevitably be decided with more than this review's information in mind. It is with great caution, however, that we suggest you proceed in the review process by seriously considering the incompleteness of the assessed visual

(among other) impacts that this tower could impose upon the landscape of Nelsonville and the greater Hudson Highlands region.

For your convenience, some significant statements from this review of the Saratoga Associates VRA have been provided below as findings of fact:

- I.a Regional Distinction (page 1) – (EC1: Objectivity) The presumptive impact of this tower design is not mentioned in any context of previous testimonials from similarly-impacted communities, but rather, is posed here as an assumed statement of fact.
- I.b Vegetative Character (page 3) - The vertical height of the proposed tower (110 feet) will be inconsistent with the average height of most of the forest trees that encompass the landscape vegetation along the valley's hillside (<75 feet). The visual rendering in the Saratoga Associates VRA clearly depicts this, which is misaligned with the best design principles outlined in the Planning and Design Manual for the Review of Applications for Wireless Telecommunications Facilities (see Appendix V.b).
- I.b Vegetative Character (page 4) - The visual renderings of the VRA only identified these areas in ground-view perspectival Photoshop simulations within a ½ mile study area. Best practices suggest that additional renderings of the proposed tower be conducted from birds-eye views, orthographic sectional views, and especially from farther distances to give landscape context to the vegetative character of the site as it relates to the tower
- I.c Valley vistas (page 5) - Such methodologies/word choice which constrain the study area to 2-mile and ½-mile buffer zones creates possible biases with perceived percentages of visibility. Given the dramatic topographic variation of the Hudson Valley landscape, vistas and vantage points beyond a 2-mile zone are certainly present and significant to the regional landscape.
- I.c Valley vistas (page 6) - The SASS designation also speaks directly to the geographic passages which contain valuable cross-valley vistas from the river facing the shoreline. Below are excerpts from the Hudson Highlands SASS report supporting this theme (see 3 excerpts)
- II.c Cold Spring Cemetery (page 8) - by simply providing two main photos with only one demonstrating an actual rendering of the proposed tower, the minimum requirements to complete a VRA for the simulation/visualization section *might* be satisfied, but additional renderings would most likely need to be submitted in order to appease the obligation of providing sufficient evidence of minimal impact.

## V. Appendix

### V.a Evaluation Criteria (“EC’s”)

“These evaluative criteria prescribe desirable overarching characteristics of visual impact assessment methods and procedures.”

-Churchward et. al, 2013. *“Report 741: Evaluation of Methodologies for Visual Impact Assessments”*, pages 6 and 7.

The ten criteria are:

EC1. Objective — the procedure is designed to eliminate individual bias.

EC2. Valid — the procedure can be defended as measuring what it intends to measure.

EC3. Reliable — adequately trained professionals following the procedure reach the same conclusion.

EC4. Precise — the data required by the procedure are measured at a grain or scale sufficiently fine to validly measure or describe characteristics of substantive interest, and sufficiently coarse to be pragmatically implemented.

EC5. Versatile — the procedure supports valid assessment of different types of proposed changes from the perspectives of different viewer groups interacting with different landscape settings.

EC6. Pragmatic — the procedure can be easily and efficiently implemented by a trained professional.

EC7. Understood easily — the procedure and resultant assessments are accessible by the public and decision makers.

EC8. Useful — the procedure and resultant assessments affect location, design, or mitigation decisions.

EC9. Implemented consistently — the procedure can be applied consistently among different projects, and individual assessments are consistent with the chosen procedure.

EC10. Legitimate — the procedure is supported by laws, regulations or other legal mechanisms, uses socially/culturally accepted standards, and uses scientifically accepted standards

## V.b Tower design principles

Pages 12 – 18: **Planning and Design Manual for the Review of Applications for Wireless Telecommunications Facilities: A Practical Guide for Communities Managing Wireless Telecommunications Facilities Siting in New York State.**  
Town of Pittsford. March 2001.



### BASIC PRINCIPLES OF DESIGN

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This section provides information on basic design principles and terminology that can be used to evaluate the visual impacts of applicant proposals. The basic design elements that should be considered when reviewing new wireless facilities include scale, line, form, texture, and color. The impact a new wireless facility has on a community is usually based on its degree of change to these existing elements. A good understanding of these elements should help municipality representatives form objective comments on the degree of contrast a new facility may present.

The basic design principles:

- **Scale:** the proportionate size relationship between an object and the surroundings in which the object is placed.
- **Form:** the structure, mass, or shape of a landscape or of an object. Landscape form is often defined by edges, outlines of landforms, rockforms, vegetation patterns, waterforms, or the enclosed spaces created by these attributes.
- **Line:** the intersection of two planes; a point that has been extended; a silhouette of form. In landscapes—

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ridges, skylines, structures, changes in vegetation, or individual trees and branches—may be perceived as line.

- **Texture:** the visual manifestations of the interplay of light and shadow created by the variations in the surface of an object or landscape.
- **Color:** The property of reflecting light of a particular

wavelength that enables the eye to differentiate otherwise indistinguishable objects. A hue (red, green, blue, yellow, and so on), as contrasted with a value—black, white, or gray.

The following illustrations identify the major design principles one should understand in order to evaluate the visual impact of applicant proposals:

■ Scale

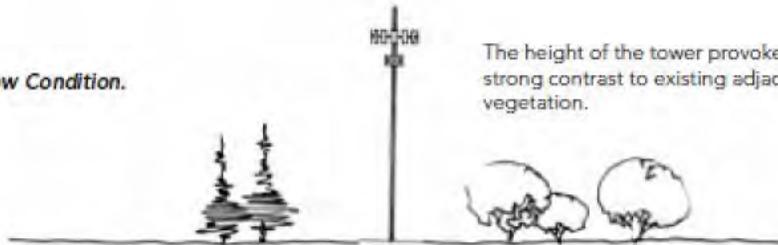
**Existing Condition.**

The existing trees are the distinct feature in the landscape.



**New Condition.**

The height of the tower provokes a strong contrast to existing adjacent vegetation.



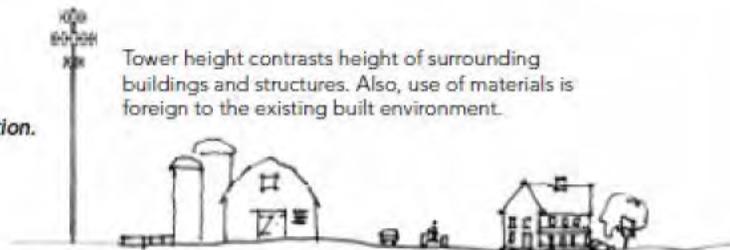
**Existing Condition.**

The existing buildings are the distinct feature in the landscape.



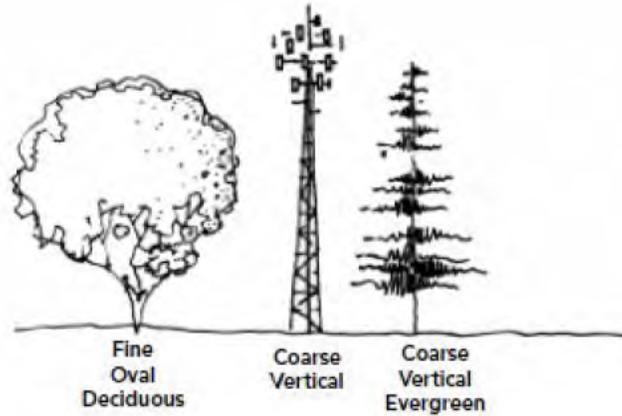
**New Condition.**

Tower height contrasts height of surrounding buildings and structures. Also, use of materials is foreign to the existing built environment.

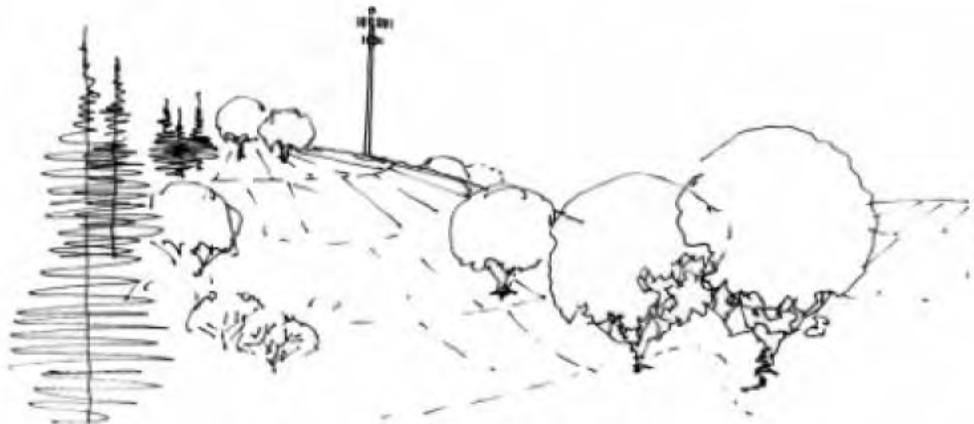


■ Form

A typical tower construction has a distinct vertical form. Often the form of the tower can contrast adjacent vegetation height and texture.



In this view, the form of the tower appears to have less contrast and therefore less impact on the surrounding landscape. The landform, rather than the tower, is the dominating feature in the landscape.

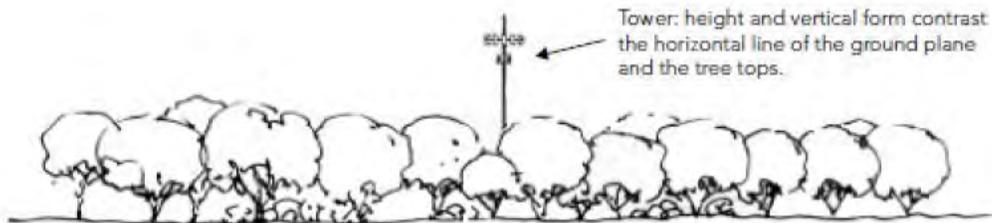
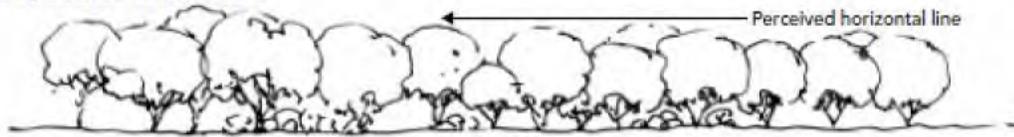


In this view, the form of the tower contrasts the landform. The contrast is increased because the tower also contrasts the open background view of the sky.

■ Line

**Existing Condition.**

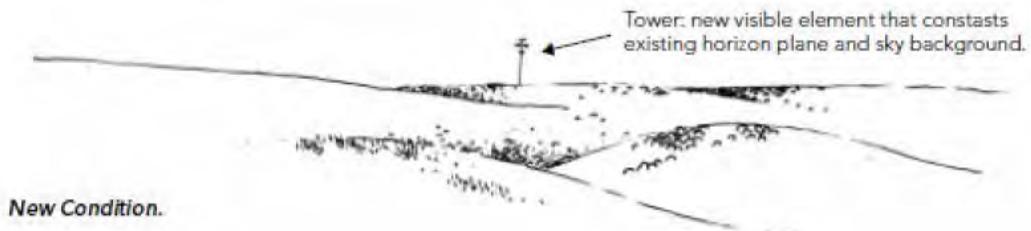
The common vegetation form and height creates a perceived horizontal line.



**New Condition.**

**Existing Condition.**

The landform in this view creates the perception of line.

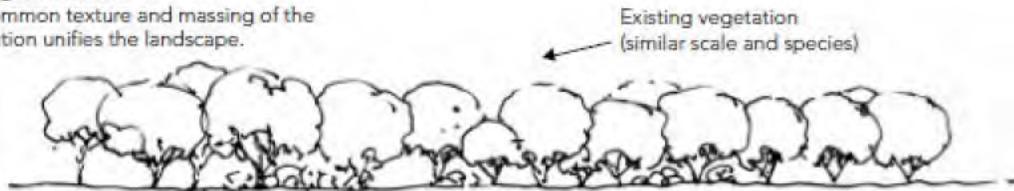


**New Condition.**

## ■ Texture

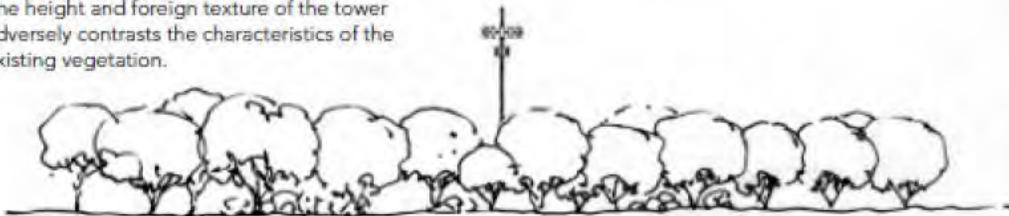
### **Existing Condition.**

The common texture and massing of the vegetation unifies the landscape.



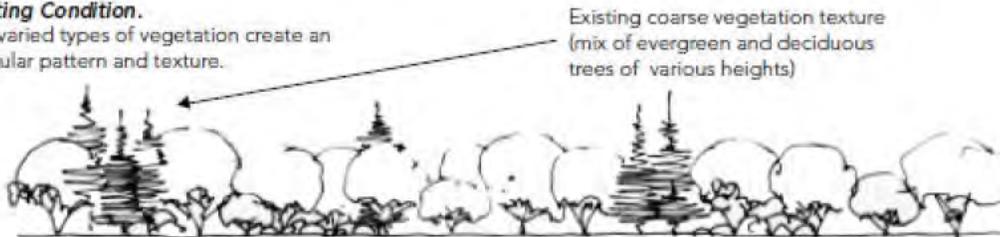
### **New Condition.**

The height and foreign texture of the tower adversely contrasts the characteristics of the existing vegetation.



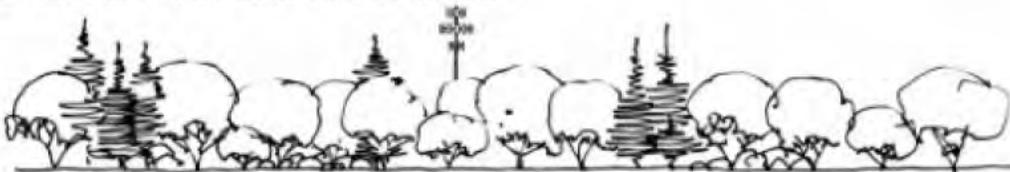
### **Existing Condition.**

The varied types of vegetation create an irregular pattern and texture.



### **New Condition.**

The irregular scale and texture of the tower are less intrusive on this irregular and non-unified form of the vegetation.



**Existing Condition.**  
The texture and scale of the  
vegetation is somewhat  
regular.



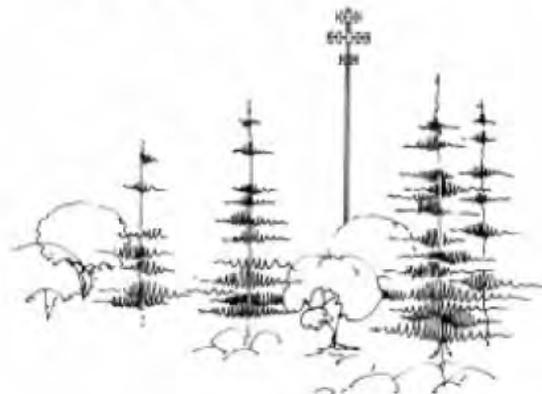
Visual impact of new tower  
contrasts  
scale and texture of existing  
vegetation.



**Existing Condition.**  
The texture of the landscape  
is varied.

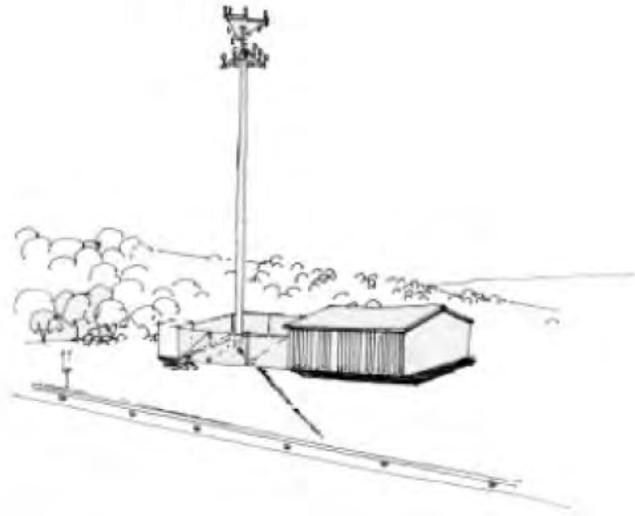


Visual impact of new tower  
is minimized by the scale  
and texture of surrounding  
varied vegetation.

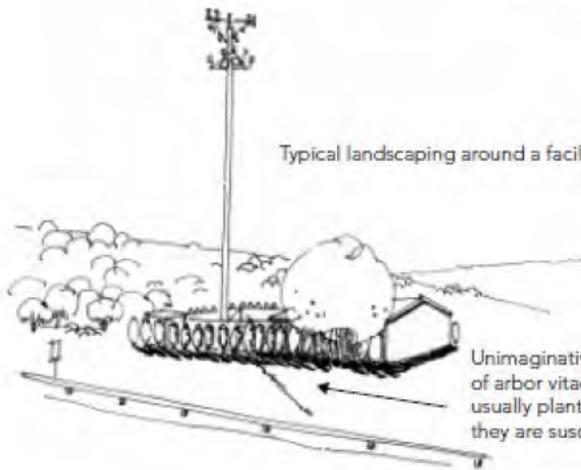


## ■ Site Design Details

Wireless facilities often include a base building and a tower enclosed in fencing. Usually, the tower has the greatest visual impact on the landscape because of its contrasting scale and form. However, the base building can also impact an existing landscape because of its scale, form, and texture. Often attempts to mitigate the contrasting features of the facility fail to consider these contrasts from various points of view.

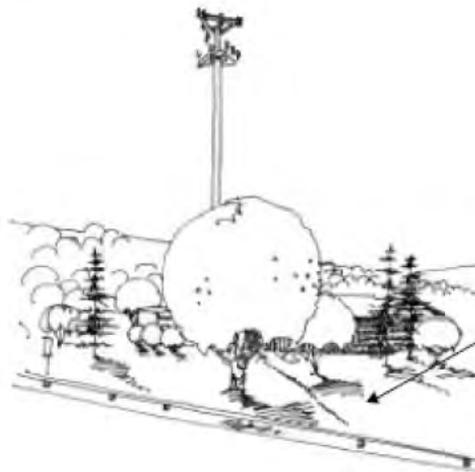


Typical landscaping around a facility.



Unimaginative evergreen screen planting. Use of arbor vitae tree species, for example, are usually planted out of context in areas where they are susceptible to deer browsing damage.

Creative approach to landscaping around the facility.



Use of native evergreen and deciduous plantings for screening. Use of varied plant groupings breaks up appearance of base facility. Foreground planting minimizes the impact of the facility's scale.

## V.c Referenced attachments

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Bureau of Land Management (BLM): Handbook H-8410-1, *Visual Resource Inventory*. 1986.

Churchward, C., J.F. Palmer, J.I. Nassaur, and C.A. Swanwick. 2013. *NCHRP Report 741: Evaluation of Methodologies for Visual Impact Assessments*. National Cooperative Highway Research Program. Washington, D.C.

JMC Planning Engineering Landscape Architecture & Land Surveying, PLLC. July 11, 2017. Site Zoning Drawings: ZD-4: Tree Removal Plan.

Town of Pittsford and contributors. 2001. *Planning and Design Manual for the Review of Applications for Wireless Telecommunications Facilities: A Practical Guide for Communities Managing Wireless Telecommunications Facilities Siting in New York State*. New York State Department of State, Division of Local Government. Albany, NY.

Salkin, Patricia. 2012. *Fed. Dist. Court in NY finds Aesthetics Sufficient to Deny Cell Tower Application*. Law Of The Land. <<https://lawoftheland.wordpress.com/2012/10/26/fed-dist-court-in-ny-finds-aesthetics-sufficient-to-deny-cell-tower-application/>>. Web.

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Saratoga Associates. 2017. Proposed Wireless Telecommunications Facility – Site Name: Cold Spring Site, NY-170. 15 Rockledge Road. Nelsonville, NY. Visual Resource Assessment.

New York State Department of the State. Division of Coastal Resources and Waterfront Revitalization. July 1993 (Reprinted 2004). *Statewide Areas of Scenic Significance: Columbia-Greene North, Catskill-Olana, Estates District, Ulster North, Esopus-Llyod, Hudson Highlands*. <<https://www.dos.ny.gov/opd/programs/HudsonSASS/Hudson%20River%20Valley%20SASS.pdf>>

## V.d Descriptive bio and resumes

### **Department of Landscape Architecture**

SUNY College of Environmental Science and Forestry

*<http://www.esf.edu/la/department.htm>*

Since 1911 the Landscape Architecture program at SUNY-ESF has been educating practitioners and teachers, designers and planners, advocates and policy makers who have devoted careers to a viable, sustainable integration of natural and cultural communities.

The Department of Landscape Architecture offers three degree programs designed to educate students to contribute in varied ways to society and the wise use of land and landscape. Each provides a basis for students to establish career directions in the profession of landscape architecture. The Bachelor and Master of Landscape Architecture, and Master of Science degrees are offered.

The large and diverse faculty offer not only a wide range of foundation courses necessary for professional preparation, but also four strong areas of study that encourage in-depth exploration in ecological design and planning, community design and planning, and cultural landscape conservation.

## Robin E. Hoffman, PhD

Department of Landscape Architecture  
SUNY College of Environmental Science and Forestry  
Syracuse, NY

### CURRENT POSITION

- 1997-present **Associate Professor, Bachelor of Landscape Architecture Curriculum Director**
- Teaching Design Studios, Professional Practice, Off Campus Experiential Studio, Construction Technology
- Research Visual resource management, specifically the juxtaposition of the cultural and ecological significance of a view.

### EDUCATION

- 1993-1997 **Ph.D., Forest Resources Management**  
Department of Forest and Natural Resources Management  
SUNY College of Environmental Science and Forestry, Syracuse, NY  
**Dissertation** *Testing the Validity and Reliability of Slides as Representations of Northern Hardwoods Forest Conditions.*
- 1983-1985 **Master of Landscape Architecture, Cum Laude**  
Department of Landscape Architecture  
University of Illinois, Champaign-Urbana, IL  
**Thesis** *Creativity in the Introductory Design Studio: Experience or Setting?*
- 1977-1982 **Bachelor of Landscape Architecture, Cum Laude**  
Department of Landscape Architecture  
SUNY College of Environmental Science and Forestry, Syracuse, NY  
**Special Projects:** *Off-campus work study program with the Greek National Forest Service. Developed Master Plan proposals for Greece's first botanical and zoological recreation park.*

### PROFESSIONAL ACTIVITIES

- Attendee Visual Resource Stewardship Conference  
Argonne National Laboratory  
Lemont, IL November 6 – 9, 2017
- Presenter *Renewable Energy Development and Land Trust's Role*  
Rally 2017: The National Land Conservation Conference  
Denver, CO October 26 – 28, 2017
- Presenter *Conservation Management Planning: Responsible, Dynamic, Transparent*  
Rally 2012: The National Land Conservation Conference  
Salt Lake City, UT September 29 – October 3, 2012
- Trustee Thousand Islands Land Trust  
Clayton, NY

## Richard Connor Neville, B.S.

Department of Landscape Architecture  
SUNY College of Environmental Science and Forestry  
Syracuse, NY

### CURRENT POSITION

- 2017-present **Graduate Teaching Assistant and DLA Graduate Student Representative**
- Teaching Natural Factors Analysis in Planning & Design (undergrad and grad level course), Introduction to Geospatial Information Technologies
  - Research Community planning and design, historic restorative design

### EDUCATION

- 2017-present **Master of Landscape Architecture**  
Department of Landscape Architecture  
SUNY College of Environmental Science and Forestry, Syracuse, NY
- 2013-2016 **Bachelor of Science, Agricultural Studies - Summa Cum Laude**  
Richard A. Henson Honors Program - Graduate, Entrepreneur and Scholar  
Department of Agriculture, Food and Resource Sciences  
University of Maryland Eastern Shore, Princess Anne, MD
- Special Projects:** *Developed a comprehensive tree inventory map for UMES campus, Aided in creating a campus infrastructure GIS database, QA/QC accuracy assessment for Assawoman Bay Watershed, Digitized the Manokin River Watershed, lead the "Champion Tree Project" quantifying vegetative character of UMES.*

### PROFESSIONAL ACTIVITIES

- Attendee AASHE National Conference & Expo  
Baltimore Convention Center  
Baltimore, MD October 9, 2015
- Technician UMES Geospatial Information Technology Laboratory  
Princess Anne, MD January 2016 – August 2017
- Presenter *'Ditch-itzing' the Manokin River Watershed + Tree Inventory of the UMES Campus*  
Maryland State Geographic Information Committee (MSGIC) Summer Quarterly  
Salisbury, MD July 21, 2016
- "Outstanding Volunteer" and Land Monitor Lower Shore Land Trust  
Snow Hill, MD

**EXHIBIT N.**

**Letter from Liz Campbell Kelly, ASLA, Principal,  
Hudson Garden Studio, LLC, dated January 9,  
2017.**

January 9, 2017

Zoning Board of Appeals  
Planning Board  
Village of Nelsonville  
258 Main Street  
Nelsonville, New York 10516

RE: Homeland Towers Application for a 110' Tower facility at \ Rockledge Rd

To Chairman Rice and members of the Zoning and Planning Boards,

In light of new submissions regarding landscape character and aesthetic impact from the Applicant, I am writing as a supplement to my letter of 11/27/2017 to register my professional opinion about the intrusive and significant aesthetic impact that the proposed tower will have on the Cold Spring Cemetery and to provide the boards with key historical design context that seems to be missing from the record.

I have reviewed the submissions and register my strong disagreement with the following opinions:

OPINION 1, Graham L. Trelstad, AKRF, Letter to Boards on 1/ 2/ 2018, PG 4:

*"I believe that the project would not have an aesthetic impact on the Cemetery or Gatehouse as the underlying historic integrity of both resources, including the setting, would not be affected in such a way as to "clearly interfere with or reduce the public's enjoyment and/or appreciation" of the Cemetery or Gatehouse. I believe that both resources can still be experienced and interpreted within an overall landscape consistent with the rural cemetery movement and the Hudson Highlands SASS, even if there are very few, if any, comparable modern visual intrusions, within the surrounding study area."*

OPINON 2, Matthew W. Allen, Saratoga Associates, Letter to Boards on 12/19/ 2017 , PG 6

*"...the addition of the telecommunications facility may have some limited effect on the integrity of setting of the Cemetery; however that affect will not be adverse, and certainly not substantially or significantly adverse. While the facility will be visible from within parts of the Cemetery, it will be within the viewshed of only a small portion of the large Cemetery property. Thus much of the Cemetery's setting will be unaffected by the proposed telecommunications facility. In locations where the facility will be visible, the effect on the cemetery's setting will not be adverse due to the proposed stealth pine tree design, which will minimize the salience of the tower and the fact that only the limited upper portion of the stealth pole will be visible."*

OPINION 3, Laura L. Mancuso, CBRE Letter of 12/18/2017, PG 4  
*"The addition of a telecommunications facility on an adjacent parcel may have some limited effect on the integrity of setting of the Cemetery; however, that affect will not be adverse, and certainly not substantially or significantly adverse. As twenty-first century individuals, we are used to and expect to see modern intrusions in landscapes. While the facility will be visible from within parts of the Cemetery, it will be within the viewshed of only a small portion of the large Cemetery property. Thus, much of the Cemetery's setting will be unaffected by the proposed telecommunications facility. In locations where the facility will be visible, the effect on the Cemetery's setting will not be adverse due to the proposed stealth pine tree design, which will minimize the salience of the tower and the fact that only the limited upper portion of the stealth pole will be visible."*

I am dismayed, and frankly, startled that none of these opinions delineate for the benefit of your boards the defining aesthetic characteristics of the **Rural Cemetery** that they claim will not be adversely affected by the addition of the proposed tower. If the opinion is that the defining character and overall experience of the cemetery is not significantly impacted by the tower, shouldn't this claim be supported with objective evidence such as a summary of the character-defining features that will allegedly remain intact? Frankly is unclear to me if any of these professionals have an adequate understanding of the **Rural Cemetery Movement** and its significant design principles. If they did, they would not be able in good conscience to make the above judgments.

As I indicated in my 11/27/2017 letter to your boards, the placement and discordant design of the tower significantly intrudes into the horizon view immediately as one enters the cemetery (as shown clearly in Figure 5 on the applicant's own submitted photo simulation of their 6/2/17 VRA). The tower has an even larger visual impact on the open sky and natural treeline that define the visitor's experience of the large northern sector of the historic property which sits in a valley below an elevated ridge upon which are nestled the mausoleums of significant figures in our local history.

HUDSON GARDEN STUDIO LLC  
www.hudsongardenstudio.com  
16 Fishkill Ave  
Cold Spring NY 10516

One of the core design principles of the American Rural Cemetery in the Victorian Era was “verticality and sense of ascension” (see following summary by Jack Goodnoe)- in other words, manipulating topography in order to create symbolic importance of monuments and tombs at higher elevations. The social status of the dead (and their living ancestors) was physically built into in the experience of a landscape - the higher the social position, the higher in physical elevation was the resting place, reinforcing an all important social order.

In the case of the Cold Spring Cemetery, one can easily see that the cemetery is designed to draw the eye to these important gravesites on this elevated picturesque ridge as soon as you enter the cemetery. What's doubly remarkable in the case of the Cold Spring Cemetery is that this monument ridge is designed to echo the dramatic variations of the natural topography of this specific dramatic Hudson Highlands site. In landscape theory this is known as *'genius loci,'* or *'the spirit of place,'* when abstract design is tied to specific landscape characteristics - whether they are landforms, or local plant communities, etc. In landscape theory, harnessing the specific 'spirit of place' through design creates powerful landscape experience and meaning.

At the Cold Spring Cemetery, the visitor who is enticed by the entry view of the horizon and takes the time to stroll up to this inviting ridge to pay due respect to the important figures buried there is then rewarded with a surprising and stunning view of the larger Hudson River Valley—arguably the best view from the entire property. This landscape was clearly designed as an experience, and the experience of ascending to this defining ridge of mausoleums is arguably a key component of its design. One could argue that the walk from the historic entryway up to the ridge is evocative of the journey from death to eternal life. The importance of the effect of this dramatic visual and experiential linking of local property and the larger region cannot be overstated.

The aesthetic impact of the proposed tower cannot be fairly judged in this case by pointing to the percentage of total area from which the tower is visible on the property. One cannot see the historic gatehouse from a majority of vantage points within the cemetery either, but no one would argue that the gatehouse then has an insignificant aesthetic impact on the character of the cemetery!

A legitimate aesthetic impact judgement would be supported by juxtaposing the specific significant character-defining features of this particular historic and scenic property to the visual impact of the proposed tower and describing the interaction of the latter on the former. I submit that this accounting appears to have not been done by the professionals quoted above. If it has been done, I'd ask that they reveal and/or summarize the evidence supporting their opinion to the Boards.

To support my professional opinion registered herein I submit the following list of defining features of the “Landscape Character” and “Design Principles” of cemeteries designed in the Rural Cemetery (sometimes called “garden cemetery”) style, as summarized by professional Landscape Architect and planner Jack Goodnoe, RLA, ASLA in a presentation to the 2013 Annual Meeting of the American Society of Landscape Architects (ASLA). The Cold Spring Cemetery is a significant local example of a cemetery in this style that has been largely preserved and has remarkably been largely unhindered by the intrusions of modern development (until now!). Mr. Goodnoe's presentation summarizes neatly:

#### ***Garden Cemetery Landscape Character***

- Visual openness
- Expressive variety of monumentation
- Verticality and a sense of ascension
- Classical styles and forms
- Uniformity of materials
- Organic landscape designs
- Human scale and intimacy

#### ***Rural Garden Cemetery Design Principles***

- Topography based road alignments and burial layouts
- Vertical and varied monumentation
- Open ground plane under a high deciduous canopy
- Changing, 'Surprise' vistas (with water)
- Burial lawns raised above road

I submit that of the defining features of the “***Garden Cemetery Landscape Character***” listed above, the proposed tower will have a significant visual impact as well as a significant adverse aesthetic impact on the sense of “***visual openness***” of the key elevated monument row and the valley burial area below it. It will quite certainly impair the site-specific design, underlying meaning and public experience of a key ascent—perhaps the key ascent—in the landscape design, thus impairing an important aspect of the “***verticality and sense of ascension.***”

The discordant nature of the monopine design as well as its stark difference in height from the surrounding treeline is in my opinion ineffective at buffering and camouflaging the tower views among a much shorter deciduous forest. The level of camouflage achieved is low, and the tower will stand out as a modern and artificial intrusion on a key ridgeline, thus impairing “***organic***” character of the landscape design of the key entryway view, the view from the central public gathering place around the flagpole, and a significant number of views from the open northern valley portion of the property. The “***human scale and intimacy***” of the landscape character of the cemetery is also impacted by the introduction of an 110' element so out-of-step with what is generally acceptable for structures in the community and especially in the cemetery that it needs a special permit to allow it.

I further submit that several of the features embodying the *“Design Principles”* listed above will be negatively impacted and thus may impair the public’s experience of the cemetery in the context of the Rural Cemetery Movement. The *“burial lawns raised above the road,”* in the Cold Spring Cemetery, particularly the Butterfield resting place and the other monuments along that key ridgeline will be burdened with a very significant visual impact of the tower that is also aesthetically significant. The new tower element would introduce a similarly competing and discordant visual element into a landscape tableau purposely designed to focus the visitor’s attention on the monuments and their relationship to the starkly open sky and, by visual inference, to heaven and the after life. In my opinion the intrusion of the modern tower is enough to impair the visitor’s understanding and enjoyment of the metaphor evoked by this design and will negatively effect the designed journey up to the monument ridge in a way that intrudes into the viewer’s experience of the *“changing, ‘surprise’ vistas”* of the cemetery and beyond into the larger Hudson Valley encountered along the way.

These are the main supporting details from which I form my professional opinion that the tower will produce a significant adverse aesthetic impact on the cemetery that is not mitigated by the monopine design, the height or the choice of location for this tower.

Furthermore, I also attach to this correspondence a document supporting my own professional opinion about the central importance of landscape design to the cemeteries of this movement like Cold Spring Cemetery: *“Perpetual Care: A Sustainable Approach to Restoring the Lost Landscape of America’s Rural Cemeteries”* by Benjamin Gilbert Buckley.

Mr. Buckley argues:

*“American Rural Cemeteries are defined by their picturesque landscaping. The carefully planned footpaths and thoroughfares that weave throughout these sites dictate the experience of visitors and play an essential role in the historic landscape.”* (pg 35)

He also notes:

*“The landscape architecture and lot horticulture of rural cemeteries are arguably their most character defining feature.”* (pg 46)

And finally, of particular note here:

*“These cemeteries have been planned as natural escapes from the chaos and commotion of city living, but over the years urban development has encroached on the landscapes, affecting the visitor’s experience of the site.”* (pg 46)

In my professional opinion, the view of this proposed tower from the gatehouse entryway, the view from the central flagpole where the entire community gathers for ceremonies like Memorial Day, the multiple and significant discordant views from the designed open space of the entire northern portion of the cemetery along with other views not fully examined here *will be significant and would impair one of the central experiences of the cemetery’s historic landscape design. The significant visual and aesthetic impact of the proposed tower on these key views diminishes several of the character-defining features of the cemetery and in my opinion is likely to result in a diminishment of the public’s appreciation of the cemetery within the context of the Rural Cemetery Movement.*

I strongly advise that you do not allow this modern development to encroach on this treasured landscape and impair the visitor’s experience and enjoyment of this significant and remarkable historic and scenic resource. Other (less detrimental) siting options, mitigation techniques or technologies should be required of the applicant.

Sincerely,



Liz Campbell Kelly, ASLA  
Principal, Hudson Garden Studio LLC  
MLA University of Pennsylvania

**EXHIBIT O.**

**Email from NYSDOS Department of Coastal  
Programs, November 29, 2017.**

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**question about consistency review for project within NYS Coastal Management Program**

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**dos.sm.Cstl.CR** <dosCstlCR@dos.ny.gov>

Wed, Nov 29, 2017 at 2:32 PM

To: Dove Pedlosky 

You are correct in that it is not legally binding, but I also agree that it is a helpful management tool that the Board can use, if they so choose, to inform their decision when considering visual impacts. Many impacts have already been evaluated and described within the framework of the SASS document and can aid significantly in a municipality's review. The SASS's were developed with the help of all of the interested communities in the planning areas and it would be a shame not to use them as a visioning document at every level of government.

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**From:** Dove Pedlosky [mailto:**Sent:** Wednesday, November 29, 2017 2:04 PM**To:** [dos.sm.Cstl.CR](mailto:dos.sm.Cstl.CR) <[dosCstlCR@dos.ny.gov](mailto:dosCstlCR@dos.ny.gov)>**Subject:** Re: question about consistency review for project within NYS Coastal Management Program

[Quoted text hidden]

**EXHIBIT P.**

**Letters from Erin Muir, Landscape Architect, and  
Ethan Timm, dated January 12, 2018.**



January 12, 2018

Zoning Board of Appeals  
Planning Board, Village of Nelsonville  
RE: Homeland Towers Application for a 110' Tower facility at Rockledge Rd

To Chairman Rice and members of the Zoning and Planning Boards:

As a resident of Cold Spring and as a Registered Landscape Architect, I am writing in opposition to the proposed cell tower at the Rockledge Site. I have been practicing in the field of Landscape Architecture for over 15 years. I am the principal Landscape Architect and co-owner of The Figure Ground Studio Architecture and Landscape Architecture, PLLC in Cold Spring, NY.

In my professional opinion, the proposed cell tower on Rockledge will most definitely have a significant adverse aesthetic impact on the Cemetery, which is a significant contributor to the Rural Cemetery Movement. Namely, the proposed tower would adversely affect the elegant rural cemetery landscape and the natural woodland that it nestles into as designed by Mead and Woodward.

I am writing to concur with my colleague Liz Campbell Kelly's assessment of the importance of the Cemetery from an aesthetically and historically. The importance of Downing and his colleagues Mead and Woodward to the history of Landscape Architecture must not be underestimated. It is a history which must be celebrated precisely because it is relatively unknown here in the Hudson Valley. This region is truly the birthplace of Landscape Architecture, and it is vital that we preserve its artifacts, including the Cold Spring Cemetery.

Mead and Woodward took great pains to preserve naturalistic settings and layouts. I believe that the proposed cell tower placement, and the horticulturally inappropriate "stealth pine" are significantly detrimental to the design and impairs the character of the Cold Spring Cemetery, thereby reducing public enjoyment of the Cemetery and its environs in perpetuity.

While I disagree with his conclusions, I agree with Mr. Treldsdad that there are "few, if any, comparable modern visual intrusions within the surrounding study area." The Cold Spring Cemetery and its environs are a true and rare modern treasure ~ an untrammelled landscape. The proposed cell tower will forever adversely affect the aesthetic character of the Cemetery.

Both Mr. Allen and Ms. Mancuso admit that the proposed cell tower would have an effect on the integrity of the Cold Spring Cemetery. They may have been unaware of its historical significance, thereby minimizing the importance of this effect. Also, while addressing the views of the tower from its immediate environs, they neglected to take into account that the Cemetery sits within a Scenic Area of Statewide Significance. The proposed "stealth pine" will adversely affect not only the public enjoyment of the Cold Spring Cemetery itself, it will reduce public enjoyment of the historically significant Hudson River Valley for visitors as far away as Storm King Mountain.

As a Landscape Architect, I urge you to recognize the adverse aesthetic impact that the proposed cell tower (and "stealth pine") will have on the Cold Spring Cemetery and its surrounding environment and reject the application for the proposed tower siting.

Sincerely,

Erin Muir  
Landscape Architect  
The Figure Ground Studio Architecture and Landscape Architecture, PLLC  
Cold Spring, NY

January 12, 2018

Zoning Board of Appeals  
Planning Board, Village of Nelsonville  
RE: Homeland Towers Application for a 110' Tower facility at Rockledge Rd



To Chairman Rice and members of the Zoning and Planning Boards:

As I stated publicly at the last meeting that I attended, I believe that the aesthetic component of this application is lacking in that it only addresses (via balloon test and 3D simulation) close range views from Peekskill Road and Cemetery surrounding areas. This narrow scope of consideration fails to adequately take into account the adverse impact to the historical character of the larger environment, as well as the public enjoyment of the Hudson Highlands as a whole. Basically, you are being asked to weigh the unsubstantiated claims of cell-service needs against the far more broadly substantiated claims supporting the historical and aesthetic importance of the Cold Spring Cemetery itself and the impact that a "stealth pine" would have on vistas all throughout the surrounding area.

Tellingly, the letters of testimony from Graham L. Trelstad, AKRF (Letter to Boards on 1/2/2018, PG 4) Matthew W. Allen (Saratoga Associates, Letter to Boards on 12/19/ 2017, PG 6), and Laura L. Mancuso, CBRE (Letter of 12/18/2017, PG 4) completely disregard the larger context within which the Cemetery sits.

As an Architect practicing in the Village of Cold Spring, I find it unconscionable that those giving testimony would have us believe that the adverse impact of the tower and "stealth pine" would end at the cemetery boundary.

The fact is, in addition to the Rural Cemetery itself, the valley in which Cold Spring and Nelsonville are situated is itself significant from an aesthetic standpoint because of views from great distances - including from nearby mountain trails, from scenic boat traffic on the waterfront, and as one traverses neighborhood streets.

Mr. Trelstad admits that there are "very few, if any, comparable modern visual intrusions, within the surrounding study area." Who are we to give up our mandate to protect the scenic beauty of this area for posterity? Trelstad freely admits that this is an untrammelled resource, about to be trammelled. This, alone, should be grounds to dismiss this application as it clearly impairs the character of the Cemetery and its environs, thereby reducing public enjoyment of said amenities.

Mr. Allen's arguments fall flat on a few fronts: first of all, he fails to address the broader viewshed (the Scenic Area of Statewide Significance) in which the tower will sit. Furthermore, as a design professional, I will categorically state that his assertion that "the effect on the cemetery's setting will not be adverse due to the proposed stealth pine tree design" is laughable. There are no comparable trees in the area, rendering the design far from "stealthy." More like "sore thumb," if you ask me.

Ms. Mancuso's statement largely mirrors Mr. Trelstad's (or vice versa) so the same arguments apply.

The most important map for us all to peruse is Saratoga Associates Visual Resource Assessment. This unnecessary eyesore would blight almost the whole valley ~ and most importantly will severely impact iconic views of our historic Villages from surrounding areas, impacting the local economy by despoiling their historic character for the foreseeable future.

I urge you to reject this application on aesthetic grounds. Thank you for your consideration.

A handwritten signature in blue ink, appearing to read "Ethan Timm", is located below the text. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Ethan Timm, Architect  
The Figure Ground Studio Architecture and Landscape Architecture, PLLC  
Cold Spring, NY

**EXHIBIT Q.**

**Letter from Philipstown Cell Solutions dated  
February 20, 2018.**



Honorable Chairman William Rice,  
Special Counsel Todd Steckler,  
Nelsonville Zoning Board of Appeals, and  
Planning Board  
Village of Nelsonville  
258 Main Street  
Nelsonville, NY 10516

February 20, 2018

RE: Application by Homeland Towers, LLC for a Special Use Permit to Construct a  
Telecommunications Facility at 15 Rockledge Rd., Nelsonville, NY

Dear Honorable Chairman Rice,  
Special Counsel Todd Steckler,  
Members of the Zoning Board of Appeals, and  
Planning Board

Philipstown Cell Solutions (hereinafter "PCS") submits the following in reply to: the February 9, 2018 letter submitted by Robert Gaudio of Snyder & Snyder, LLP, as attorneys for Homeland Towers LLC, and New York SMSA Limited Partnership d/b/a Verizon Wireless (hereinafter referred to as "Homeland", "Verizon" or the "Applicant" individually, or the "Applicants" collectively); the February 9, 2018 letter submitted on behalf of New Cingular Wireless PCS LLC (hereinafter "AT&T", the "Applicant" or the "Applicants") by Cuddy & Feder LLP; and, all supplemental and supporting documentation contained therein.

**Reply to the Snyder & Snyder, LLP Letter of February 9, 2018**

**Supplemental RF Report:**

Counsel for the Applicant, in a letter dated February 9, 2018, states that the Supplemental Report prepared by PierCon confirms "that a Distributed Antenna System is not a feasible alternative." As is more fully detailed herein, the Supplemental Report merely makes conclusory statements and assertions unsupported by any technical or engineering information whatsoever. In short, this report confirms only that the Applicant has failed to meet its burden and exercise the due diligence required to demonstrate the feasibility of a DAS network for the Village of Nelsonville.

**The Clarkstown Decision:**

Counsel also references the Clarkstown decision which, as PCS detailed in its submission of February 9, 2018, has been distinguished in Second Circuit jurisprudence and is not

applicable to the instant matter. Local Boards are indeed allowed to specify a preference for alternative technologies for specific applications where aesthetic concerns are at issue.

In fact, without thoroughly exploring the feasibility of “other less visually-intrusive alternatives”, the applicant has not met its burden. (See, *Voicestream Minneapolis v. St. Croix County*, 212 F.Supp. 2d 914 (2002), (“plaintiff appears to have taken the position that it would be more efficient and less costly to stick with its single-tower proposal because of the difficulties likely to be associated with obtaining the necessary leases and variances that would be required to build facilities in the Riverway District. Plaintiff’s approach was understandable, given the costs involved in conducting feasibility studies, procuring leases and pursuing variance requests. However, as the court stated in *Town of Amherst*, “this one-proposal strategy may have been a sound business gamble, but it does not prove that the town has in effect banned personal wireless communication.”)).

#### DAS Under the Village Code:

Counsel goes on to cite the Village Code (hereinafter “Code”) (specifically Section 188-68A.11, which requires the number of towers and antennas in the Village to be minimized), suggesting that a DAS system is not allowed under the Code or would otherwise be in violation of this Section. This claim is wholly without merit. First, in reading the sections of the Code pertaining to telecommunications facilities as a whole, it is clear the intent and spirit of the Code is to minimize the intrusiveness of any such facilities upon the Village, and that even a liberal reading of the Code suggests Section 188-168A.11 refers to macro-cell “commercial communications towers”, not small and inconspicuous DAS nodes. Second, the title of the very Section that counsel erroneously suggests pertains to DAS nodes is titled: “Application for special permit to place new tower.” The Code defines commercial communications towers as “a freestanding or building- mounted structure, including appurtenances and antennas...” and thus may not in fact apply to DAS. Third, it is somewhat bemusing that the Applicant would show concern for the level of intrusiveness posed by a handful of strategically placed and discrete DAS nodes, but has no such concern when it comes to their intent to erect no less than three macro-cell tower sites in and around the Village of Nelsonville as has been made clear on the record.

Finally, Cuddy & Feder, counsel for AT&T in this proceeding, took a position contrary to the one advanced here. In a separate application in the nearby municipality of Pelham, NY, where Cuddy & Feder were in fact advocating for DAS deployment in a community with similar topographical conditions and tree-lined streets as are found here in Nelsonville, Cuddy & Feder stated:

Where *a village board* as the legislative body regulates and retains special permit jurisdiction, it *has inherent authority to modify special permit submission requirements* on the basis of the details of a particular application and *in furtherance of the public’s welfare* even where the code does not expressly state such authority. See, McKinney’s Village Law 7-725-b, Practice Commentaries. Indeed *village boards* in such circumstances *have authority to depart from their own legislated standards* so long as their decision on a specific permit application is not in and of itself capricious. See, *Real Holding Corp. v.*

Lehigh, 778 N.Y.S.2d 438 (2004); Chernick v. McGowan, 238 A.D.2d 596 (2d Dept. 1997); Cummings v. Town Bd. of North Castle, 62 N.Y.2s 833 477 N.Y.S.2d 607 (1984). (Emphasis added). (<https://www.pelhamgov.com/sites/pelhamny/files/uploads/120814memotovillageboardoftrustees.pdf>). (See also, photographic examples of DAS nodes on tree-lined streets in Pelham, NY and Weseley Hills, NY at Exhibit 'A': and the Decision and Order, In the Matter of the Application of MATTHEW KAPLAN and AIMEE LINN v. Village of PELHAM, attached with this submission).

Accordingly, it is within the Board's discretion in the instant matter to depart from the legislated standard of the Code where in the public interest, and as such the Applicant's claims here have no merit. Yet again, upon applying even modest scrutiny to the Applicant's submissions, it becomes evident that they are inaccurate and lack merit, do not reflect the actual state of the law and should be discounted in their entirety.

Conditions of Approval:

With respect to the Applicant's "Conditions of Approval", PCS submits the following responses:

a. The Applicant's offer to maintain the tower height at 110 feet does not ensure that it will never be raised at some point in future. The Applicant only offers not to raise the tower as of right, as is allowed under existing law. This confirms to an extent that under federal law the Applicant currently has the right to unilaterally raise the tower, as has been claimed by PCS and other tower opponents. The Applicant merely offers to come before the Board with any request to raise the tower. There is nothing in this offer that indicates what the Applicant would do if the Board denied any such request. Presumably, the Applicant will preserve its rights to challenge any such denial, such that future raising of the tower remains a distinct possibility. Alternatively, should the Applicant claim some additional actual coverage need in future that could only be remedied by a heightened tower or an additional tower, the Board would find itself in a position where its discretion to limit heightening the tower is effectively nullified. In addition, any such agreement between the Village and the Applicant would not apply to carriers not party to this application or the proposed agreement, thereby making it unenforceable against such a third party carrier seeking co-location. Finally, laws may be amended or passed in future that would grant the Applicant additional rights to raise the tower height not foreseen now nor contemplated by this offer.

b. The Applicant offers \$20,000 in an escrow fund for adjacent homeowners to assist with landscaping and screening. First, it should be asked why this offer is being made now, when throughout the entirety of this proceeding the Applicant has maintained that the intrusiveness of the tower is insignificant and that no such screening or landscaping is required. Further, there is no evidence on the record that the residents immediately adjacent to the tower have made any requests or expressed any desire for such monetary assistance. In fact, the only evidence on the record on this issue suggests that the neighbors are adamantly opposed to the tower and have

stated openly that they are not willing to make modifications to their properties to accommodate its siting at the proposed location. As a result, this offer remains illusory at best given its contingency upon all neighboring properties granting a full release to the Applicant; impossibility, as at least two adjacent property owners have intervened in this proceeding by counsel to ensure their opposition is properly before the Board.

c. The Applicant's proposal to create a conservation easement to restrict future development at the property makes a mockery of such an instrument. The very purpose of a conservation easement is to ensure that development of the kind proposed herein never happens in the first place. What use would a conservation easement serve once the property has forever been marred by the industrial-scale intrusion that the proposed tower will bring to this community? Conservation easements are meant to preserve and protect land from development, not as a means to ensure such development projects are approved.

d. Regarding the alternative tower design simulations that have now been proposed by the Applicant and assessed by the Applicant's consultants: PCS submits that unfortunately both proposed designs do not minimize the detrimental intrusiveness or negative visual and aesthetic impact of the proposed tower. Given that the obelisk alternative is a taller and significantly more prominent structure, and that the flagpole alternative purportedly requires double the artificial tower structures on this prominent ridge, we submit that these designs will negatively affect the character-defining qualities and visitor-experience of the cemetery in much the same way as the monopine design and may even stand out more prominently in wider views from the surrounding area. Both the original monopine and these two additional tower designs that the Applicant has proposed are highly intrusive and have a significant negative visual impact not allowed under the Code. In short, even the "least bad" option does not mean it is a good option. Finally, the Applicant's insistence on offering these alternatives only on condition of the project's approval speaks to the lack of good faith in this offer and the level of disregard the Applicant shows for the real and repeated concerns expressed widely by hundreds of community members as well as members of both Boards about the impact of this size structure at this sensitive scenic and historic ridge location. As we have outlined in our previous reports and repeat herein, there are other better and less-intrusive solutions that are appropriate for a scenic and historic area like ours. We urge the applicant to adjust their plans to fit into our community, as is required by our local law, or alternatively, that the Board deny the application in its entirety.

#### **Reply to the Applicant's RF Consultants' Letters of February 5, and February 6, 2018**

The Applicant's RF consultants, Mr. Feehan and Mr. Penesso, each make various representations pertaining to the infeasibility of DAS for the Village of Nelsonville in their submissions of February 5, and February 6, 2018, respectively. PCS submits that the bulk of these submissions amount to bald assertions offered in a conclusory manner without any technical or engineering support, are lacking in merit and should be discounted in their entirety.

VOLTE and 4G LTE are Information Services and Existing Coverage at 850MHz is Sufficient:

The Applicant's consultants claim that the proposed tower will remedy a need for full spectrum 4G LTE technology, including VOLTE, but that the existing 3G technology provided on the 850 MHz bandwidth will remain active in this area in spite of not being part of the proposed installation. On its face, this last point is an admission by the Applicant that there is no gap in coverage at the 850 MHz bandwidth, an assertion that PCS has maintained from the outset of its opposition to this application. This further supports PCS' contention that the instant application is to accommodate a desire by the Applicant for increased capacity at additional wireless broadband bandwidths, and has nothing to do with a coverage gap in personal wireless services. There is no provision in the Telecommunications Act and no Section in the Code that requires a wireless provider to have full coverage at every possible bandwidth. Indeed, as has been previously submitted, U.S. district courts have held that 4G LTE technology, including VOLTE, are data information services, not personal wireless services, and are thus not protected under the Telecommunications Act. PCS respectfully submits that Mr. Feehan's conclusory statement to the contrary, unsupported by any countervailing legal authority, must therefore be discounted entirely.

The Significance of the Former Butterfield Hospital Site to the Instant Application:

The Applicant AT&T has repeatedly stated on the record that its purported coverage gap and need for the proposed tower has come about as a result of the loss of its wireless facility on the old Butterfield Hospital site in the Village of Cold Spring. Indeed, the following are quotes from statements made by the Applicant on the record at public hearings, and RF engineering reports submitted in support of the instant application:

“AT&T has maintained a wireless facility on the Butterfield Hospital pursuant to a lease agreement in order to provide wireless service to the Village of Nelsonville and the surrounding areas (“Hospital Facility”). The Hospital has ended its agreement with AT&T thereby requiring AT&T to stop using that location and remove the existing facility. **The removal of AT&T equipment from the Hospital Facility will result in the loss of reliable wireless services for AT&T customers in this area.**” – Daniel Penesso, RF Consultant for Applicant AT&T, initial RF Analysis Report.

“A significant gap in reliable wireless service exists in the Village of Nelsonville and neighboring communities **as a result of the decommissioning of AT&T's facility at the Hospital Facility**” – Daniel Penesso, RF Consultant for Applicant AT&T.

“Based upon these tests, a propagation map illustrating **AT&T's coverage without its equipment at the Hospital Facility** is attached as Exhibit 1. As the propagation map in Exhibit 1 clearly demonstrates, **there is a significant gap in service** in the portion of the Village in the vicinity of the Site and the surrounding areas **without the Hospital Facility.**” – Daniel Penesso, RF Consultant for Applicant AT&T.

“It is my professional opinion that: (1) **A significant gap in service exists** in the portion of the Target Area in the Village of Nelsonville and surrounding areas **as a result of the decommissioning of its facility at the Hospital Facility;**” – Daniel Penesso, RF Consultant for Applicant AT&T.

“**15 Rockledge Road Facility will allow** AT&T to provide reliable **wireless service** in the Target Area, **similar to that provided by AT&T’s installation on the Hospital Facility** and thus work in conjunction with AT&T’s existing network.” – Daniel Penesso, RF Consultant for Applicant AT&T, initial RF Analysis Report.

“In fact, the **only existing site in the vicinity was at the Butterfield Hospital**, a location that has actually been decommissioned and removed.” – Vincent Xavier, Regional Manager, Homeland Towers, LLC, 6/28/17 Alternative Site Analysis.

“The **need for the facility** to provide wireless service in the area, including throughout the Village of Nelsonville, and a large part for AT&T **is being driven by the fact that they lost their existing site at Butterfield Hospital.**” – Robert Gaudioso, Snyder & Snyder, LLP, Counsel for the Applicant, before the Nelsonville Zoning Board of Appeals, 8/29/17.

“The point of the AT&T [RF] report, was that **they HAD a site at Butterfield Hospital** that was decommissioned when the work was done over there.” Robert Gaudioso, Snyder & Snyder, LLP, Counsel for the Applicant, before the Nelsonville Zoning Board of Appeals, 11/15/17.

As has been repeatedly made clear throughout these proceedings by the Applicant and their respective legal counsel and RF engineering consultants, AT&T’s purported need for the proposed macro-site is a direct result of the loss of their previous facilities at the former Butterfield Hospital. By these representations, the Applicant has thus admitted that had the Butterfield facility not been decommissioned, there would be no coverage gap and no actual need for the proposed macro-site. This fact raises three important issues: 1) any replacement facility need not be any more intrusive in design than that which existed at the Butterfield site; 2) the actual design of the prior Butterfield site contradicts the Applicant’s claims pertaining to the infeasibility of a DAS system and the need for a 110 foot tower; and, 3) plans for the new Butterfield project have been approved that include provision for a cell site facility accommodating at least two wireless carriers, thereby presenting a less intrusive and less detrimental alternative for the Applicant.

#### 1. The Butterfield Hospital Facility Design Provided Sufficient Coverage:

The decommissioned AT&T wireless facility consisted of approximately four to eight antennas mounted atop the two-story Butterfield Hospital facility. At most, these antennas were positioned approximately 30-35 above ground level, at the relative height of a third story building. (See, Attached photographs of former AT&T wireless facility on Butterfield Hospital at Exhibit ‘B’). Clearly, these antennas are not mounted atop a 110 foot tower, yet by the Applicant’s own statements on the record, this prior facility was adequate to “provide wireless service to the Village of Nelsonville and the surrounding areas.” (See, Daniel Penesso RF Report). Why, if the

prior facility, consisting of a small number of antennas mounted approximately 30 feet in the air, was sufficient to provide reliable wireless coverage to the Village of Nelsonville and the surrounding area, has the Applicant now come before the Board to insist repeatedly that the only means to deliver the same service is by constructing a massive 110 foot macro-site cell tower in the heart of the Village overlooking our historic cemetery? PCS submits that as the Applicant's own statements on the record with respect to the Butterfield Hospital facility and the photographs of same prove, the Applicant has failed to demonstrate an actual need for the facility as it has been proposed, and that there exist substantially less detrimental alternatives that the Applicant has failed to pursue.

### 2. The Butterfield Hospital Facility Design Indicates a DAS Network is Feasible:

One of the Applicant's primary reasons given for why a DAS network is infeasible in the Village of Nelsonville, is the prevalence of tall trees that rise above the available utility poles. Presumably, the issue here being the purported interference the taller trees will have on the signals of the DAS nodes. The photographs of the Butterfield Hospital facility, however, clearly show that the antennas were mounted at or below the prevalent tree line. (Exhibit 'B'). Yet, the Applicant has stated on the record that this facility was still somehow capable of providing reliable wireless coverage throughout the Village of Nelsonville and the surrounding area. Certainly, the Butterfield site did not consist of tower-mounted antennas rising dozens of feet above the dense tree line, as is now being claimed as a necessity by the Applicant. This glaring contradiction should raise questions in the minds of the Board as to the Applicant's veracity with regard to its entire application. PCS submits that as the photographs of the Butterfield Hospital show, a 110 foot macro-site cell tower is not the least detrimental means to provide wireless coverage throughout the Village of Nelsonville and the surrounding area, and that a thoughtfully designed DAS network is in fact feasible regardless of the tree cover.

### 3. The New Butterfield Development Has Received Wireless Facility Approval:

The new Butterfield development has received approval from the Village of Cold Spring to accommodate a wireless facility that will accommodate at least two wireless providers. Specifically, the roof line of Building 3 of the project has been redesigned to incorporate a cupola within which the cell facility will be located. Approval of this redesign has been granted, as observed by members of PCS at the recent Cold Spring Historic District Review Board public hearing of February 14, 2018. Members of PCS confirmed with the developer that accommodation for at least two wireless providers will be made available, and that construction of the project is set to commence imminently. PCS submits that the new Butterfield development is a less detrimental and less intrusive alternative location that must be pursued by the Applicant.

AT&T Drive Test Data Indicates Sufficient Coverage at 700 MHz:

AT&T RF consultant, Daniel Penesso, in his February 6, 2018 letter, attempts to qualify the drive test data presented at the 700 MHz frequency by claiming “one must account for some coverage being provided existing on-air site” from an antenna facility located across the river at West Point. Notwithstanding that PCS submits the Applicant’s propagation maps are inaccurate for reasons stated in prior submissions, rather than merely record and report the date the Applicant again attempts to provide an excuse as to why the reported coverage appears to be better than it actually is. Whether the existing coverage is provided by an antenna across the river is irrelevant. So long as coverage exists and is sufficient, then the Applicant is unable to show an actual need as required under the Code. (See, 360 [Degrees] Communs. Co. v. Board of Supervisors, 211 F.3d 79, 2000 U.S. App. LEXIS 5071, finding that federal regulations contemplate the existence of dead spots, defined as small areas within a service area where the field strength is lower than the minimum level for reliable service).

Applicant’s RF Consultants’ Claims of DAS Infeasibility are Unfounded:

In Mr. Feehan’s letter, he claims in conclusory fashion that “[a]n outdoor DAS is not a feasible alternative to remedy Verizon Wireless’ significant gap in service in this area.” The reasons given include: the high number of trees in the area; the distance of homes from the streets; limitations of access to utility poles; State right-of-way claims along Route 301; the inability to co-locate providers with DAS; and, the possibility that a DAS system would go down in times of emergency or natural disaster. Likewise, Mr. Penesso’s letter discusses in a conclusory manner that a DAS system for the Village of Nelsonville is infeasible. Mr. Penesso claims that DAS networks are “typically implemented in locations such as shopping malls, school campuses, office buildings, larger venues such as sports stadiums and even arenas as well as nodes attached to utility poles in street right-of-ways.” Mr. Penesso claims that AT&T requires a macro cell site for this target area “because of the large geographic area of unreliable coverage that needs to be filled,” and that “a DAS network would not be able to provide the level of coverage that the proposed macro site can provide.” Mr. Penesso also goes on to discount the feasibility of DAS for Nelsonville given the number of trees in the area that are taller than the available utility poles and the impact that would have on a DAS network’s effectiveness.

The above reasons given by both RF consultants are provided in a conclusory manner, with no supporting evidence or technical information whatsoever. No RF or engineering testing was conducted to support these assertions and very little useful information is provided. Indeed, much of this submission contradicts readily available wireless industry examples of DAS implementation as well as the Applicant’s counsel’s very own submissions in other municipalities where they have advocated for DAS networks.

DAS Can Accommodate Co-location:

For example, Mr. Feehan asserts that “co-locating multiple carriers on a DAS system is very difficult.” Yet, in the town of Wesley Hills, NY, Applicant’s co-counsel Cuddy & Feder stated before the Zoning Board there in an application to deploy a DAS network that “DAS

nodes can accommodate up to two additional carriers for co-locating.” (See, [https://www.wesleyhills.org/sites/wesleyhillsny/files/minutes/pb\\_meeting\\_1.24.18.pdf](https://www.wesleyhills.org/sites/wesleyhillsny/files/minutes/pb_meeting_1.24.18.pdf)). Interestingly, no mention was made there either by the Applicant’s co-counsel or the Village’s own RF Consultant Mr. Graiff, that co-locating on a DAS system was fraught with difficulty. Indeed, even a cursory review of wireless industry publications indicates that co-locating multiple carriers on a DAS network is common place and a standard component to any such network.

State Right-of-Way and Utility Pole Access Concerns are Speculative:

Regarding Mr. Feehan’s claims that there are potential limitations of access to utility poles and issues with respect to State right-of-way claims along Route 301, no evidence is submitted that such concerns would be at issue with a DAS network in Nelsonville. Again, these claims are conclusory and unsupported and can only be meant to cast doubt in the minds of the Board rather than providing any useful information. There is no indication that a DAS network in Nelsonville would necessitate placing nodes along Route 301 in the State right-of-way (particularly given the prospect of a raised McKeel Corner tower), nor is there reference to any specific utility poles that would be necessary for a DAS in Nelsonville but are inaccessible, thereby making such a network infeasible. Indeed, the Applicant resorts to providing photographs of four random utility poles that happen to be at or below the tree line as in some manner supporting the infeasibility of DAS for the entire Village of Nelsonville. Yet, it is not even asserted that these particular poles would even need to be part of such a network. Accordingly, these photographs are irrelevant and should only be considered by the Board in terms of how little use they are in determining the feasibility of DAS in Nelsonville.

In addition, The Applicant’s RF consultant submits that Nelsonville risks losing regulatory authority of node placement in the Right of Way (ROW). While utility poles in the ROW are considered the private property of the utility companies in New York, a review of New York jurisprudence demonstrates that municipalities exercise significant control in regulating these structures.

Critically, N.Y. VILLAGE LAW § 6-602 “Separate Highway District” recognizes that highways within a Village boundary are subject to local control: “The streets and public grounds of a village constitute a separate highway district and are under the exclusive control and supervision of the board of trustees or other officers of the village when such control is delegated to them by such board.”

Moreover, Nelsonville Village Code §188-67 “Collocation on Eligible Building or Structure” clearly states that special permit approval is necessary for attaching an antenna on “eligible structures” (including utility poles) that alter the width and height of the structure. It stipulates that any application must be reviewed under the criteria set forth in §188-70 “Standards for Issuing Special Permits” including provisions related to actual need and adverse impact on scenic and historic resources.

And Central Hudson instructs private parties seeking to attach equipment to poles owned by Central Hudson to first receive federal, state and/or municipal approval:

*"Licensee shall install its facilities in accordance with all requirements of Central Hudson, the National Electrical Code, the National Electrical Safety Code, the Occupational Safety and Health Administration any other applicable federal, **state and municipal statute, rule and/or regulation, and any rules or orders now in effect or that hereafter may be issued by the PSC or any other governmental authority or any entity whose standards are referenced in the Agreement or the Exhibits attached to the Agreement having jurisdiction, including, but not limited to, all requirements for proper bonding, grounding, clearances, guying and anchoring of Licensee's Facilities...If permits, permissions or consents are required from federal, state and/or municipal authorities, it will be the Licensee's obligations to apply and obtain it before attaching to Central Hudson facilities."***

<https://www.cenhud.com/workingwithus/operatingprocedures>

#### 1.KAPLAN v. VILLAGE OF PELHAM (Supreme Court, Westchester. 2014)

Here petitioners commenced an Article 78 proceeding against the Village of Pelham to vacate the municipality's Right of Way agreement with Extenet. The Village had authorized Extenet's installation of DAS nodes without seeking a special use permit or conducting SEQRA as necessitated under its own Pelham Village Code. Extenet argued that under New York State law it required only the consent of the municipality to install and maintain infrastructure in the ROW. It further claimed that a municipality only has the authority to regulate public safety in the ROW, but not the siting of utility infrastructure.

The Court disputed ExteNet's argument, saying:

*"Under federal law, the Telecommunications Act of 1996 provides at, 47 U.S.C. §253(a), that "[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide and interstate or intrastate telecommunications service." However, regarding state and local governmental authority, the statute further provides that "**[n]othing in this section affects the authority of a State or local government to manage the public rights-of-way ...**" (47 U.S.C. §253(c)). In the section of the statute that addresses mobile services, the preservation of local zoning authority is expressly addressed and provides that "nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction and modification of personal wireless service facilities" (47 U.S.C. §332(c)(7)(A)). From the recitation of the above, **it is clear that the Village maintains significantly more authority over its ROW than ExteNet contends and that the representation made to the Village that if it denied ExteNet the right to install its equipment, "Federal law" allowed ExteNet "to move ahead with the installation" was, at best, a gross misstatement of the law.** The above case law also makes clear that, as indicated in the Court's decision on the TRO, neither Ch. 87 nor SEQRA are pre-empted in their entirety by federal or state law in this matter. Indeed, while ExteNet disputes that "aesthetics" is a valid concern of municipal authorities when it comes to telecommunications equipment to be installed in a ROW, such zoning concerns have been held to be valid and not in conflict with the TCA, so long as they do not have the effect of prohibiting wireless services."*

2. VERIZON NEW YORK INC. v. VILLAGE OF WESTHAMPTON BEACH (United States District Court, E.D. New York 2014)

Verizon New York argued that it maintains the right to license attachments to its utility poles with private parties, saying that under New York law, a municipality does not have the right to dictate to the franchisee what it may or may not do with its own property—in this case, the utility poles. Verizon referenced the New York Court of Appeals' holding that a telephone company has an "unconditional right to erect and maintain poles for its lines upon public streets and highways" and that the company's telephone poles constitute personal property belonging to the utility (citing *North Hempstead*, 41 N.Y.2d at 693).

The Court recognized the right of a company to enter into contracts with private parties, but found that

*"Under Village Law § 6-602, the streets and public grounds of Quogue and Westhampton Beach to be under the control and supervision of the Boards of Trustees of those villages. N.Y. VILLAGE LAW § 6-602 ("The Streets and public grounds of the village constitute a separate highway district and are under exclusive control and supervision of the board of trustees..."). N.Y. VILLAGE LAW § 4-412(3)(6) gives the Board of Trustees the power to "grant rights and franchises or permission to use the streets . . . [and] public places or any part thereof or the space above or under them...for any specific purpose upon such terms and conditions as it may deem proper and as may be permitted by law." N.Y. VILLAGE LAW § 4-412(3)(6)."*

Verizon also claimed that its rights and powers with respect to the utility poles derive from state law, not local law, and that state law expressly trumps any competing local law. But the Court disputed state pre-emption in this matter, arguing:

*"Notwithstanding these findings, however, private property, such as the utility poles at issue here, may still be regulated by the municipalities... Courts have repeatedly addressed the issue of whether a municipal ordinance is invalid because the state legislature has pre-empted the area that the municipality had sought to enter... In general, police powers are not to be superseded unless the legislature has demonstrated a clear and manifest purpose to do so... Further, the New York Court of Appeals has exhibited a reluctance to overturn local laws, finding that the laws enacted by local legislatures have an "exceedingly strong presumption of constitutionality"... The Court finds here that there is no language in either the LIPA Act or the [New York State] Transportation Corporations Law specifically pre-empting a village's authority to regulate attachments to utility poles. Nor is there any evidence from the legislative history of a "declaration of state policy" that would supersede the municipalities' police powers to regulate this area. As a result, the Court finds that the municipalities' ability to regulate attachments to utility poles as a function of their police powers is not pre-empted by the LIPA Act or the Transportation Corporations Law."*

3. STAMINSKI v. ROMEO (Supreme Court, Special Term, Suffolk County, 1970)

*"Section 27 of the Transportation Corporations Law gives telegraph and telephone corporations broad powers to construct their lines and fixtures over or under public highways, and to utilize private lands for their purposes, with the right to condemn such lands if necessary. The section requires however that telegraph and telephone corporations must obtain the permission of city, village or town authorities to use local streets for the construction of its lines."*

4. VILLAGE OF CARTHAGE v. CENT. NEW YORK TEL. & TEL. COMPANY (1906).

The Court of Appeals found that localities retain the right to regulate and manage the ROW in terms of coordinating construction schedules and ensuring public safety, but are also permitted *"to regulate the erection of telegraph, telephone or electric light poles and the stringing of wires on these poles...the right to erect these poles and string the wires is not derived from the village authorities, but they are permitted to regulate the erection of the same; that is to say, the location of the poles and the streets to be occupied are, doubtless, within the reasonable power of the village to regulate."*

For all the foregoing reasons, PCS submits that the Village of Nelsonville would retain siting authority over DAS nodes in the Village right-of-way.

DAS is Used in Surrounding Municipalities with High Tree Lines and Challenging Topography:

With respect to both RF consultants' claims regarding the prevalence of tree lined streets making DAS in Nelsonville "infeasible", there are many examples in nearby communities that prove otherwise. Indeed, as is more fully detailed below in the section of this submission pertaining to the former Butterfield site, and as is evidenced in several nearby communities where DAS has been deployed, this line of argument against DAS should be highly scrutinized by the Board. For example, in the village of Pelham, NY, in neighboring Westchester county, a DAS network has been deployed among the tall tree-lined streets and in spite of the topography. (Exhibit 'A'). Similarly, in Wesley Hills, NY, where Applicant's co-counsel and the Board's own RF consultant Mr. Graiff have advocated for the deployment of a DAS network, DAS nodes were deployed on utility poles in spite of difficult topography and tree lined streets not unlike here in the Village of Nelsonville. (See, aerial video of Wesley Hills, NY topography and tree lined streets at <https://www.youtube.com/watch?v=oX6XxeMHL6U>).

Both of the Applicant's consultants in fact admit in their submissions that the conditions found in Nelsonville only reduce a typical DAS node's coverage to approximately 800' to 1200' relative to its capability in flat open terrain. This reduced coverage, however, does not make a DAS network infeasible. Rather, it requires better engineering and maximizing the potential of each DAS node by considered and strategic placement, in addition perhaps to a small number of additional nodes. Indeed, the Applicant's RF consultants, in spite of their expertise as engineers, provide no useful information regarding how a DAS network in Nelsonville is technically "infeasible." (See, additional examples of DAS deployment in local

communities with dense vegetation and challenging topography:

<http://www.crowncastle.com/projects/rye-ny.aspx>;

<http://www.crowncastle.com/projects/wesley-hills-ny.aspx>;

<http://www.crowncastle.com/projects/huntington-ny.aspx>).

#### A DAS Network in the Village of Nelsonville is Feasible and Would Require Only a Few Nodes:

The Applicant's RF consultants also claim that at least twenty DAS nodes would be needed to achieve the same coverage of the proposed macro-site cell tower. The proposed tower, however, would cover an area of nearly eight square miles, whereas the Village of Nelsonville, where this application is situated, is only one square mile. Thus, as PCS' RF engineering consultant Richard Comi has stated, very few DAS nodes (perhaps as few as three or four) would be required to sufficiently cover the entire Village of Nelsonville, and would constitute a dramatically less intrusive and detrimental alternative to the proposed macro-site cell tower. As has been discussed in prior submissions, there is nothing in the Telecommunications Act or the Code that requires the Village of Nelsonville to approve an application for a cell tower that will provide the vast majority of its coverage outside this municipality. (See, *Airtouch Cellular v. City of El Cajon*, 83 F. Supp. 2d 1158, (S.D. Cal., 2000), finding there is no prohibition of wireless services within the meaning of § 332(c)(7)(B)(i)(II) if the carrier's request is denied but the carrier may turn to alternative sites, even if those sites "may be less than optimal." *Jefferson County*, 59 F. Supp. 2d at 1109-10 ("forcing [the carrier] to use lesser alternatives" does not constitute prohibition)).

#### A DAS Network Would Provide In-Building Coverage to Most of Nelsonville:

Also raised as a concern by the Applicant's RF consultants, is the claim that a DAS network will not provide adequate in-building coverage, as compared to the proposed tower. Again, this claim is overstated. The Village of Nelsonville is one square mile, with most of the residents being clustered along main street and among the closely spaced houses in the immediate vicinity. As with the other examples given herein, professional engineering consultant Richard Comi has indicated that a properly engineered DAS network of a handful of nodes would be more than sufficient to address any purported in-building coverage gaps within the small geographic area of the Village. Regardless, as has been indicated in prior submissions, in-building coverage in sparsely populated rural areas is neither required under the Code nor protected under the Telecommunications Act.

#### DAS Failure During an Emergency of Natural Disaster is Speculative:

The Applicant's RF consultants also discuss the possibility of a DAS network failure in the event of emergency or natural disaster. Not only is this assertion highly speculative and clearly meant to cast doubt and fear in the minds of the Board, but it is not supported by the reality that DAS networks are being deployed throughout New York and across the country in increasing numbers. If such networks were as fragile as the Applicant would have us believe, it is doubtful that the wireless industry would be utilizing this technology at all. For

the Applicant's consultants to engage in such speculation, it is no different than if PCS were to suggest that the proposed tower is a faulty design due to the risk of it being hit by lightning, falling as a result of an earthquake given Nelsonville's proximity to a fault line, or the risk of electrical fire causing the tower to collapse. Further, in the event of emergency or natural disaster, the Applicant has developed contingent technologies to ensure adequate coverage. (See, Applicant's deployment of drone cell nodes during emergencies: <http://fortune.com/2016/10/06/verizon-drones-emergency/>; <https://www.rcrwireless.com/20170718/carriers/up-air-verizon-drones-public-safety-market-tag6>; <https://www.rcrwireless.com/20170928/carriers/drones-FirstNet-ATT-tag4>). In addition, a DAS network in Nelsonville would not replace the coverage that currently exists, but would rather expand and enhance that service. As cellular service generally remains adequate now in times of power outage, there is no reason to believe that such an outage affecting a DAS network would have any impact beyond what residents experience now when the power goes out. Accordingly, the Applicant's submissions in this respect are highly speculative, amount to little more than fearmongering and should be disregarded in their entirety.

**Applicant's Participation in the FirstNet Program has No Bearing on the Instant Application:**

The Applicant submits information regarding the FirstNet program with which New York State has chosen to participate. Nothing in the Applicant's submission, however, supports a finding that approval of the instant application is required in order for the Applicant to deploy a FirstNet compatible facility. First, the Applicant currently enjoys sufficient coverage at the 700 MHz bandwidth, thereby allowing for FirstNet deployment under existing conditions. Second, should additional coverage be required for FirstNet deployment, such could be accomplished by utilizing any number of the various less intrusive and less detrimental alternatives that have been outlined throughout this proceeding. In short, the proposed facility is not necessary for the Applicant to accomplish its FirstNet rollout, which is scheduled to be complete by 2022. Finally, accommodation for a FirstNet participant is not required under the Code. Accordingly, the Applicant's participation in the FirstNet program should not have any bearing on the instant application.

**Reply to Saratoga Associates Supplemental Submission of February 7, 2018**

PCS submits the following responses to Saratoga Associates (hereinafter "Saratoga") supplemental Visual Resource Assessment submission dated February 7, 2018.

1. The alternate designs proposed by the Applicant and evaluated by Saratoga remain highly intrusive and do not present less detrimental alternatives to the tower initially proposed in this application. The obelisk in particular, being necessarily taller and a more prominent structure will likely increase visibility of the structure from the surrounding area rather than minimize such views. A modern fake monument would be out of character against our small village's skyline, competing with the historic steeples that have defined our area for hundreds of years. It would also tower above--and take focus away from--the real monuments to those who have died in the beautiful and bucolic cemetery. The double flag pole design also remains highly

intrusive, as this alternative would purportedly require two towers as opposed to one, thereby increasing the discordance with the surrounding natural features. Indeed, as has been shown throughout this application process, a towering structure of this height situated on the key ridge and in several of the most important views of our historic rural cemetery is highly intrusive and not the least detrimental or least intrusive alternative as required by the Code and pursuant to federal law.

2. The photographs taken by Saratoga from the south end of the rural cemetery, in an effort to minimize the negative impact of the proposed macro-site, are misleading. These photos are effectively irrelevant to the issue of the visual impact of the proposed facility, as regardless of where visitors end up within the cemetery, EVERY single visitor is impacted negatively, twice over, upon entering and exiting this sacred space. The imposing cell tower will be the first image visitors have of the cemetery as they enter, and the last image they have as they leave, regardless of where they spend their time while visiting. This will negatively impact their experience and distract from the solemnity of this historic landmark and the reflection that people seek to engage in while visiting. Tower structures of similar height and substance at this sensitive location will also significantly impact several of the character-defining features of this thoughtfully designed National Register eligible Rural Cemetery, as outlined in letters submitted to the Boards by Liz Campbell Kelly, ASLA on 1/9/2018, Erin Muir, RLA on 1/12/2018, Ethan Timm, RA on 1/12/2018 and other landscape architects and professionals. In addition, given that the tower will loom over the historic cemetery gatehouse, the only entry and exit point to the cemetery, it will be impossible to visit this landmark without being negatively impacted. This negative impact is compounded by the fact that the Village gathers around the gatehouse and central flagpole area for special commemorative events such as on Memorial Day services. In terms of having a negative visual impact on the cemetery, the proposed tower could not be in a worse spot. It is a desecration.

3. The photographs taken from the surrounding area confirm that the tower will be highly visible from hiking trails that residents and tourists frequent and enjoy, and thus the tower will disrupt and negatively impact the views, vistas and sightlines that residents are accustomed to, and in many cases have invested in homes here to enjoy. Nature tourism has become a vital component to the local economy in the Village of Nelsonville, with hikers, bird-watchers and other nature-lovers descending upon the Village throughout the year to enjoy its many hiking trails and other natural features. Any negative impact on this asset to the Village cannot be underestimated. Accordingly, the proposed tower remains both unnecessary given the absence of an actual need for signal coverage in the area, and highly detrimental and intrusive to the Village of Nelsonville and the surrounding area.

4. The photographs taken from across the river by Saratoga are at best inconclusive. No photos were taken that depict the proposed tower from a straight-on perspective from across the river or from other useful and informative sightlines. Interestingly, Saratoga claims that due to road closure, they were unable to take photos from across the river on the date of the second balloon test. Yet, in their submission they produce a number of photographs from across the river apparently taken in the spring of 2017. These photos are clearly taken from vantage points that

conceal the view of the Village. Members of PCS and many in this community have driven along Route 218 across the river, and are familiar with the various scenic outlooks, including at least two that provide unobstructed clear straight-on views of the Village. That Saratoga would have driven this scenic route and not observed these views and photographed them is highly unlikely given these views would be the most negatively impacted by the proposed tower. Put another way, it is highly likely that the proposed tower would be highly visible from these straight-on views. Rather than present photographs from these vantage points, however, Saratoga submits irrelevant photos from positions that obscure and minimize the view of the tower. PCS submits that either Saratoga chose not to take photographs from these highly impacted vantage points across the river as they would clearly reflect the intrusiveness of the proposed tower upon surrounding vistas, or Saratoga did take photographs from these vantage points and has not submitted them for the same reason. PCS attempted to take photos from Route 218 on the date of the second balloon test, but can confirm that Saratoga is correct in stating that the road was closed, thereby making it impossible to take photographs from these locations on that date.

5. PCS confirms that a second balloon test was conducted on January 31, 2018, but is unable to confirm the appropriateness of the methodology under which said test was conducted. Counsel for the Applicant makes reference to correspondence dated January 23, 2018 that sets out the methodology used, but PCS has not reviewed this correspondence and is unable to speak to its contents. The second balloon test was purportedly conducted at a height of 110 feet, approximately 10 feet lower than the first test. Even at this lower height, however, the balloon remained highly visible from several points in and around the Village, and in particular in the vicinity of the historic rural cemetery. Accordingly, the proposed tower remains highly intrusive, has a significant negative impact on visual and historic resources within the Village of Nelsonville and is not the least detrimental alternative to remedy any purported gap in coverage, as required under the Code.

#### **Reply to the Lane Appraisals, Inc. Letter of January 18, 2018**

In response to submissions made by Lane Appraisals, Inc. regarding the impact of cell towers on property values, PCS submits a June 2014 study conducted by the National Institute for Science, Law and Public Policy questioning the impact of cell towers on property desirability. (See, attached NISLP study with this submission). PCS submits that there is empirical data supporting a finding that proximity to cell towers negatively impacts the desirability and marketability of residential properties. Although the Code does not require the Applicant to ensure no negative impact on property values in the Village of Nelsonville, many residents have raised this issue as a concern. Therefore, PCS submits that the Board may exercise its discretion in reviewing the study submitted herewith, as a means to balance the considerations submitted by the Applicant with respect to the impact of cell towers on property values.

For all the reasons stated herein, and based on the substantial evidence on the record, PCS respectfully requests that the application for an information services wireless facility as proposed, be denied in its entirety.

Sincerely,



PCS  
By: Jason Biafore

**EXHIBIT R.**

**Letter from Philipstown Cell Solutions dated  
February 19, 2018.**



# PHILIPSTOWN CELL SOLUTIONS

Honorable Chairman William Rice,  
Special Counsel Todd Steckler,  
Members of the Zoning Board of Appeals, and  
Planning Board  
Village of Nelsonville  
258 Main Street  
Nelsonville, NY 10516

February 19, 2018

Dear Honorable Chairman William Rice,  
Special Counsel Todd Steckler,  
Members of the Zoning Board of Appeals, and  
Planning Board:

In his letter of February 7, 2018, Vincent Xavier, Regional Manager with Homeland Towers, LLC, asserts that various misrepresentations “made to the public concerning the proposed facility” have prejudiced the application. In an effort to support this assertion, Mr. Xavier resorts to sifting through community social media forums to selectively, and inaccurately, quote posts regarding the proposed cell tower.

## **1. Savethecoldspringcemetery.com**

In a bizarre attack on a local group working to protect the cemetery, Mr. Xavier takes issue with a single comment from August 2017. During a discussion about where the tower would be located, a user posted a picture depicting a lattice-type structure in the cemetery. Mr. Xavier objects to the lattice design and implies that social media posts like this have led to public opposition. However, there are no other social media examples given to support his claim.

Mr. Xavier’s concerns are exaggerated. The single comment he references was made very early on in the application process, when many in the community were not fully engaged or aware of the specifics of the application. The public’s awareness and opposition has since evolved markedly, which may explain Mr. Xavier’s desperate and inapposite attempt here to undermine it.

In addition, the applicants themselves have since gone on to propose alternative design structures, such as an obelisk, that are not all that dissimilar from the lattice tower image Mr. Xavier claims has prejudiced this application in the minds of the public. Thus, Mr. Xavier’s concerns in this regard cannot be given any serious consideration.

## **2. Philipstown Cell Solutions “stealth” monopine cell tower images**

Mr. Xavier accuses PCS of intentionally misleading the Board with respect to its submission of photographs of “other ‘stealth’ monopine cell towers in our area.” PCS categorically denies this accusation, as there was no intent to mislead the Board. The photos of these monopine towers were taken along the New City exit of the Palisades Interstate Parkway (Rockland County), the I-87 New York State Thruway at Nanuet (Rockland County), and off the Stony Point exit of the Palisades Interstate Parkway (Rockland County). All three examples are in the neighboring county of Rockland; which PCS submits constitutes “in our area”. Although Homeland Tower promises a “higher quality” monopine similar to the tower they built in Somers, NY,<sup>1</sup> to the civilian eye, the difference between these towers is minimal.

The purpose of PCS providing these photographic examples was simply to provide some balance to the applicant’s submissions. The photographs of monopines that the applicant had submitted showed towers with deciduous tree screening (even if in off-leaf conditions) or situated among other coniferous trees. These examples do not provide an accurate depiction of what the proposed tower will look like from the most impacted vantage points within the view shed in Nelsonville and the surrounding area. Regardless of whether the applicant’s fake pine trees are of “high quality”, they remain fake pine trees, easily discernable, and as many have stated on the record, are incapable of fooling anyone.

Furthermore, the proposed tower will loom tall above the surrounding deciduous tree line, compounding the negative visual impact. The issue could have been fairly assessed had Mr. Xavier responded with relevant and representative photographs of the applicant’s “high quality” monopines extending high above a deciduous tree line, as it will appear in the cemetery should the application be approved.

It is unfortunate that Mr. Xavier would level such an accusation against well-intentioned and reasonable comparative photographic submissions presented by our community group, when, as has been pointed out repeatedly by PCS, the applicant has themselves repeatedly engaged in misleading claims and misrepresentations on the record.

## **3. Inadequate exploration of Alternate site locations**

Mr. Xavier’s final response to PCS “Applicant Alternate Site Analysis” again lacks sufficient detail to dismiss all potential alternate sites. (See *PCS 2<sup>nd</sup> Opposition Report*, January 9, 2018, Part E.) Homeland Tower has continually failed to demonstrate good faith effort in determining the feasibility of other sites. In addition to the apparently sudden reappearance of the Butterfield site option (see this PCS submission), Mr. Xavier only mentions three of the five alternate site possibilities raised in PCS submission.

### *a. 50 Fishkill Road*

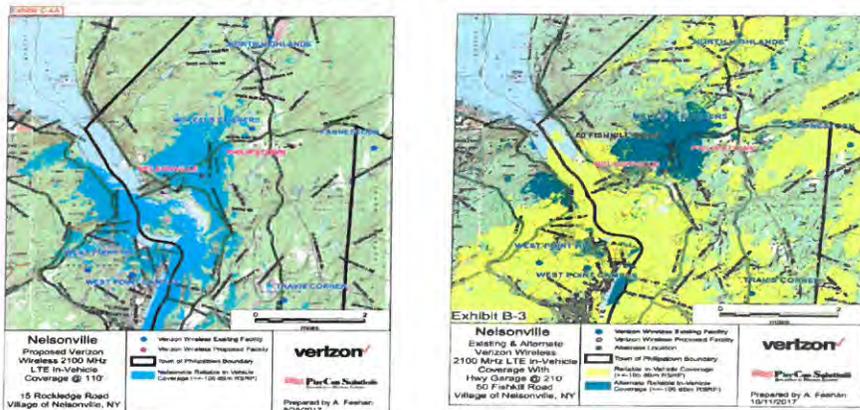
Mr. Xavier again makes no mention of 50 Fishkill Road, a property that now houses the Philipstown Highway Department. This property was discussed several times at town meetings,

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<sup>1</sup> Although Mr. Xavier references the cell tower built by Homeland in “Somers, NY,” the tower at 2580 Rte. 35 is actually located in Katonah, NY.

and as previously noted, was addressed in Mr. Graiff's advisement letter of November 7, 2017 as a possible alternative. The PierCon Solutions Report submitted 11/1/17, provides no data and no crane test at different altitudes to determine the reach of the tower at various heights. Instead, the report provides conclusory statements and a single propagation map at 210'. As Mr. Comi reported, with no supporting documents or test results, the applicant has not explored the feasibility of this site.

In fact, the PierCon Report admits a higher tower at 50 Fishkill Rd. would provide essentially the same coverage as the proposed Rockledge Road tower. First, the report states at a height of 210' this alternate site would provide in-building coverage for 700 MHz and would cover "most of the Village of Nelsonville." Second, the PierCon Report admits that in-building coverage for 2100 MHz at 50 Fishkill Rd. is comparable to coverage from the proposed site at 15 Rockledge Road. And finally, while the PierCon Report claims that the 2100 MHz in-vehicle coverage does not cover all of Nelsonville, it fails to specify in any detail the extent of in-vehicle coverage and how this compares to the Rockledge Road site. Indeed, reviewing the PierCon 2100 MHz in-vehicle propagation maps for the two sites, at the scale provided, the in-vehicle coverage in Nelsonville is almost identical:



For these reasons, 50 Fishkill Rd. remains a possible alternate location for the tower.

*b. McKeels Corner*

Mr. Xavier's letter again fails to mention the already existing 140-foot tower at McKeels Corner. Although McKeels Corner has been a constant subject of discussion during town meetings, and addressed in submissions from both sides, Homeland Towers has chosen to remain silent on the feasibility of this site considering the recent revelations about removal of equipment and conflicting reports between RF experts. (See, i.e., Menkes Associates Report, PCS Response, 2/9/18, Exhibit A). The applicant's own reports indicate the existing tower provides coverage to Nelsonville. (See, i.e., Report of Adam Feehan quoted in Menkes Associates Report, 11/30/17; see also Feehan Report of 1/3/18). Additionally, during a recent decision by the Philipstown Zoning Board of Appeals on a separate tower application, the board noted their willingness, and the landowner's agreement, to adjust the height or even add another tower to McKeels Corner as needed. Without a thorough examination of the status and potential of the existing tower, McKeels Corner tower remains a viable alternate site.

*c. Other Private Property*

Mr. Xavier reports he finally met with a land owner whose property fits the setback requirements on January 31, 2018. The resulting outcome is unclear. According to Mr. Xavier, the land owner indicated “she did not have the occasion to consider my inquiry”. Exactly one week later, the applicant submitted their final report stating the property was not a feasible alternative because “[the landowner] has failed to contact me.” We submit this alternative has not been adequately pursued. Not only did the land owner indicate she had not been aware of the proposal previously (nor were details given about what was offered her), but the applicant assumed refusal after giving the land owner only one week to respond to the first contact. A good faith effort to pursue feasible alternatives would have begun far in advance of the final submission deadline, consisted of more than a single, vague conversation about leasing space, and included at least one follow up phone call. Other private property remains a viable alternate site.

*d. Lack of good faith effort pursuing other feasible alternatives*

Homeland Towers submitted its application for the Cemetery Tower in July of 2017. During a town meeting, Mr. Gaudioso revealed the applicant had been researching the cemetery site for three years previous to their application. Throughout this process, the applicant insisted continuously that all alternative sites had been fully pursued and were not feasible. However, Mr. Xavier’s letter indicates the applicant finally spoke to three of the alternative site possibilities *for the first time* on January 29, 2018 (72.4 acres owned by New York State), January 31, 2018 (property owner) and February 7, 2018 (18.02 acres, owned by NYC). Regardless of the details and outcomes of these conversations, the applicant has shown a lack of transparency and good faith effort in its search for feasible alternatives. The final submission deadline for new materials was February 9, 2018. Contacting and speaking with land owners/stewards less than a week from the final deadline, after the application has been in progress for at least three and a half years, should be given the highest level of scrutiny by the Board and the Court. We submit no final decision can be made on the feasibility of these alternatives when a single conversation, at the deadline, has been documented between each land owner and the applicant.

The applicant has not fully explored all alternate sites, even though Federal courts have repeatedly held that alternative sites must be considered even if they would “present challenges and be less than ideal” and “even if those sites ‘may be less than optimal.’” *Airtouch Cellular v. City of El Cajon* (quoting *Jefferson County*). Moreover, the First Circuit explicitly dismissed ‘cost’ as a reason to find an alternate site unfeasible, writing that “ultimately, we are in the realm of trade-offs” and “such choices are just what Congress has reserved to the town.” *Town of Amherst v. Omnipoint Communications*.

**4. Contractual Relationship of Applicant and Property Owner Finally Revealed**

Mr. Xavier’s letter finally reveals that Homeland Towers has fully executed a Contract to *purchase* the property at 15 Rockledge Road. This information should have been given to the Board more than a few weeks before the decision deadline. As owners rather than

tenants, Homeland will have many more rights involving use of the property. Just a few examples of issues that must now be considered are:

- i. tax benefits for Homeland Towers as owners of the property that may not benefit the town;
- ii. the possibility of Homeland Towers leveraging the property and leases with the carriers to make future investments and secure future loans for additional development;
- iii. the ability of Homeland Towers to sell or assign their rights with carriers in ways they would not be able to do with a simple, or even long term lease.

In short, there is significant monetary benefit to siting the tower at Rockledge over any other property. Therefore, this sudden revelation of Homeland Tower's contract to own 15 Rockledge Road should cast doubt on their claims about why the many other possible alternative locations were not feasible.

## **5. Still No Proven Need for the Cell Tower**

In a final, desperate attempt to prove an actual need for the tower, Mr. Xavier repeats citations from Homeland's RF engineers that PCS has deconstructed thoroughly in our past submissions, expert reports, and call log. (See also, this PCS submission explaining no gap at the 850 MHz bandwidth). Mr. Xavier then bases his final argument on unverified and misleading pieces of quotes from online comments made in response to unrelated news articles about other proposed towers.

- a. "Cell Tower Proposed off Route 9", *Highlands Current*, June 23, 2017

This article referenced by Mr. Xavier, published in the local newspaper, discusses a proposed 180-foot cell tower "on a hillside on Route 9 near 301," near Vineyard Road, being considered by Philipstown Zoning Board of Appeals. The article never mentions the tower proposal for Rockledge Road being considered by Nelsonville ZBA, nor do the online commenters.<sup>2</sup>

- b. "Anyone Want a Cell Tower", *Highlands Current*, November 4, 2017

The second article referenced by Mr. Xavier is also off the topic of the proposed Rockledge Tower. Although the article mentions the cemetery tower on Rockledge, the report concerns an alternate tower being considered on Cedar Street, a possibility that was withdrawn by the village shortly after being introduced. Again using unverified sources, Mr. Xavier presents three quotes from online comments in a misleading and selective manner. There is no indication

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<sup>2</sup> In fact, the single quote that Mr. Xavier uses from the online comments to the Vineyard Road Tower article refers to emergency services, a point that was ultimately dismissed by the Philipstown Board after they received a letter from Putnam County stating "we have spoken to the company proposing the tower, Homeland Towers, on numerous occasions and made it clear that based on studies provided by Motorola the tower offers no advantage to Putnam County and at this time we have no desire to use the tower in any capacity." (See also, Letter from Thomas Lannon, Sr., Office of ITGIS, Putnam County, NY, November 7, 2017).

the commenters are actually Nelsonville residents with any knowledge of the service in Nelsonville. In fact, the quotes only discuss neighboring Cold Spring. (See also, Letter from Dave McCarthy, February 14, 2018.)

Finally, that Mr. Xavier would resort to trawling social media posts in an effort to prove actual need for this tower speaks to the persistent credibility issues that have plagued this application from the outset, and to which PCS has repeatedly drawn the Board's attention. Not only is this tiny sampling of public commentary not reflective of community opposition as a whole (See, Petition submitted February 9, 2018, as but one example), but it remains anecdotal and uninformative at best, and certainly cannot amount to substantial evidence when weighed against the opposition herein as a whole.

Sincerely,

Philipstown Cell Solutions

**EXHIBIT S.**

**Letter from Philipstown Cell Solutions dated  
February 9, 2018.**



Honorable Chairman William Rice,  
Special Counsel Todd Steckler,  
Nelsonville Zoning Board of Appeals, and  
Planning Board  
Village of Nelsonville  
258 Main Street  
Nelsonville, NY 10516

February 9, 2018

RE: Application by Homeland Towers, LLC for a Special Use Permit to Construct a  
Telecommunications Facility at 15 Rockledge Rd., Nelsonville, NY

Dear Honorable Chairman Rice,  
Special Counsel Todd Steckler,  
Members of the Zoning Board of Appeals, and  
Planning Board

Philipstown Cell Solutions (hereinafter "PCS") submits the following in further support of its opposition to the above-noted application and in reply to various submissions made by the applicants and their respective representatives and legal counsel.

**Comments Made by the Applicant at the January 10, 2018 Public Hearing**

Various oral submissions were made by Homeland Towers, LLC (the "Applicant") at the last public hearing of January 10, 2018. Several of these statements were either mischaracterizations of substantial evidence on the record, or misapplications of relevant case law. We set out to detail those statements below and provide the appropriate responses to correct the record.

For the purposes of clarity, references to statements made at the prior hearing will be identified by the segment of video as posted at the Village of Nelsonville website, and the corresponding time of said video when the statement was made. Unless otherwise noted, all statements were made by counsel for the Applicant, Robert Gaudio.

***There is no Actual Need or Significant Gap in Coverage***

**Video Part 1 @ 32:35** – One can "...find service on the street... It's in the buildings and inside the vehicles where you have the problem."

**Video Part 1 @ 32:57** – "There is on-street service, just not in-building and in-vehicle service."

Contrary to the Applicant's claims here, the record is clear that at a minimum, on-street AND in-vehicle coverage is sufficient throughout most of Nelsonville and the surrounding area. If we are to accept the Applicants' RF submissions as accurate, which PCS denies for reasons given in prior submissions, the Applicant's own RF

submissions, those of the Board's RF consultant Mr. Graiff as well as RF submissions from Mr. Menkes in the Philipstown application (see attached RF Engineer Menkes reports at Exhibit 'A'), all suggest that any purported gap in coverage is limited for the most part to in-building coverage. According to these RF submissions, in-vehicle coverage is sufficient in the 700 MHz frequency, as is by Applicant's own admission, on-street coverage at various frequencies. Any purported deficiency in coverage is thus limited primarily to in-building coverage. Further, as the Board's own RF consultant has indicated, the higher frequency bands as proposed in this application have been designed for off-loading of peak web-browsing activity, i.e., capacity, not coverage, based in speculative future need not allowed under the Village Code.

Courts have held that determining whether a significant gap in coverage exists to establish a prohibition of service claim under the Telecommunications Act, is a fact-based exercise to be determined on a case-by-case basis. Factors that courts will consider when making this analysis include the actual size of the gap, the number of people affected, whether there are major auto routes in the area and whether the gap is limited to a certain type of coverage. Indeed, "[w]here the holes in coverage are very limited in number or size (such as the interiors of buildings in a sparsely populated rural area ... the lack of coverage likely will be *de minimis* so that denying applications to construct towers necessary to fill these holes will not amount to a prohibition of service." See, *Sprint Spectrum, L.P. v. Willoth*, 176 F.3d 630, 2<sup>nd</sup> Cir. 1998.

Nelsonville, a small village of one square mile with a population of approximately 600, is by any measure a sparsely populated rural area. So too are the surrounding environs. Considering that not all Nelsonville residents will have one of the Applicants as their cell phone service provider, let alone that not every resident will own a smart phone capable of utilizing the LTE technology upon which the instant application is based, speaks to just how limited the affected number of people are for any purported coverage gap here. (See, Menkes report at Exhibit 'A'). Adding the rural character of the area, the absence of major auto routes, that any purported coverage gap is principally based on in-building coverage in a sparsely populated rural area, and in-vehicle coverage being admittedly sufficient, speaks to the absence of a significant gap in coverage as contemplated by *Willoth* and its line of decisions. Put another way, the foregoing factors when considered in their totality, speak to the sufficiency of existing coverage as contemplated in the case law.

As the decision in *Willoth* held, and as has been subsequently followed in the Southern District of New York, U.S. District Court, "once an area is *sufficiently* serviced by a wireless service provider, the right to deny applications becomes broader." See, *T-Mobile Northeast LLC v. Town of Ramapo*, 701 F. Supp. 2d 446 (S.D.N.Y. 2009). As the Ramapo decision further held, citing the First Circuit's reading of *Willoth*, "once a carrier has adequate (though less than perfect) service in an area, local boards can deny applications *by that carrier* for additional towers without violating the effective prohibition clause." See, *Second Generation Props., L.P. v. Town of Pelham*, 313 F.3d 620, 632 n.13 (1st Cir. 2002). Thus, as existing coverage remains sufficient in the Village of Nelsonville, the Board has broader authority here to deny the instant application.

***Applicant has Not Considered Less Intrusive and Detrimental Alternatives as Required Under the Village Code and Under a Prohibition of Service Standard***

**Video Part 1 @ 31:50** – Speaking about possible less intrusive alternatives to the proposed tower: “Every alternative site that was brought up we’ve looked at ...and ... facilities didn’t work from an engineering standpoint.”

**Video Part 1 @ 42:40** – “We’ve presented ... what we believe ... is the best option.”

**Video Part 3 @ 34:50** – Responding to a question from the Board pertaining to ANY alternative existing between DAS and a 130 ft. monopine over the Cold Spring Rural Cemetery: “No. There isn’t”

The applicant has not considered all less intrusive and detrimental alternatives from an engineering standpoint. The Applicant has failed to consider “less sensitive sites, **alternative system designs**, alternative tower designs, **placement of antennae on existing structures**, etc.” (Emphasis added). (See: *APT Pittsburgh Ltd. Pshp. v. Penn Twp. Butler County*, 196 F.3d 469 (3<sup>rd</sup> Cir. 1999); *Omnipoint Holdings, Inc. v. City of Cranston*, 586 F.3d 38 (1<sup>st</sup> Cir. 2009)). The Applicant has further failed to meet their heavy “burden of showing the lack of available and **technologically feasible alternatives**.” See, *In re Cell Tower Litig.*, 2011 U.S. Dist. LEXIS 96686, (S.D. Cal. 2011). (Emphasis added). For example, the Applicant has not fully considered the technical feasibility of DAS or other similar technologies to remedy any purported gap in the one square mile area of the Village of Nelsonville, nor has the Applicant fully considered the technical feasibility of co-locating on a heightened “McKeel Corner” tower (which the RF consultant in the neighboring Philipstown application has indicated would suffice to alleviate much of the purported Nelsonville gap, see, Exhibit ‘A’), or some combination of such less intrusive technologies and alternatives. Other possibilities not fully considered in conjunction with DAS or in combination include the 50 Fishkill site, the re-developed Butterfield Hospital site or the former Philipstown dump site.

These sites have been dismissed by the Applicant in a conclusory manner, with little to no supporting evidence and were never properly considered in conjunction with a DAS or in possible combination as less intrusive and detrimental alternatives. With respect to the Butterfield site, the Applicant has repeatedly stated on the record that there is no interest by the developer to reinstall cellular infrastructure on the newly-developed buildings, and that the loss of this site in particular has given rise to their “need”. A review of ongoing applications before the Village of Cold Spring Historic District Review Board (“HDRB”), however, indicates that these claims appear to be untrue. Indeed, an agenda for this Board’s upcoming February 14, 2018 monthly meeting clearly indicates that an application to modify the roofline to “accommodate cellular equipment” at the Butterfield redevelopment remains pending. See, Attached Copy of HDRB Agenda at Exhibit ‘B’.

As a further example, the Menkes engineering report states, “[r]aising the antenna elevation to 190 ft. and adjusting the antenna orientations at the McKeel Corners site would improve the in-building coverage at 700 MHz along Route 301 west of Route 9.” (Exhibit ‘A’). Indeed, the same report quotes the Applicant’s own RF engineer, Mr. Feehan, who agrees with Mr. Menkes’ assessment, stating “[b]ased solely on the

area of coverage provided by the two options, Mr. Menkes is correct in concluding that the existing site option is the better choice without Nelsonville.” (Exhibit ‘A’). Further, in denying the Applicants’ Philipstown application, the Philipstown Zoning Board cited the McKeel tower alternative as one basis for denial of that application. See, video of Philipstown denial decision at: <https://www.youtube.com/watch?v=2FRrivhod6c>.

Accordingly, if the Nelsonville tower proposed herein is denied, the McKeel Corners site with modified height and antenna positioning would alleviate much of the purported coverage gap within the Village of Nelsonville that forms the basis for this application. The Philipstown Zoning Board noted in its application process and ultimate denial decision that it was prepared to grant a variance to raise the McKeel Corners tower to such a height, thus alleviating the need for the tower as proposed in this application.

**Video Part 3 @ 33:40** – *“They’re still not covering areas, and we’re not going for a [height] variance because those areas are outside the Village.”*

Another significant consideration with respect to less intrusive or less detrimental alternatives is the fact that the proposed Nelsonville tower will not fully remedy the purported gap in coverage. By Applicant’s own admission, even if the proposed tower is approved and built, there will remain purported gaps in coverage that the Applicant will seek to remedy in subsequent siting applications. What is telling here is that the Applicant acknowledges those purported gaps will remain *outside* the Village. Thus, it must be accepted that the Applicant’s principle concern and design priority with *this* application, is to fill any purported coverage gap *within* the Village of Nelsonville. As has been repeatedly mentioned, the Village of Nelsonville is approximately one square mile. A massive macro-cell telecommunications tower, capable of blanketing several square miles in multi-frequency broadband capacity is by definition not the least intrusive or detrimental design that could be deployed to sufficiently service a small rural village of approximately one square mile with a few hundred inhabitants, the majority of whom will not likely be the Applicant’s customers. (Exhibit ‘A’).

Indeed, as Applicant’s RF consultants have stated, “[t]he area that remains in the coverage gap is located in Cold Spring and will become the objective of a future site intended to address the gaps in that jurisdiction.” See, Piercon Report 11/1/17, pg. 4. Further, Applicant’s RF consultants claim “[d]ue to topography in the gap area, the gap is not proposed to be resolved utilizing a single facility.” See, Piercon Report 8/30/17. Yet, contradictorily the Applicant’s RF consultants go on to state “[t]he Nelsonville project is designed to work with the adjacent project name Philipstown. Nevertheless, the Nelsonville project is fully independent of the Philipstown site and is required to provide coverage to the Village of Nelsonville regardless of the Philipstown site.” See, Piercon Report 8/30/17, pg.7.

Accordingly, the Applicant submits that no less than three macro-cell telecommunications towers, all designed to work together as part of a system, yet also fully independent of one another, are needed to service the small rural communities of the Village of Nelsonville and the Village of Cold Spring. This strains credulity, particularly in light of the substantial evidence on the record indicating that existing coverage is sufficient along Route 301 and Route 9D in and around the two villages,

let alone the consideration of less intrusive and detrimental alternatives such as DAS, a heightened McKeels corner, use of other viable tower sites or any combination thereof, to sufficiently provide wireless service to this rural community. Ultimately, by the Applicant's own admission and as is supported by the substantial evidence on the record, the macro-cell tower proposed in this application is simply the wrong design for a simple coverage objective, and remains both highly intrusive and detrimental to this community.

### ***Failure to Consider Distributed Antenna Systems (DAS)***

**Video Part 1 @ 44:53** – Responding to a question from the Board asking that the Applicant provide some information on the feasibility of DAS: “*That’s an alternative technology and the Second Circuit has said municipalities cannot require carriers to choose alternative technologies. That’s the Clarkstown decision.*”

The *Clarkstown* decision to which the Applicant refers merely stands for the proposition that a municipality may not legislate an alternative technology by requiring one preferred technology over another, as that would amount to a pre-emption of federal telecommunications law. As the Nelsonville Code does not require one technology over another, the *Clarkstown* decision is not applicable here. Further, courts in the Southern District of New York, U.S. District Court, have distinguished *Clarkstown* and have in fact held that “[i]n contrast, it is proper for a town to express a preference for an alternative technology for a specific application.” See, *Metro PCS N.Y., LLC v. City of Mt. Vernon*, 739 F. Supp. 2d 409, S.D.N.Y. 2009. In further distinguishing *Clarkstown*, the *Mt. Vernon* decision goes on to apply the well-established Second Circuit precedents of *Willoth* and *Omnipoint Comm. v. City of White Plains*, 430 F.3d 529 (2d Cir. 2005), holding that “the Second Circuit [has] allowed planning boards to examine aesthetic concerns with regard to applications setting forth “specific technologies to be used on specific sites.””

Accordingly, the Applicant's reliance on *Clarkstown*, in an apparent effort to persuade the Board that they are prevented from specifying a preference for a DAS system (as but one example of an alternate technology or design) particularly where aesthetic concerns are paramount as they are here, is a complete misrepresentation of the well-established precedent on this issue in Second Circuit jurisprudence. Rather, it is proper and wholly within the Board's discretion to specify a preference for an alternate technology such as DAS in a specific application where aesthetic concerns are at issue as they are in the instant matter.

**Video 1 @ 45:57** – “*Your own consultant has indicated [DAS is] not a feasible alternative.*”

As is more fully detailed in PCS' supplemental ‘DAS Survey’ submission, and as was presented to the Board at the prior hearing by PCS' RF consultant CMS, DAS systems are currently being deployed throughout New York State in small communities very similar to Nelsonville. Indeed, throughout Long Island and Hudson Valley counties such as Westchester, Rockland, Dutchess, Orange and Ulster, DAS deployment has become increasingly prevalent. Small communities, and even those in rural environments with difficult topographical terrains, have utilized DAS

technology (as Chairman Marino pointed out at the prior hearing with respect to Marlboro New York, in Ulster County). See Attached DAS Marketing Materials for Proximate Communities to Nelsonville and with Rough Terrain, at Exhibit 'C'.

PCS submits that neither the Applicant nor the Board's RF consultant, Mr. Graiff, to whom the Applicant refers, have taken a serious look at the feasibility of a DAS system to service any purported gap *within the one square mile area of the Village of Nelsonville*, where this application is situated. As CMS has noted, a DAS system comprised of a few strategically situated DAS cells would be more than capable of providing coverage in the small geographic area of Nelsonville, with a much less intrusive and detrimental aesthetic impact.

**Video Part 1 @ 46:39** – DAS is “...used for densification in urban areas ... where you have a capacity problem.”

**Video Part 1 @ 48:15** – “Putting [DAS] in where there's a capacity need ... particularly in New York City, in stadiums, indoor venues where there's congestion of users.”

Although one use of DAS may indeed be to relieve capacity problems in urban areas and stadiums, it is by no means that system's only suitable use. Indeed, as noted above and in our supplemental materials, DAS has now become a common means of providing wireless coverage in rural communities throughout New York State and across the country. Likewise, it is an appropriate and feasible alternative technology to remedy any purported gap in coverage in the Village of Nelsonville given the highly intrusive and aesthetically detrimental tower that has been proposed in this application. See, Exhibit 'C' and PCS 'DAS Survey' submission.

**Video Part 1 @ 48:55** – “In the historic district of downtown, it would be less intrusive ... I don't think that assumption would necessarily be the case.”

DAS has evolved significantly in recent years, and there are many designs available that can blend in with historic districts and neighborhoods with any number of character features. For example, the city of New Orleans recently deployed a DAS throughout the French Quarter, one of the most historic neighborhoods in the United States. The design features used allowed the DAS to blend seamlessly into the surrounding environment. See, New Orleans DAS Deployment Video at <https://www.youtube.com/watch?v=Tx3OEWUgfZw>. See, Exhibit 'C' and PCS 'DAS Survey' submission.

### ***The Proposed Tower Will Provide Increased Capacity Not Alleviate a Coverage Gap***

**Video Part 1 @ 49:55** – “The applicant has always taken the position that this is a need for coverage throughout the Village of Nelsonville.”

**Video Part 1 @ 50:52** – “You're not going to build a network that wouldn't very quickly have inadequate capacity.”

**Video Part 1 @ 51:20** - *“If you have a wide area of coverage gap that needs full LTE coverage at all the different bands ... then [you’ll build] a macro-site and that’s what this is...”*

**Video Part 1 @ 51:47** - *“If we built the wrong solution we would have a capacity issue.”*

By the Applicant’s own admission, the proposed facility is not designed to merely remedy a purported coverage gap in the small one square mile Village of Nelsonville. As noted above, the proposed design will blanket several square miles with multi-frequency wireless broadband capacity designed to accommodate high-speed wireless internet usage. By definition, a macro-cell tower site designed in this manner is highly detrimental and intrusive to the small Village of Nelsonville, and is based in future speculative capacity need not allowed by the Village Code. It cannot be meant to provide simple wireless coverage to a small rural village of one square mile with a few hundred inhabitants, not to mention that the majority of those residents are not customers of the Applicant. (Exhibit ‘A’).

The statement, “if we build the wrong solution we would have a capacity issue,” is on its face an admission that the design of the proposed tower is meant to ensure there will be no future capacity issue. That is, incorporated into the design, will be an accommodation for additional capacity demand that may, or may not, evolve in future. This future need in capacity is speculative and not allowed under the Village Code. In short, the instant application seeks to “improve and expand its services, not to resolve a legally cognizable gap in those services.” See, *Cellco P’ship v. Bd. of Supervisors of Fairfax Cnty.*, 140 F. Supp. 3d 548 (E.D. Vir. 2015). The *Cellco* court went on to hold that “[s]uch improvements may be desirable, but they are not protected from local decision-making.” In assessing the supporting evidence submitted by the applicants in *Cellco*, which in many respects mirror the submissions made by the Applicant here, the court held that such submissions “[a]t most ... indicates that the Board’s decision prevents Verizon from improving existing service, particularly wireless internet and data service, but it does not demonstrate that the decision prohibits Verizon from providing personal wireless services.” In sum, the Applicant’s desire to expand and improve wireless broadband services amount at most to future speculative need not allowed under the Village Code nor protected under the regulations of the Telecommunications Act.

### ***The Opposition is Based Primarily on Aesthetics***

**Video Part 2 @ 27:05** - *“We can all say that RF exposure isn’t an issue, go back and look at the notes. It’s been THE issue from day one. Now other people have made other issues as far as aesthetics. But the fact of the matter is a lot of what’s driving this has been radio frequency exposure. But the reality is that’s still what’s driving a lot of the opposition.”*

**Video Part 2 @ 27:57** - *“The reason [Secor] was rejected was on radio frequency exposure related to the school and that’s a fact.”*

To say that these comment strain belief is an understatement. That the Applicant would make this statement on the record in the face of the vast amount of substantial

evidence in opposition and to the contrary, speaks to the lack of respect that the Applicant has for the Board and this process. It should also be viewed as reflective of the Applicant's credibility, or lack thereof, with respect to their submissions as a whole. PCS, the main community-based opposition group has gone to great lengths and expense, to present as credible and substantial an opposition as possible based on legitimate grounds such as aesthetics, the absence of an actual need and that the proposal is not the least detrimental alternative. On the whole, very few public comments have been related to health and environmental concerns. Those few members of the public, who have expressed such concerns, have every right to do so in a free and democratic country. The Board has said from the very beginning that it cannot, and will not, consider such concerns in its decision-making process. Contrary to the Applicant's assertion here, even the very earliest public hearings brought comments with respect to the right-of-way issue, property values, business concerns, there being no actual need, and indeed the aesthetic impact.

With respect to the Secor site, the record is clear that there was no formal application before the Board to locate a tower at that site. Accordingly, there was no decision from the Board, and no reasons were given for why Secor was removed from consideration by the Village Board. At best, the Applicant engages in unfounded speculation with this comment, not unlike many aspects of their application as a whole.

#### ***Accusation Against Dr. Chris Marrison's Submissions***

**Video Part 1 @ 33:57** – In challenging the submissions of software engineering expert Dr. Chris Marrison, the Applicant accused Dr. Marrison of: “...*accusing the Applicants of fudging the Data.*”

This is an inaccurate claim. The basis for Dr. Marrison's submissions has been that without knowing the underlying software methodology, or inputs to the program, it is not possible to know the accuracy of the results. Dr. Marrison merely suggests that to lay this issue to rest, the Applicant could provide a clearer picture of the methodology and inputs used so that they could be independently verified. This submission is further supported both by the Philipstown Zoning Board's denial decision, where experts there raised the same issue, as well as federal court precedent in the *Celleo* decision referenced above. It should be noted that the Applicant remains unwilling to provide such methodology or input information.

#### **Variance is Required Under 7-736**

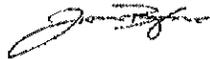
Case law supports a finding this plot cannot be used as desired by the Applicant without a variance to improve the plots access. As the access to the proposed site remains limited to that granted in a mere right-of-way for access only, any such improvement requires the consent of the owner of the land upon which the right-of-way is situated. See, *Matter of Seiden v. Zoning Board of Appeals of Village of Ossining*, 46 A.D.3d 694 (App. Div, 2<sup>nd</sup> Dep't, 2007). Thus, it is within the Planning Board's discretion to deny any variance for the proposed tower unless its conditions

for upgrading the right-of-way are met. Without the right-of-way owner's consent, such improvements cannot be made unilaterally by Applicant, and thus this application is not compliant with Section 7-736 of the New York Village Law, and may not be approved.

For all the reasons stated herein, and based on the substantial evidence on the record, PCS respectfully requests that the application for an information services wireless facility as proposed, be denied in its entirety.

Sincerely,

PCS



By: Jason Biafore \_\_\_\_\_

**EXHIBIT A**



Menkes Associates, LLC

Hank Menkes, President  
menkesassoc@gmail.com

December 21, 2017

Mr. Robert Dee, Chairman  
Phillipstown Zoning Board of Appeals  
238 Main Street  
P. O. Box 155  
Cold Spring, New York 10516

Re: Homeland Towers/Verizon Wireless application for a proposed cell tower at  
50 Vineyard Road, Phillipstown, NY

As requested, this letter provides a professional opinion relative to the justification for a proposed cell site and 140 foot tower at 50 Vineyard Road, Phillipstown, New York; and, if determined to be necessary, whether alternative sites may satisfy the coverage requirements for reliable in-building service in the areas identified by the applicants along Route 9 and Route 301.

To facilitate making these decisions, the predicted coverage plots from the various PierCon Solution RF reports were employed. The use of calibrated predictive, computer generated coverage plots is well established in the wireless industry so there is no reason to doubt the use of the supplied coverage plots for predicting the RF signal levels for this application. However RF coverage plots are not the only criteria in determining the real-world impact of a wireless network's performance.

Although there is correlation between RF signal strength and network performance, it is also true that if the RF signal strength is less than the service provider's targeted performance objective, it does not mean that calls or data sessions cannot be established or sustained. This was demonstrated by the evidence provided by the residents. Rather, it only means that the statistical success rate of those calls and data sessions is reduced. A more definitive measure of impaired coverage is the actual call performance records in the area of consideration. The user equipment generates this information, the network elements record this data, and all service providers utilize these records to determine the performance of their network. The Board requested the call performance data, but the applicants refused the request claiming that it was proprietary even though such information has been presented for other Verizon applications when it was to their benefit.

The signal strength plots for the existing Verizon network in Philipstown show reference signal received power (RSRP) at 700 MHz as less than -95 dBm along a northerly section of Route 9 and an area of Route 301 west of Route 9. However at -105 dBm, the in-vehicle target value, these same areas offer reliable service. This indicates that the RSRP values in the areas of reduced call quality range between -105 dBm and -95 dBm. This indicates completely reliable in-vehicle service for the claimed compromised areas. However the applicants, on this application, assert less reliable in-building service.

The applicant has indicated in their September 6, 2017 PlerCon RF report that the affected population in the area be considered in determining the impact of the purported less reliable coverage. Their RF report states that, according to the 2010 census report, there are 430 residents in the targeted area exclusive of the businesses along Route 9. The exact area is not explicit, but it will be assumed that it includes both the areas around Route 9 north of Route 301 and Route 301 west of Route 9. This is a relatively small population number to start, and it must be further adjusted to represent actual Verizon subscribers. According to the Pew Research center, as of November of 2016, 77% of all Americans owned a smart phone and an additional 18% owned a basic cell phone. Only smart phones can access LTE technology, the technology of focus for this application. Of the 77% who own a smart phone, 35.7% are Verizon subscribers. As a result, of the 430 people in the area of concern, and applying these nationwide averages to this limited area of Philipstown, approximately 119 people could potentially be Verizon subscribers. According to the applicants' report this number does not include the businesses along Route 9 with their employees and customers. Consequently an additional 25% will be added resulting in approximately 150 total potential Verizon in-building subscribers divided between the Route 9 and Route 301 areas. By any measure, erecting a new cell site and tower to serve an additional potential 150 subscribers is questionable and speaks to the numerical insignificance of the in-building coverage gaps.

Apart from the questionable need for a new cell site and tower, the Menkes Associates, LLC report of November 28, 2017 concluded that "Raising the antenna elevation to 190 feet and adjusting the antenna orientations at the McKeel's Corners site would improve the in-building coverage at 700 MHz along Route 301 west of Route 9; however a gap would remain along Route 9 north of Route 301. Conversely, the proposed tower at 50 Vineyard Road provides reliable in-building service at 700 MHz along Route 9, but leaves a larger portion of Route 301 without reliable service."

The applicants raised the possibility of erecting an additional tower in the Nelsonville area to address the remaining reduced in-building coverage along Route 301. However, the Philipstown Board has indicated that they do not have jurisdiction over the fate of the proposed Nelsonville tower and as such must consider the issues associated with the application at hand. Consequently, the existing McKeel's Corners site with a 190 foot tower is the better choice based on offered coverage. The applicants' RF engineer, Mr. A. Feehan, agrees with this conclusion as recorded in his November 30, 2017 RF report which states, "Based solely on the area of coverage provided by the two options, Mr. Menkes is correct in concluding that the existing site option is the better choice without Nelsonville."

In conclusion, the impact of the areas of reduced in-building coverage in the existing Verizon 700 MHz wireless network has been quantified using the applicants' methodology and numbers. The result is that for approximately 150 subscribers the applicants are proposing a new cell site and tower. As indicated above, the data submitted by Verizon when viewed in the context of the applicants' refusal to provide call performance data, and the lack of evidence from any resident establishing actual impaired or compromised in-building coverage representing a verifiable gap in coverage raises questions regarding the need for a new cell site and tower.

Prepared and submitted by:

A handwritten signature in cursive script, appearing to read "H. E. Menkes".

H. E. Menkes  
President



Menkes Associates, LLC

**Homeland Towers, LLC and Verizon Wireless  
Cell Site Application  
50 Vineyard Road, Phillipstown, NY**

**Radio Frequency Evaluation and Recommendations  
Relative to the Suitability of McKeel's Corners Cell Site**

November 28, 2017

## **Introduction**

At the request of the Zoning Board of Appeals for the Town of Philipstown, NY, Menkes Associates, LLC reviewed the Homeland Tower/Verizon Wireless "Supplemental Report Regarding the Existing McKeel's Corners Site" prepared by Mr. Adam Feehan of PierCon Solutions, dated November 13, 2017. The applicant generated this report in response to questions raised in the November 10, 2017 Menkes Associates, LLC report. The Menkes Associates report indicated that there was insufficient data presented in the earlier PierCon RF reports to form a definitive conclusion regarding the suitability of the existing McKeel's Corners cell site if the tower and antennas were elevated to 190 feet above ground level.

## **Comparison of Coverage Plots for McKeel's Corners Antenna Elevation Change**

At the November 13, 2017 Board meeting, the applicant's attorney indicated that they would be revising their application for the proposed tower at 50 Vineyard Road to include a 140 foot tower rather than the original 180 foot structure. Since there are no coverage plots for this revised tower height in any of the RF reports, the D1-D4 plots from the original PierCon report of September 6, 2017 showing coverage with a 150 foot tower will be used as the new comparison baseline for the proposed tower at Vineyard Road. The difference of 10 feet will not be significant for these comparisons; and, if anything, would pose a greater challenge for the McKeel's Corners site to prove viable. To be considered a viable alternative site, the coverage from the modified McKeel's Corners site must equal or exceed the coverage from the proposed Vineyard Road site.

As was stated in the earlier Menkes Associates, LLC report, it is important to understand that achieving reliable coverage at 2100MHz at a -95 dBm Reference Signal Receive Power (RSRP) level is a significant challenge in any environment because of the reduced signal propagation at this high frequency. It is particularly difficult with an irregular topography as in the Philipstown area. This can be seen in plot A3 for the existing network, and plot D3 for the composite coverage from the existing network and the proposed coverage from the site at 50 Vineyard Road in the September 6, 2017 PierCon RF report. Since Verizon appears to recognize and accept the reduced coverage at this frequency; reliable coverage at an in-building signal level of -95 dBm RSRP at 700 MHz will be given priority, for this report, over coverage at 2100 MHz in making judgement on the viability of an extended tower at McKeel's Corners. Furthermore, no modified plots at 2100 MHz were provided in the November 13, 2017 supplemental PierCon RF report.

Plot D1 from the September 6, 2017 PierCon RF report and plot A1 from the supplemental RF report of November 13, 2017, which represent the composite coverage at 700 MHz and -95 dBm, compare the performance of the proposed site at 50 Vineyard Road to the McKeel's Corners site with an antenna height of 190 feet, approximately 90 feet higher than the current antennas. The McKeel's Corners site leaves a gap along Route 9 north of Route 301. Increasing the antenna height to 210 feet and/or modifying the antenna down-tilts do not eliminate the gap, as shown in the remaining plots in the November 13, 2017 PierCon report. However the 150 foot tower at Vineyard Road leaves a gap along Route 301 west of Route 9.

The McKeel's Corners site, at the elevated antenna height of 190 feet, would partially mitigate this gap along Route 301.

Prioritizing the remaining coverage gaps on either Routes 9 or Route 301 is a challenge laden by speculation. In a case like this, potential opportunities (POPs) might have typically been considered in formulating a decision. POPs is analogous to the population in an area that would be offered wireless service. The fixed population densities along Routes 9 and 301 in the gap areas are both relatively small and when multiplied by Verizon's market share of approximately 37 percent, become even smaller. Consequently deciding the priority for coverage between the two remaining gaps is difficult.

### **Conclusions**

Menkes Associates, LLC examined the coverage performance of raising the tower height to 190 feet at McKeel's Corners, Philipstown, NY relative to Verizon's objective of alleviating coverage gaps along Route 9 north of Route 301, and Route 301 west of Route 9. The McKeel's Corners RF coverage analysis was performed by comparing its coverage to the coverage of the proposed tower at 50 Vineyard Road at a revised height of 150 feet. This analysis used the predictive computer generated coverage plots from the PierCon RF reports to compare the coverage for all cases.

Raising the antenna elevation to 190 feet and adjusting the antenna orientations at the McKeel's Corners site would improve the in-building coverage at 700 MHz along Route 301 west of Route 9; however a gap would remain along Route 9 north of Route 301. Conversely, the proposed tower at 50 Vineyard Road provides reliable in-building service at 700 MHz along Route 9, but leaves a larger portion of Route 301 without reliable service. The Homeland Towers' application for the Nelsonville site appears to be proposed to provide coverage along Route 301 and in additional areas west of the proposed Nelsonville site. If the Nelsonville cell site is erected, the proposed tower on Vineyard Road would be the better choice. Conversely, if the Nelsonville tower is not constructed, the McKeel's Corners site with a 190 foot tower is the better choice based on offered coverage.

Prepared and submitted by:



H. E. Menkes, President

**EXHIBIT B**

VILLAGE OF COLD SPRING  
HISTORIC DISTRICT REVIEW BOARD  
MONTHLY MEETING

WEDNESDAY, FEBRUARY 14, 2018 AT 8:00PM  
BUTTERFIELD LIBRARY, 10 MORRIS AVENUE, COLD SPRING

The Village of Cold Spring Historic District Review Board will hold its monthly meeting at 8:00pm on Wednesday, February 14, 2018. The agenda includes the following items; all items may not be called, or may not be called in order.

**\*\*times provided are estimates\*\***

**OLD BUSINESS**

- 8:00pm 66 Main Street (The General Store), Nationally-listed area of the Historic District
- a. SEQR classification
  - b. Façade and blade-mounted signage; removal of window AC unit and replacement of window glass
- 8:15pm Butterfield Redevelopment, Building 3 (Unicorn Contracting), Locally-listed area of the Historic District
- a. SEQR classification
  - b. Modification of entrance doors; roofline modifications: gables; headroom for elevator shaft, and cupola to accommodate cellular equipment

**NEW BUSINESS**

- 8:45pm Butterfield Redevelopment, Building 2 (Baxter Building Corp), Locally-listed area of the Historic District
- a. SEQR classification
  - b. Modification of west-side street level windows & doors to accommodate louver vents

**WORKSHOP**

- 9:10pm 126 Main Street (SCGY Properties), Nationally-listed area of Historic District
- a. Discussion of design options and materials specifications for redevelopment proposal
- 9:45pm 20 The Boulevard (the Kemble House), Nationally-listed area of the Historic District
- a. Discussion of design options for rehabilitation of structure
- 10:20pm: 2 Main Street (Hudson House), Nationally-listed area of the Historic District
- a. Discussion of design alternatives for rear addition

**BOARD BUSINESS**

- 10:45pm Status update: 35 Market Street (including correspondence)  
Escrow and invoice review/approval  
Discussion of Chapter 64 status  
Design Standards Update status  
Minutes

**EXHIBIT C**

# Wesley Hills, NY

## Project Overview

The Village of Wesley Hills in Rockland County, New York features Dutch-inspired architecture and countless opportunities to explore nature. While the views are breathtaking, the terrain makes it difficult for wireless carriers to provide a dependable wireless connection.

To help give residents more reliable access to the wireless services they depend on, we're proposing a new Small Cell Solutions (SCS) network. As the latest in wireless technology, SCS uses a series of nodes—connected by high-capacity fiber optic cable—supplementing the existing network and expanding coverage and capacity.

As a licensed Competitive Local Exchange Carrier (CLEC) in the state of New York, we are able to place small, inconspicuous nodes in the public right-of-way where other utility equipment is currently located—on utility poles and streetlights, for example. This minimizes redundant infrastructure and reduces the number of new facilities needed.

We embrace a shared model that accommodates multiple wireless carriers on our fiber-fed network—allowing us to maximize coverage and capacity with the least amount of infrastructure possible.

As we work through this process, we will continue working closely with the Village Board and local government officials to ensure that designs meet community standards.



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## DISTRIBUTED ANTENNA SYSTEMS

A DAS is a set of low-powered antennas installed across a geographic area and connected to a central location or power source by fiber. The technology is especially useful in areas where traditional towers aren't feasible — due to coverage issues (such as densely populated areas, rough terrain or in buildings), zoning challenges or other concerns. These voice and data systems — both indoors and outdoors — have supported a wide range of applications (cell phones, mobile radios, Wi-Fi, pagers) and frequency ranges (800 MHz up to 6 GHz).

SAC provides full turnkey self-performing DAS including RF engineering, IBwave design, managed Architecture and Engineering services, Construction services, Head-End Room BTS installation/ commissioning and system testing/optimization services. DAS are still a relatively new technology and selecting a quality installation company can be challenging. Wireless carriers have a tendency to hire the "elite" and consistently train these companies by giving them more knowledge and expertise than firms that are trying to break into the industry. As such, aside from SAC, there are only a handful of design-build companies that have gained traction in their DAS regional market, and demand will only continue to grow as wireless technology continues to gain global momentum.

SAC's certifications and experience with Mobile Access, Tyco and Andrew Systems among many others, have allowed it to customize and provide best-of-breed DAS solutions to boost network capacity and coverage based on building layout, traffic patterns, network infrastructure and other factors. The Company has performed extensive work in designing, building and maintaining DAS for tier one wireless carriers, higher education, hotels, office buildings and transportation venues across the country.

## SOLUTIONS

- 4G
- DAS
- FTTx
- SAC Engine Room™

## SERVICES

- Site Development
- Architecture & Engineering
- Construction Services
- Technical Services
- Program Management

## CAREERS

[Join our Team](#)  
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Watch SAC's presentation  
of the Merchandise Mart System  
Implementation Case Study

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(<https://harriscommunications.com>)

## What are Bi-Directional Amplifiers?

A Bi-Directional Amplifier (BDA) can be a very effective component of a distributed antenna system (DAS). A BDA allows cell phone users to access service in locations that are completely obstructed from a cell tower. These locations can include basements or tunnels, places with difficult terrain, and offices in a large building that face away from the signal source.

## How Does a Bi-Directional Amplifier Work?

When strategically placed in a building, the BDA receives the signal from an antenna which is located in an area unobstructed from the cell tower, such as on the roof of a building. After the BDA receives the signal, it then distributes the signal to places that would otherwise be unreachable. The BDA can increase, or amplify, the strength of a signal as it passes through, allowing the signal to stay strong even as it continues to travel further from the signal source.

innovative way to provide coverage and capacity to these areas without creating the need for new tall structures is to co-locate a group of wireless antennas onto existing shorter structures. Existing utility poles serve as the perfect location to build a wireless Outdoor Distributed Antenna System, also known as ODAS.

Maser Consulting recently completed a project like this in Suffolk County, NY. Our professionals designed and evaluated a large group of existing utility poles to support an ODAS design to enhance coverage and capacity to an existing densely populated residential area for wireless coverage without the need to construct new structures. The project lasted approximately two months and overcame multiple challenges including mapping existing utility poles; evaluating the capacity, location, and utility coordination for each pole to support the antennas; and associated control equipment. Now that the system is successfully up and running, the residents are supported by the coverage and capacity they need, without noticing the source.

**Maser Consulting P.A.**

Engineers Planners Surveyors Landscape Architects Environmental Scientists

Corporate Headquarters: 331 Newman Springs Road, Suite 203, Red Bank, NJ 07701 Toll Free: 877.627.3772 ALL OFFICE LOCATIONS

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**EXHIBIT T.**

**Letter from Philipstown Cell Solutions dated April 16,  
2018.**



Honorable Chairman William Rice,  
Special Counsel Todd Steckler,  
Nelsonville Zoning Board of Appeals, and  
Planning Board  
Village of Nelsonville  
258 Main Street  
Nelsonville, NY 10516

April 16, 2018

RE: Application by Homeland Towers, LLC for a Special Use Permit to Construct a  
Telecommunications Facility at 15 Rockledge Rd., Nelsonville, NY

Dear Honorable Chairman Rice,  
Special Counsel Todd Steckler,  
Members of the Zoning Board of Appeals, and  
Planning Board

Philipstown Cell Solutions (hereinafter "PCS") submits the following in reply to: the March 5, 2018 Alternate Design Application submitted by Robert Gaudio of Snyder & Snyder, LLP, as attorneys for Homeland Towers LLC, and New York SMSA Limited Partnership d/b/a Verizon Wireless (hereinafter referred to as "Homeland", "Verizon" or the "Applicant" individually, or the "Applicants" collectively); the February 20, 2018 letter submitted on behalf of New Cingular Wireless PCS LLC (hereinafter "AT&T", the "Applicant" or the "Applicants") by Cuddy & Feder LLP; the March 9, 2018 Technical Memo re: Alternate Designs, submitted by AKRF consultants; the February 16, 2018 letter submitted by the Village's consulting engineer Ronald Graiff, P.E.; the March 26, 2018 Alternate Towers Photos Memo submitted by Snyder & Snyder, LLP; the March 30, 2018 AKRF Technical Memo; the March 27, 2018 letter sent from the Nelsonville Zoning Board of Appeals (hereinafter the "Board") to the New York State Historic Preservation Office (hereinafter "SHPO"); and, all supplemental and supporting documentation contained therein.

### **Preliminary Statement**

PCS submits the following in opposition to the proposed alternate tower designs put forth by the Applicants in their recent submissions, as well as in contemplation of additional alternatives raised within the course of the instant proceeding so far as they impact said proposed design alternatives. The following should not be viewed as an admission by PCS that the Applicant has established and demonstrated the requisite need for the proposed facility as required in the Nelsonville Zoning Code (hereinafter the "Code") or under federal law. Rather, PCS maintains that the Applicants have failed in their burden to demonstrate

such an actual need, and the following should be read as to support an argument in the alternative. Should the Board find the Applicants have established said need, which PCS does not admit but in fact denies, the following submission supports a finding that the Applicants have failed in their burden to reduce the negative aesthetic and/or visual impact of the proposed design alternatives upon identified historic and/or scenic resources to the requisite level of insignificance.

Whereupon the following submission discusses matters presumed to be outside the scope of the review of the proposed alternate designs, such discussion should in the interests of justice be duly considered by the Board as a proper exercise of its discretion and mandate and viewed as relevant to the alternative design discussion and incorporated into the record as such. Such consideration is allowed, and in fact encouraged under existing law and the Board's mandate.<sup>1</sup>

Further, some submissions made by the Applicants subsequent to the close of the public hearing on matters outside the review of the alternate designs, have been inaccurate, argumentative and contradictory, and PCS merely seeks to correct the record on these points, and shall limit any such discussion to issues as they impact the proposed design alternatives. PCS does not intend to re-canvass broad issues previously discussed and refrains from doing so herein.

### **The Applicants' Proposed Design Alternatives**

In response to concerns raised by PCS and its scenic resource consultant-experts, the Board and the community at large, the Applicants have proposed a number of tower design alternatives including: 1) a single 110 foot flagpole; 2) a 125 foot obelisk; 3) two 110 foot flagpoles; and, 4) a single 120 foot flagpole. PCS opposes each of these design alternatives and submits that none of these proposed design alternatives meet the requisite standard under the Code to minimize the negative impact on historic and/or scenic resources to a level of insignificance. Further, these designs violate the conditions required under the Code in various respects, and have been determined by SHPO to have an "Adverse Effect" upon nearby "historic receptors" in their March 14, 2018 correspondence. As the record shows, all proposals with the exception of a 110 foot flagpole have, in fact, been verbally dismissed and described as "off the table" by the Applicants before the Board at the April 4, 2018 public hearing (hereinafter the "4/4 hearing"). Although they are seemingly no longer being

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<sup>1</sup> See, *Kenyon v. Quinones*, 43 A.D.2d 125, (App. Div., 4th, 1973). "... many Zoning Board hearings consist of a miscellany of hearsay, opinion, fact and conjecture, with the testimony unsworn and informality quite prevalent, and such factors do not destroy the validity of the proceedings (2 Anderson, N. Y. Zoning Law and Practice [2d ed.], § 20.14, p. 143; *Matter of Von Kohorn v. Morrell*, 9 N Y 2d 27, 32; *People ex rel. Fordham Manor Ref. Church v. Walsh*, 244 N. Y. 280, 287). The statements of witnesses need not be reported verbatim and may be in narrative form (*Matter of Hunter v. Board of Appeals of Vil. of Saddle Rock*, 4 A D 2d 961) and ***the Zoning Board of Appeals is not bound by rules of evidence*** (2 Anderson, § 20.14, supra). (Emphasis added).

See also, *New York State Department of State, Zoning Board of Appeals Manual, ZBAM [2015]*, page 31: "It is the function of the board of zoning appeals to listen to and ***consider all evidence that may bear upon the issue it is deciding.***" (Emphasis added).

considered, the Applicant's last written submission included all of the alternate designs. PCS therefore submits the following in further opposition to all proposed design alternatives.

1) ONE 110 FOOT FLAGPOLE

PCS submits that the Applicants' alternate proposal of a single 110 foot flagpole should be rejected by the Board for a number of reasons. First, this late proposal has been put before the Board in the absence of any substantial evidence supporting its feasibility and in direct contradiction to statements made by the Applicants and their experts on the record. Second, the proposal remains discordant with the natural setting and its negative visual impact has not been reduced to a level of insignificance as required by the Code. Further, and as is more fully detailed in the final section of this submission, the single 110 foot flagpole design alternative will become an anomalous feature in the landscape amounting to little more than a discordant eyesore, and will serve to establish a dangerous precedent making it difficult for this community and many others within the Hudson River SASS region to have much control over future telecommunications tower siting. PCS further submits that this alternate proposal should be rejected by the Board on the basis of the arguments and case law contained in our April 4, 2018 Memorandum on Alternate Design Proposal, which we incorporate and make a part hereof.

The Board should consider that the bulk of the substantial evidence on the record supports a finding that a single 110 foot flagpole is not capable of the co-location requirement under the Code. Indeed, the Applicant and its RF engineering experts have stated repeatedly on the record that a single 110 flagpole is not a viable option for this application. In addition, the Applicants' counsel stated with much emphasis and vociferousness at the February 27, 2018 public hearing (hereinafter the "2/27 hearing), that this alternate design was not practicable. Consider the following statements:

"We can't comply with that [co-location] provision with one flagpole at 110 feet ... because the reality is, there's four carriers out there. Okay. We can put our blinders on, but you're not the Planning Board. You're the Zoning Board, your Code has a specific provision to take into account two more carriers." - Robert Gaudioso, Snyder & Snyder, LLP, Counsel for the Applicant, before the Nelsonville Zoning Board of Appeals, 2/27/18, @ 42:00.

"So at 110 feet, if you have Verizon at 110 to 100, and then AT&T at 100 to 90, the next two slots are from 90 to 80, and then from 80 to 70. 80 to 70 is definitely not going to work. 90 to 80 is most likely not gonna work. Okay. And we can speculate. You can say that's speculation, but that's the reality, and we know that because we're in the business. So what we offered was to actually spend more money and build two towers." Robert Gaudioso, Snyder & Snyder, LLP, Counsel for the Applicant, before the Nelsonville Zoning Board of Appeals, 2/27/18, @ 42:27.

Consider also, the submissions made by the Applicants' own RF consultant regarding co-locating four carriers on a 110 foot pole:

"In regard to the potential for AT&T using one level of a potential 'flagpole' style facility, AT&T would require at least two levels and ten ("10") feet of separation

for its antenna arrays. While an installation at one level may be technically possible ... such a configuration imposes significant limitations for operation, maintenance and optimization ... While the engineering may be feasible, it is far from optimal in this case and in fact involves significant compromises that will impact the ability of the site to provide reliable service now and in the long-term.” Daniel Penesso, RF Consultant for Applicant AT&T, February 20, 2018 Letter to the Board.

“The flagpole design ... places a large amount of equipment in an extremely tight space. Since the amount of extra space is limited, it is very difficult to modify the equipment after it has been installed ... This causes the site to not function as optimally as it should ... If a flagpole design was to be used in this area, certain criteria would need to be met to accomplish the goals of remedying the significant gap in coverage. ... In summary, in order for a flagpole design to work, two flagpoles at 110’ would be needed...” Adam Feehan, RF Consultant for Applicant Verizon, February 5, 2018 Letter to the Board.

Accordingly, up until the 4/4 hearing before the Board, the Applicants, supported by submissions of their RF consultant experts and exclamations by their legal counsel, maintained that a single 110 foot flagpole was not a viable design option. These submissions are part of the record and form the basis of the Applicants’ substantial evidence on this issue. In a sudden and unexplained about-face, however, the Applicants appeared before the Board at the 4/4 hearing to state the opposite. Consider the contradictory statements made by Applicants’ counsel:

“We went back to the engineers and we added the single 110 foot flagpole ... and the single 110 foot flagpole can be designed and will be designed to support four co-locators ...” - Robert Gaudio, Snyder & Snyder, LLP, Counsel for the Applicant, before the Nelsonville Zoning Board of Appeals, 4/4/18, @ 18:00.

“We can make the one flagpole work. I’m not really sure what the benefit of the two flagpoles is.” Robert Gaudio, Snyder & Snyder, LLP, Counsel for the Applicant, before the Nelsonville Zoning Board of Appeals, 2/27/18, @ 26:20.

These statements are in direct contradiction to those made previously by the Applicant and are unsupported by any substantial evidence. Indeed, the Applicant has failed to offer any explanation from their RF consultants to illuminate how their prior submissions on this issue were incorrect. All the Board has before it are the vague and conclusory statements made by the Applicants’ counsel. Counsel for the Applicant has made multiple contradictory claims throughout this proceeding, many unsupported by substantial evidence or legal authority of any kind, the Board must view the Applicants’ last minute and unsupported proposal for a single 110 foot flagpole with the utmost scrutiny and suspicion. Indeed, it would seem from a complete review of the record that perhaps the Applicant is satisfied to secure approval of a single 110 foot flagpole rather than face rejection of all of its design proposals, with the knowledge that in time they will return before the Board to exclaim an actual need for a second flagpole at 110 feet, which they had previously maintained is the only viable flagpole design at this height. Statements made by Applicants’ counsel before the Board at the 4/4 hearing support such a finding:

“ We could also build the one flagpole at 110 feet and reserve space inside the compound that if in the future you were faced with the dilemma that you had to

approve a second flagpole, we would lay out the compound to account for that.” Robert Gaudio, Snyder & Snyder, LLP, Counsel for the Applicant, before the Nelsonville Zoning Board of Appeals, 4/4/18, @ 26:40.

“A second flagpole could be built at a later date.” Robert Gaudio, Snyder & Snyder, LLP, Counsel for the Applicant, before the Nelsonville Zoning Board of Appeals, 4/4/18, @ 27:08.<sup>2</sup>

In addition to scrutinizing the Applicants’ vague and contradictory submissions regarding the single 110 foot flagpole design, the Board should also consider the negative visual impact that even this design will have on the scenic and historic resources in the vicinity and beyond. Even if the Board considers that this design alternative has the “least negative visual impact” of all the designs proposed by the Applicant, it still remains that this design imposes a negative visual impact that has not been reduced to insignificance as required under the Code.

As one expert explained: the “landscape is a unified environment with the treeline creating a horizontal line in the sky. Each of these [alternate design proposals] stands significantly above the existing treeline.” See, April 16, 2018 Letter Submitted by Landscape Architect Erin Muir, Attached at Exhibit ‘A’. Further, “none of the proposed alternatives serve to reduce the visual impact of the proposed artificial structure within the Rural Cemetery/surrounding landscape.” See, April 15, 2018 SUNY Report, Submitted by Dr. Robin Hoffman and Mr. Connor Neville Directly to the Board. Most significantly, as the SUNY expert explains: “the constraints which determine the visual and aesthetic impact of a proposed structure are foundationally based upon the context into which the structure is to be placed, not based solely upon the tower’s ability to camouflage or by the façade design itself.” *Ibid.* As was implied on the record by the Planning Board Member at the 4/4 hearing, flagpoles are not typically found in the woods, and thus the discordancy of and intrusiveness of the flagpole design may in fact remain as significant, if not more so, than the original monopine design itself.

Finally, Applicants’ counsel stated on the record at the 4/4 hearing that if the alternate design proposals do not meet the standard under the Code for reducing the visual impact to a level of insignificance, then “it’s an impossible standard to meet.” (Robert Gaudio, Snyder & Snyder, LLP, Counsel for the Applicant, before the Nelsonville Zoning Board of Appeals, 4/4/18, @ 32:30). PCS submits that just because the Applicant has failed to meet its burden with respect to its design proposals, does not mean that the burden itself is incapable of being met. The Board should consider, for example, the cell facility design which has been incorporated into the redesigned Butterfield Project cupola. PCS has attached an attorney Affirmation herein which includes those design plans. A review of that design, and others like it, shows that such visually insignificant designs are in fact possible. Anyone viewing the Butterfield Project cupola, from near or far, would have no idea that it housed a cell phone telecommunications facility. Clearly, designs that reduce visual impact to a level of insignificance exist, just not among those proposed by the Applicant.

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<sup>2</sup> An interesting and ironic point to note in reviewing the video of the 4/4/ hearing at this juncture, is that the Chairman of the Planning Board’s cell phone appears to ring at around the 27:00 mark in spite of the fact that the Haldane Auditorium is located in the heart of the purported gap in in-building coverage that the Applicant has claimed as supporting their need for the proposed facility.

## 2) THE 125 FOOT OBELISK

PCS submits that the 125 foot obelisk alternative design should be rejected by the Board for a number of reasons. First, at a proposed height of 125 feet, it is the most imposing of all designs yet submitted by the applicant, the most discordant with the natural features and scenic resources in the immediate vicinity and from within the wider SASS region as a whole, as well as the most non-conforming design with respect to the height limitations under the Code and the general provision therein that any telecommunications tower's impact on historic and/or scenic resources be reduced to a level of insignificance. Indeed, where the issues of concern raised by the community and the Board alike have largely pertained to the original design's prominence and visual impact on those resources, it is mystifying that the Applicants would propose a design alternative that imposes an even greater visual impact, not a less significant one. The obelisk design thus imposes a visual impact that is of greater significance than the original design and further fails to reduce that impact to a level of insignificance as required under the Code.

As recently noted by some residents in our community, unfortunately the obelisk has come to stand as a symbol of racism, white supremacy and the Confederate States' fight to preserve slavery and commemorate that fight against the northern states in the Civil War. Indeed, the obelisk has recently been associated with these dark chapters of our nation's past, and communities across the country have increasingly issued calls for such monuments to be dismantled and removed. (See, News Articles Describing Fights to Remove Confederate Obelisk Monuments, Attached at Exhibit 'B'). Our research indicates that nearly one third of all Confederate monuments built following the Civil War took the form of obelisks, and approximately half of those monuments were erected in cemeteries.<sup>3</sup> These controversial monuments were not exclusively erected in the more sympathetic areas of the southern states, but have rather been found across the country and indeed even in close proximity to the site of the proposed tower in this application.<sup>4</sup>

It is not an unknown fact that sadly, this very community had an active and prominent Ku Klux Klan membership well into the 20<sup>th</sup> Century. (See, Copy of the August 25, 2017 Highlands Current Article on Local KKK Activity, Attached at Exhibit 'C'). In fact, there are reports of active KKK activity in Cold Spring and Nelsonville until at least the 1950s,<sup>5</sup> with some reports even indicating activity into the 1970s.<sup>6</sup> With such a disturbing part of our local history on the minds of many in this community, and in the midst of the broader national conversation to reconsider the symbolism and impact of monuments such as the obelisk and the evil and discord they represent, that such a monument stands on the verge of approval in this application should shock our collective conscience. We were not aware of the dark symbolism that is entwined with the obelisk when its design for this application was

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<sup>3</sup> See, Widener, Ralph W., Confederate Monuments: Enduring Symbols of the South and the War Between the States, Andromeda Associates, 1982.

<sup>4</sup> See, <https://www.lohud.com/story/news/2017/08/18/confederate-veterans-cemetery-monument-hastings-on-hudson-greenburgh-draws-concerns/575772001/>

<sup>5</sup> See, Burton, Leonora, Lament of an Expat: How I Discovered America and Tried to Mend It, AuthorHouse, 2013.

<sup>6</sup> See, [http://www.kimandreggie.com/steal\\_cd.htm](http://www.kimandreggie.com/steal_cd.htm)

conceived, and further that it stood to stir memories of a troubled past in our own community. Unfortunately, we have heard from our community members that this is precisely what this design alternative, however well-intentioned, has inadvertently achieved, and for that reason alone it must be rejected with prejudice by the Board.

### 3) TWO 110 FOOT FLAGPOLES

Pursuant to §188-68.A.(11)(d), the Applicants are required to site the proposed tower in such a manner as to “minimize the total number of towers ... to the extent possible within the limits of technology and economic feasibility.” Pursuant to §188-71.D.(3), the Applicants are further required to site the proposed tower in such a manner as to ensure that it “shall not be placed closer than 500 feet to any existing commercial communications tower.” On its face, the Applicants’ proposed design alternative to construct two 110 foot flagpoles at the proposed location is in conflict with the requirements under these sections of the Code. PCS submits that for this reason alone, rejection of this proposal is warranted. Denial of this proposal is further supported by the Applicant themselves having stated on the record that “...we can make the one (110 foot) flagpole work. I’m not really sure what the benefit of two flagpoles is.” (Robert Gaudio, counsel for the Applicants @ 26:20 of the April 4, 2018 public hearing -

<https://drive.google.com/file/d/1ndGnytKqg6yhQM8CcHATS0u2nR87kw30/view>).

Accordingly, even the Applicant has conceded on the record that given the primacy of the aesthetic concerns raised in this application, the two flagpole alternative is far from an optimal design and does not merit serious consideration.

Namely, case law supports a finding that where aesthetic concerns are paramount, as with the instant application, even “stealth” flagpole designs may be properly rejected by a Board where not “architecturally compatible with the surrounding area and ... not sufficiently screened from view.” See, *Cellular South Real Estate, Inc. v. City of Mobile*, 2016, U.S. Dist. LEXIS, 88444. PCS submits that the two flagpole design alternative will inherently be more visible, constitutes a higher level of intrusiveness than any single tower design and compounds the significance of the negative visual impact and thus must be rejected by the Board.

### 4) ONE 120 FOOT FLAGPOLE

Pursuant to §188-71.D.(6), the Applicants are required to construct the proposed tower in such a manner as to ensure the “maximum height ... is 110 feet above ground elevation. In all cases, the permissible height is measured from ground elevation to the top of any antenna projecting above the top of the tower.” On its face, the Applicants’ proposed design alternative to construct one 120 foot flagpole at the proposed location is in conflict with the requirements under this section of the Code. PCS submits that for this reason alone, rejection of this proposal is warranted. Further, the Code clearly requires that the maximum permissible height is measured from the ground level to the top of *any* antenna projecting above the top of the tower, including any “whip” antenna to accommodate emergency services or other such communications capability. That the Applicants have suggested any

such emergency “whip” antenna would be added *to* a 120 foot flagpole tower, compounds the violation of this Code provision. Accordingly, the Board must reject this design alternative.

In addition to being violative of the Code, the single 120 foot flagpole alternative has effectively been rejected by SHPO, given the conditions found in its March 14, 2018 letter, stating that any tower design at this location must be capped at 110 feet to not result in an “Adverse Effect” finding. Accordingly, the Board must also reject this design alternative. Denial of this proposal is further supported by the Applicant themselves having stated on the record that “the 120 foot flagpole in our opinion is no longer feasible based on SHPO’s opposition.” (Robert Gaudioso, counsel for the Applicants @ 15:20 of the April 4, 2018 public hearing -

<https://drive.google.com/file/d/1ndGnytKqg6yhQM8CcHATS0u2nR87kw30/view>).

Accordingly, even the Applicant has conceded on the record that given the primacy of the aesthetic concerns raised in this application, the single 120 foot flagpole alternative does not merit further consideration.

PCS further submits that this alternate proposal should be rejected by the Board on the basis of the arguments contained in our April 4, 2018 Memorandum on Alternate Design Proposal, which we incorporate and make a part hereto. Namely, case law supports a finding that where aesthetic concerns are paramount, as with the instant application, even “stealth” flagpole designs may be properly rejected by a Board where not “architecturally compatible with the surrounding area and ... not sufficiently screened from view.” See, *Cellular South Real Estate, Inc. v. City of Mobile*, 2016, U.S. Dist. LEXIS, 88444. PCS submits that the single 120 foot flagpole design alternative will inherently be more visible, constitutes a higher level of intrusiveness than the original tower design and compounds the significance of the negative visual impact and thus must be rejected by the Board.

## 5) CONCLUSION

As representatives of our community, we’ve spent the last few weeks canvassing our neighbors about these alternate designs. Overwhelmingly, the designs have met as much resistance as the original monopine proposal. Any looming structure at 110 feet would destroy the sanctity and beauty of this historic cemetery, and destroy this important view shed forever. PCS strenuously urges the Board to listen to the overwhelming collective voice of this community, supported by this opposition and the substantial evidence therein, and to deny the alternate design proposals on the Rock Ledge location.

### **Other Alternatives Not Pursued in Good Faith by the Applicant**

PCS submits that there remain a number of other alternate designs and locations that the Applicant has failed to pursue in good faith. These alternatives remain viable and would be fully compliant with the Code where applicable. PCS submits that a proper and good faith evaluation of these alternate designs and sites would eliminate the purported need for the subject facility and/or reduce any negative visual impact on cultural, historic and/or scenic

resources to the requisite level of insignificance as applicable, and in all respects would be preferable alternatives to those proposed by the Applicants.

#### 1) The Butterfield Project Site

PCS made various submissions regarding the Butterfield project site (hereinafter the “Project”) as an alternative location for the proposed facility in its February 20, 2018 Memorandum in Opposition. Principally, it was submitted that the Applicant had made a number of statements and submissions on the record indicating that the need for the proposed facility at Rockledge Road was directly the result of the loss of the cell phone telecommunications facility at the decommissioned Butterfield Hospital site. At the February 27, 2018 public hearing (hereinafter the “2/27 hearing”), the Applicants made various statements in reply to these submissions. PCS submits that the bulk of these statements made by the Applicant were inaccurate, contradictory, or argumentative and raise serious questions regarding the credibility of the Applicants and the veracity of their entire application, including with regard to its latest submissions on proposed design alternatives.

To their credit, at the 2/27 hearing, the Board pressed the Applicants’ legal counsel, Robert Gaudioso, on the issue of potentially siting the proposed facility, or a facility in general, at the Project site. In response, counsel for the Applicant became argumentative and stated:

“...this is the exact purpose of the ‘Shot Clock’ ... to not allow things to go on forever ... We’re not going to go on a wild goose chase over this issue. If the issue is that you think somehow the cupola will work, and it’s somehow not speculative, we’ll take a decision today on that basis. We are willing to talk to you about the alternative analysis and what we can do as far as the visuals and with respect to design ... we’re happy to go through the items we submitted as far as the designs and go in that direction.” - Robert Gaudioso, Snyder & Snyder, LLP, Counsel for the Applicant, before the Nelsonville Zoning Board of Appeals, 2/27/18, @ 28:08.

Thus, rather than engage in a sincere and good faith conversation on the merits of the Project alternative, the Applicant chose instead to threaten enforcement of the ‘Shot Clock’ and intimidate the Board, making it clear that there was no interest on the part of the Applicant in even discussing design or location alternatives other than those of its own choosing.

It should also be noted that the federal ‘Shot Clock’ provision is not in fact meant to prevent things from going “on forever”, but rather to prevent a local zoning board from engaging in *unreasonable* delay. Can raising a legitimate and viable alternative, that the Applicants’ themselves had indicated in submissions to the Board had formed the basis of the application itself, truly be considered unreasonable? It should be noted that at the 2/27 hearing the Board’s own RF consultant suggested that consideration of the Project site might warrant further inquiry when he stated, “you talked about potential alternate siting that may warrant further study, you talked about Butterfield.” – Ron Graiff, Village RF Consultant, before the Nelsonville Zoning Board of Appeals, 2/27/18 @ 31:25. Therefore, the Board’s sincere inquiry into the Project site is not unreasonable and should not be viewed as a basis to merit imposition of the ‘Shot Clock’.

In addition to becoming argumentative in response to the Board's raising the Project alternative, the Applicant also made a number of contradictory statements that warrant closer scrutiny. For example, with respect to the impact of the loss of the Butterfield Hospital site on the purported need for the subject facility, counsel for the Applicant made the following statements:

"Butterfield is not the solution that's going to solve Nelsonville." - Robert Gaudioso, Snyder & Snyder, LLP, Counsel for the Applicant, before the Nelsonville Zoning Board of Appeals, 2/27/18, @ 37:08.

"It was a nice little site for AT&T for a while to provide some downtown service. But it's not going to provide the service throughout the area." Robert Gaudioso, Snyder & Snyder, LLP, Counsel for the Applicant, before the Nelsonville Zoning Board of Appeals, 2/27/18, @ 37:10.

"Butterfield was covering a little small area, and this is going to cover the full village." Robert Gaudioso, Snyder & Snyder, LLP, Counsel for the Applicant, before the Nelsonville Zoning Board of Appeals, 2/27/18, @ 37:45.

"If you read the opposition quotes ... never once in any of the quotes, even the quotes cited by PCS, does it say that Butterfield, that the coverage from this facility was going to duplicate Butterfield. Never once did it say that." - Robert Gaudioso, Snyder & Snyder, LLP, Counsel for the Applicant, before the Nelsonville Zoning Board of Appeals, 2/27/18, @ 26:15.

"If you look at, again, even PCS' 'hand-picked' quotes, never once does it say ... that the coverage from Rockledge will duplicate Butterfield's coverage. It never says that. Never once. Not even close." Robert Gaudioso, Snyder & Snyder, LLP, Counsel for the Applicant, before the Nelsonville Zoning Board of Appeals, 2/27/18, @ 37:30.

First, in response to the Applicants' implication that PCS somehow selectively "hand-picked" quotes from the record in an effort to mislead the Board or not offer a complete picture of this issue, it must be said that the only thing selective about the quotes the Applicant is referring to, is that each and every quote that could be found in the record going back to the initial application on this issue was selected for presentation to the Board. PCS welcomes the Applicant to point to other quotes or submissions that they may have made to the Board in the course of this proceeding that indicate anything other than what the quotes in question clearly state: that the basis for the instant application was the loss of the Butterfield Hospital cell phone telecommunication facility, and that the proposed site at Rockledge will offer similar coverage to that which was lost as a result of the decommissioning of the Butterfield Hospital site.

Second, the various statements made by the Applicant that the former Butterfield site was a "nice little" facility offering some "downtown coverage," stand in stark contrast to the statements made by the Applicant and their RF engineering consultants on the record in support of the instant application and as justification for the actual need requirement under the Code for the proposed facility. One such statement in particular, quoted in PCS' previously-noted memorandum, bears reconsideration. In the initial application, the Applicants' RF consultant stated:

“Based upon these tests, a propagation map illustrating **AT&T’s coverage without its equipment at the Hospital Facility** is attached as Exhibit 1. As the propagation map in Exhibit 1 clearly demonstrates, **there is a significant gap in service** in the portion of the Village in the vicinity of the Site and the surrounding areas **without the Hospital Facility.**” – Daniel Penesso, RF Consultant for Applicant AT&T. (See, Copy of Propagation Map, Attached at Exhibit ‘D’).

A review of this propagation map clearly shows that the Applicant was claiming at the outset of this Application that the loss of the old Butterfield Hospital site resulted in a wide area of coverage loss. Certainly, these submissions by the Applicant indicate that the coverage lost was not limited to a “nice little” area of “some downtown” coverage that the Applicant would now contradictorily have us believe. If the coverage loss was in fact so minimal and insignificant as the Applicant exclaimed vociferously at the 2/27 hearing, why was the opposite stated to be the case at the outset of this application and throughout the proceeding up until the moment such a position became inconvenient to the Applicant? If in fact the coverage loss and resulting coverage gap from the defunct Butterfield Hospital site had been so minimal, the Applicant would never have mentioned it as forming the basis for the instant application as it would not have justified the requisite need under the Code and federal law. In fact, the Applicant has made no mention throughout this proceeding of any other cause for the coverage gap that now purportedly exists other than the loss of the Butterfield Hospital site. Yet now when challenged on this issue, the Applicant reverses course and effectively attempts to argue that the former cell site at the Butterfield Hospital was of little significance, in spite of the record showing clearly the repeated and emphatic statements of the Applicant to the contrary. This conduct shows clear enough that at best this application has been a moving target, that the Applicants and their submissions are not credible and that the Applicants have not acted in good faith throughout this proceeding.

The Applicant was correct, however, to state that no quote could be found in the record that indicated the coverage at Rockledge would “duplicate” that of the previous Butterfield Hospital site. The Applicant engages in hyperbole, however, to state that nothing in the record even “came close.” Consider for example the assertion by the Applicant’s RF consultant that the: “15 Rockledge Road Facility will allow AT&T to provide reliable wireless service in the Target Area, *similar to that provided* by AT&T’s installation on the Hospital Facility *and thus work in conjunction* with AT&T’s existing network.”– Daniel Penesso, RF Consultant for Applicant AT&T, initial RF Analysis Report. While this statement fails to use the word “duplicate,” it certainly gives the impression that the proposed facility will offer sufficient coverage to effectively accomplish the Applicants’ service goals as were being achieved with the previous Butterfield facility. When one considers this statement in conjunction with the previous noted statements made by the Applicant concerning the need for the new facility being the result of the loss of Butterfield, the only reasonable interpretation can be that essentially the same level of coverage as was had before will be achieved with the proposed facility. PCS welcomes the Applicant to clarify these statements if there is a more reasonable interpretation to be had, and if this was not in fact the interpretation that they sought to put before the Board. Again, that the Applicant chooses to disingenuously engage in contradiction on these points shows their contempt for the Board and this process, and their application as a whole must be viewed in this light.

Finally, in an effort to dismissively brush the whole issue of potentially siting a telecommunications facility at the Project site aside, counsel for the Applicant suggested at the 2/27 hearing that any reference to the site was hearsay and not properly before the Board. Interestingly, counsel for the Applicant then proceeded to engage in lengthy statements pertaining to conversations and actions undertaken by third parties that were in themselves properly considered hearsay. Regardless, as is indicated above, zoning boards of appeal are not bound by the rules of evidence, and a Board's consideration of hearsay evidence does not "destroy the validity of the proceedings." *Supra*. Further, as indicated herein, a board's function is to properly listen to and consider all the evidence that might bear upon the matter before it. Accordingly, attached to this memorandum is an attorney Affirmation prepared by the undersigned as a witness statement to the Cold Spring Historic District Review Board (hereinafter "HDRB") public meeting on February 14, 2018, wherein the proposal to revert the Project plans to accommodate a cell phone telecommunications facility was discussed and approved. (See, Attorney Affirmation, Attached at Exhibit 'E'). In addition, draft minutes of said meeting are also attached, indicating same. (See, Draft HDRB Minutes from February 14, 2018 Public Meeting, Attached at Exhibit 'F').

As is detailed in the Affirmation, the discussion between the HDRB members and the Project developer's agents surrounded the redesign of the Project's Building 3 cupola to accommodate two wireless telecommunications carriers as a result of the developer having been approached by same, and that according to the developer's agents the cell facility was "back in play." Further, the Affirmation discusses the developer's agents explaining the anticipated construction schedule of the project, and includes photographs of the Project site that support these claims. Accordingly, PCS submits that contrary to the Applicants' unsupported and conclusory statements on this issue, the Project site remains a viable and available alternate location for siting the proposed facility.

It should be further noted that the Applicant has failed to provide any documentation or substantiation of its claims that it had attempted to negotiate an arrangement with the Project developer to locate a cell facility there. The Board should note that in almost every other potential location that the Applicant investigated, some statement was provided in the form of various "Alternate Site Analyses" submitted throughout the course of this proceeding. Yet no mention was ever made by the Applicant of any investigation into the Project site until PCS raised its potential viability in the February 20, 2018 filing. In response, rather than engage in a good faith effort and/or provide the documentation and substantiation as provided with other locations, the Applicant merely resorted to defensive, dismissive and argumentative statements before the Board at the 2/27 hearing. PCS submits that the Applicant's record for credibility and veracity is sufficiently suspect that an adverse inference should be drawn from the Applicant's evasiveness with respect to legitimately pursuing the Project site.

## 2) CHURCH STEEPLES AND OTHER TALL STRUCTURES

Given that the Applicant has come forward with alternate design proposals that require the housing of telecommunications antenna within exceptionally narrow confines (i.e., 3 foot diameter flagpoles) a reconsideration of area church steeples and other tall structures should be undertaken. For example, the principal objection by the Applicant to area church steeples, most notably the Cold Spring Baptist Church, was the narrow confines of such structures.

Indeed, the Cold Spring Baptist Church was rejected in part, in spite of the willingness of the Pastor there to lease to the Applicant, due to the four foot diameter of its steeple. Yet, the Applicant seems perfectly willing now to house a cell phone telecommunications facility in an even narrower space. Thus, PCS submits that in light of the foregoing and the tendency of the Applicant to engage in unsupported, vague and conclusory assertions on issues it is not interested in pursuing, the Board should insist upon a re-evaluation of the viability of church steeples and other tall structures in the area.

### **The Inappropriateness of the Flagpole Design and Impact of Approval**

PCS submits that the proposed flagpole design alternatives are highly discordant with the natural features at the proposed location and will have just as much of a negative visual impact as the original design. Indeed, disembodied flagpoles are not found in the woods. Even Sabre Industries, the Applicants' sub-contractor for tower construction, indicates on their website that flagpole designs are typically "used in urban areas." See, Copy of Sabre Industries Website Information on Concealment Alternatives, Attached at Exhibit 'G'. A survey of similar flagpole cell tower designs in our area, finds that the vast majority are indeed located in urban areas, principally around the strip malls and car dealerships along Route 9 from Fishkill to Poughkeepsie. See, Photographs of Examples of Flagpole Cell Towers Along Route 9, Attached at Exhibit 'H'. Of particular note should be the flagpole tower located at 1895 South Rd, in Poughkeepsie. Exhibit 'H'.

This flagpole tower displays a number of antennas and cables on its exterior, compounding its aesthetic intrusiveness and appearance as an eyesore. Can we know for certain that the proposed flagpole will not also at some point in the future come to exhibit such ugly features? We do know from the Applicants' own submissions that flagpole designs are inherently troublesome with limited space and compromised operability. Indeed, up until very recently the Applicant was maintaining that co-locating four carriers on a single 110 foot flagpole was impossible. Now, the Board is called upon to disregard those submissions, in spite of being supported by engineering testimony, to instead rely merely on vague and conclusory statements by the Applicants' counsel that such problems will not in the end materialize. Considering the contradictions presented in this application, the community has a justifiable concern that the possibility exists that any flagpole tower proposed for Rockledge could end up looking like the one in the above-noted photos, if not worse.

Many in our community have chosen to live here, precisely because this small area is unique in its aesthetic character and natural environment. Not to take away from our neighbours in Fishkill and Poughkeepsie, but the residents of Nelsonville do not want to be reminded of car dealerships and strip malls when we look upon our landscape and in particular places of national and historic significance. Unfortunately, the flagpole design proposals will serve to head Nelsonville in that direction, and should be rejected by the Board. These design proposals are not in keeping with the nature and character of our precious landscape.

The Applicants argue that because examples of flagpole cell towers in or around cemeteries may exist, that it is a perfectly acceptable and visually insignificant design proposal. As one such example, the Applicant referred to a flagpole tower located in a Westchester cemetery. See, Photos of Mount Eden Cemetery Flagpole Cell Tower, Attached at Exhibit 'I'. These photographs show that the flagpole cell tower design is a discordant feature when set within a natural setting such as a cemetery. Comparing how such designs fit within the strip mall

landscape referred to above, it is clear that flagpole designs are much less suited to blending in with trees than they are in a purely urban setting. Furthermore, the key distinction between urban/suburban/exurban cemetery locations, and the location at issue in this application, is that the Cold Spring Rural Cemetery (hereinafter the “Cemetery”) has a unique rural character in a natural setting that would be irrevocably and detrimentally impacted were a cell tower facility of this design to be located there. As Liz Campbell Kelly so clearly explained in her January 9, 2018 letter to the Board, there are particular design features incorporated into the natural landscape that make rural cemeteries precious historic, cultural and scenic resources that must be preserved. Placing a discordant cell tower in the guise of a flagpole on the sensitive ridgeline that is the essence of the Cemetery’s key design feature, will strike at the heart of its very purpose and completely undermine its aesthetic import. In short, a flagpole cell tower in the proposed location will destroy the beauty of this landmark.

In addition to the aesthetic significance of the Cemetery, it is worth considering momentarily the cultural heritage it represents for this community. A number of figures of local, state-wide and even national prominence are interred here. See, List of Prominent Figures Interred at the Cold Spring Rural Cemetery, Attached at Exhibit ‘J’. As a community, we have been entrusted with the care and preservation of his final resting place, not only for those who are buried there, but also for the generations to come who will want to fully experience its serenity, find peace there and embrace its heritage. Why risk marring and desecrating this sacred space? For what purpose? So a self-interested and profit-motivated telecommunications corporation can erect a monument to its own greed and disregard for the communities they purport to serve? PCS has maintained from the outset that this community is willing to work with and accommodate the Applicant in finding an appropriate solution to remedy its purported coverage gap. There remain viable alternative locations and designs that could be pursued by the Applicant that would still work for them and not impose such an aesthetic and cultural affront to this community. Our community believes that the price of approval of this application is much too high, and that such action will stand as a marker to the loss of what once made our community such a special place.

We ask the Board to consider the long-term implications of approval of the flagpole design alternative. In addition to the essence and character of this community being forever changed to its detriment, Nelsonville will frankly end up with little more than an eyesore. Such an example can be found near Camp Smith National Guard Base in Cortlandt, NY. This also happens to be the flagpole cell tower in closest proximity to the proposed facility. With its weathered and discoloured upper portion and peeling paint below, this tower might best be described as grotesque. Presumably, it has taken on such a displeasing appearance that even the flying of the American flag during daytime hours is seen as disrespectful. See, Photos of Camp Smith Flagpole Cell Tower at Exhibit ‘K’. Regardless of the Applicants’ assurances, at some point in the future, this is an example of what this community will end up with if the instant application is approved. The Applicant may make assurances and promises to the contrary, that maintenance of the facility can be assured, etc., but frankly there is no way to know for certain. Moreover, given the Applicants’ proclivity for making contradictory statements and generally engaging in conduct that calls their credibility into question, makes such assurances anything but guaranteed.

## **Conclusion**

PCS requests that before taking its decision on the instant application, the Board reflect upon the monumental effort put forth by this community in its united and steadfast opposition to this proposal. We are your neighbours, friends and colleagues. We know that you share the same love and affection for this community that all of us have. We do not envy the difficulty of the position you find yourselves in, and we extend to you our sincerest gratitude and appreciation for all the work you have put into this long and challenging process.

If at times throughout this proceeding it appeared to you as though the community did not support you in your role as decision-makers here, please know that nothing could be further from the truth. The reality is that we have done our utmost to provide you with the tools necessary to do what is right for the preservation of this community in denying this application. In that respect, we have offered you all the support we could possibly muster.

PCS has a number of attorneys involved in this opposition effort, and many hours have been spent pouring over court decisions, media reports and other sources. It must be said that in all of our research, we were unable to find an opposition effort as extensive, detailed and well-supported as the one before you now. Indeed, even your Special Counsel has stated that the record as it stands is more than sufficient to support a denial of this application. The record in opposition is supported by significant expert testimony and contains sufficient substantial evidence for this Board to feel confident and comfortable that a denial of this application is rationally based. PCS respectfully requests that this Board exercise its discretion in favour of this community in denial of the instant application.

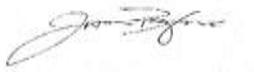
If for whatever reason the Board is hesitant to deny the application for fear of subsequent litigation, the Board must know that this community will stand in solidarity and support behind it. Fear of litigation should not be the basis for approval of the instant application. Litigation may come with risk and uncertainty, but the Board can be certain of this community's support, as well as the strength of the opposition on the record that will serve as the foundation and rationally based justification for this application's denial. Given the extensive and well-supported opposition on the record, the Board should not hand this application to the Applicant. Rather, if the Applicant ultimately is to secure a right to construct a cell tower on Rockledge, which is anything but assured, let that right come as a result of judicial scrutiny of the record, not as a result of the Applicant's imposition of fear and intimidation.

Finally, PCS asks the Board to consider the entirety of the record before it in making its decision. Consider the litany of the Applicants' contradictions, misstatements, misapplications of the law, omissions and unexplained reversals of position that are so replete throughout this record. Indeed, much of the expert evidence initially submitted in support of this application has since been contradicted by subsequent submissions. In some respects, the original application is unrecognizable. Weigh that against the well-reasoned, well-supported and good faith opposition before you.

For all the reasons stated herein, and based on the substantial evidence on the record, PCS respectfully requests that the application for an information services wireless facility as proposed, be denied in its entirety.

Sincerely,

PCS

A handwritten signature in cursive script, appearing to read "Jason Biafore", is written in black ink on a light-colored background.

By: Jason Biafore

**EXHIBIT U.**

**Letter from John A. Bonafide, Director, Technical  
Preservation Services Bureau, Agency Historic  
Preservation Officer, dated March 14, 2018.**



## Parks, Recreation and Historic Preservation

**ANDREW M. CUOMO**  
Governor

**ROSE HARVEY**  
Commissioner

March 14, 2018

Ms. Laura Mancuso  
Director, Cultural Resources  
CBRE  
4 West Red Oak Lane  
White Plains, NY 10604  
*(via email)*

Re: FCC  
New Cellular Communications Tower/Stealth Mono-Pine/110 Feet/NY170  
15 Rockledge Road, Nelsonville, Putnam County  
17PR06164 / FCC #0007902925

Dear Ms. Mancuso:

Thank you for your continued consultation with the State Historic Preservation Office (SHPO). We continue to review the project in accordance with Section 106 of the National Historic Preservation Act of 1966 and the applicable Programmatic Agreements

I am in receipt of your letter of February 20 and more than 420 pages of material, much of which appears to be unrelated to the specific issues of Section 106.

In reviewing the multiple visual assessments for this project, we found that the visibility of the tower, based on the land covered testing, is relatively constrained. However, it is clearly in the viewshed of several historic receptors. We also do not consider a view "Screened by Evergreen" as noted in several of the simulations to be a sufficient minimization of effects.<sup>1</sup> A single winter storm can remove this screening leaving the tower exposed to view from the selected point.

It is the NYSHPO's opinion that the tower, albeit camouflaged to be less obtrusive, will be a visual anomaly in the landscape and thus, impact the setting of the historic resources.

However, we also realize that the placement of this tower in a heavily treed area several hundred feet from the nearest historic receptor (Cold Spring Cemetery) screens the lower two-thirds of the structure from view. The utilization of modern tree camouflage on the upper section somewhat lessens the visual starkness of the tower and panels to the casual viewer. This visual minimization is also augmented by the low height of the proposed tower at 110 feet.

Our office therefor is seeking to alter its previous No Adverse Effect finding (October 2, 2017) to include the following conditions:

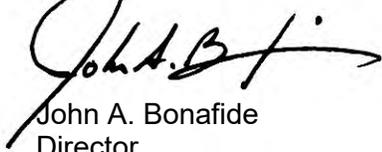
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<sup>1</sup> Saratoga Associates letter to ZBA-February 7, 2018-VPC1, VPC4, VPC5 & VPC8.

- The tower will employ an appropriate visual camouflage method to allow it to blend more effectively into the landscape.
- The height of the tower be capped at 110 feet. Any increase over this height in this location will create a significant visual impact.

If I can be of any further assistance, please do not hesitate to contact me at (518) 268-2166 or [john.bonafide@parks.ny.gov](mailto:john.bonafide@parks.ny.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Bonafide". The signature is fluid and cursive, with a prominent initial "J" and a long, sweeping underline.

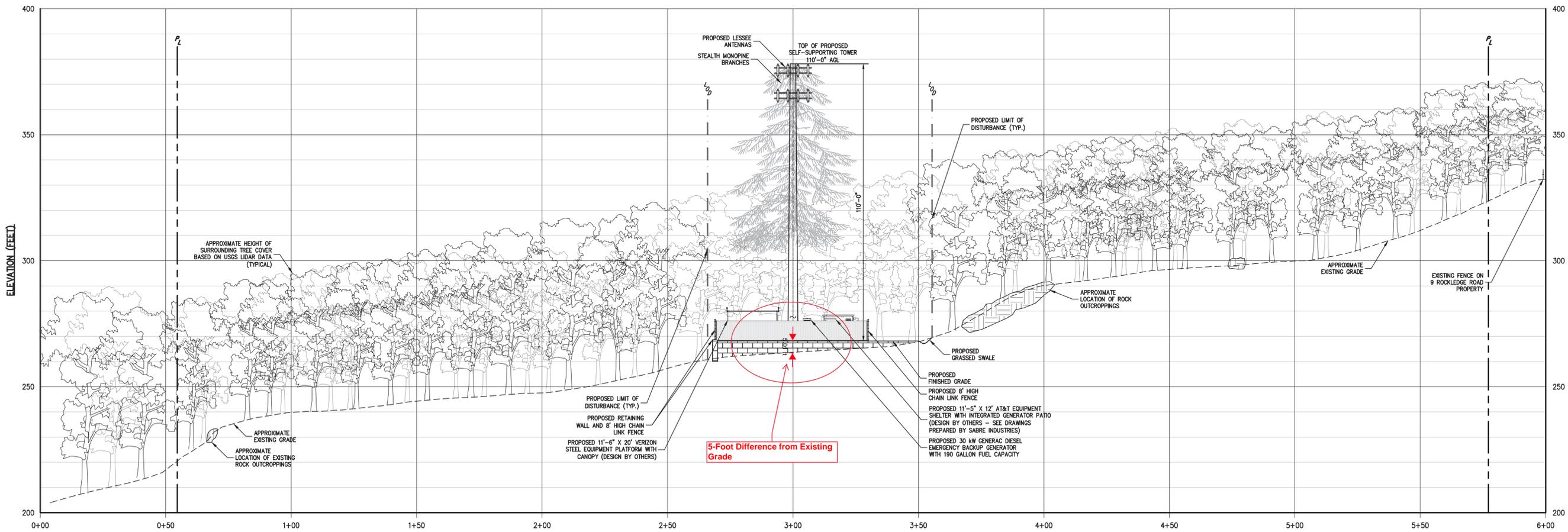
John A. Bonafide  
Director,  
Technical Preservation Services Bureau  
Agency Historic Preservation Officer

cc: Jill Springer, FCC *(via email)*  
Hon. William O'Neill *(via email)*

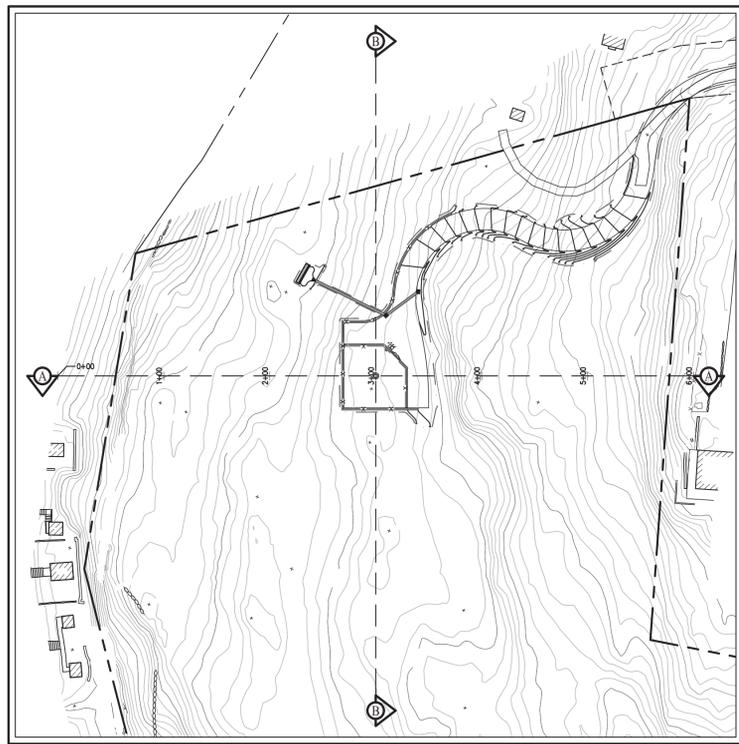
**EXHIBIT V.**  
**JMC Site Plan**

- V1 Existing Grade and Monopole Base of Tower.**
- V2 5-Foot Elevation Above Grade.**
- V3 Measurement of Branch Area as per Sabre Industries Letter (Exhibit D).**
- V4 Cross Section Showing Revised and Actual Branching Pattern.**





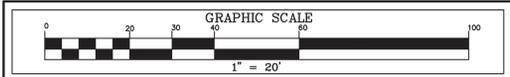
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**SITE SECTION A-A**  
 SCALE: 1" = 20' HORIZ. 1" = 20' VERT.



**SITE GRADING PLAN**  
 SCALE: 1" = 80'

**NOTES:**  
 1. APPROXIMATE TREE CANOPY HEIGHTS SHOWN HAVE BEEN OBTAINED FROM AVAILABLE UNITED STATES GEOLOGICAL SURVEY LIGHT DETECTION AND RANGING (LIDAR) DATA.  
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 SITE NUMBER: NY170  
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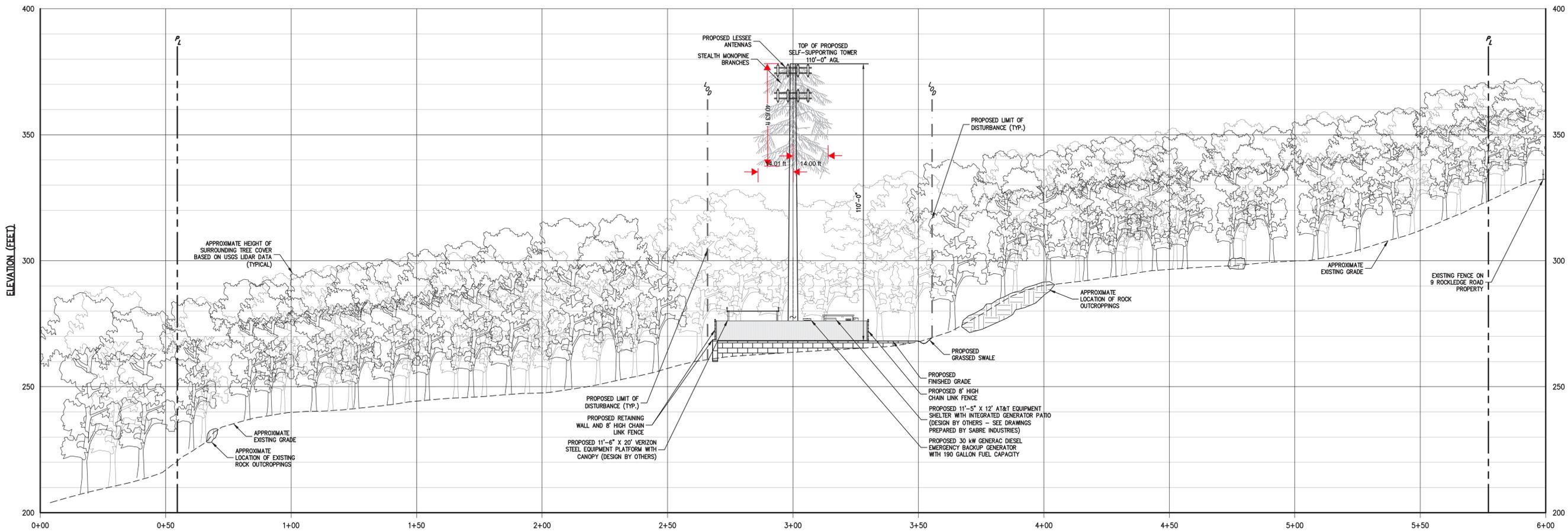
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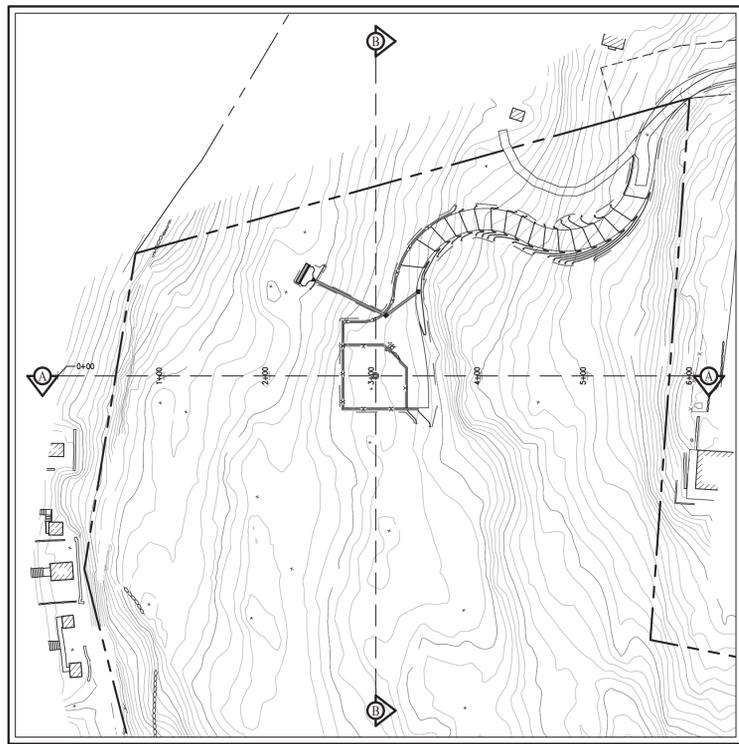
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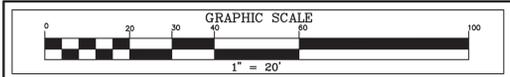


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 SCALE: 1" = 80'

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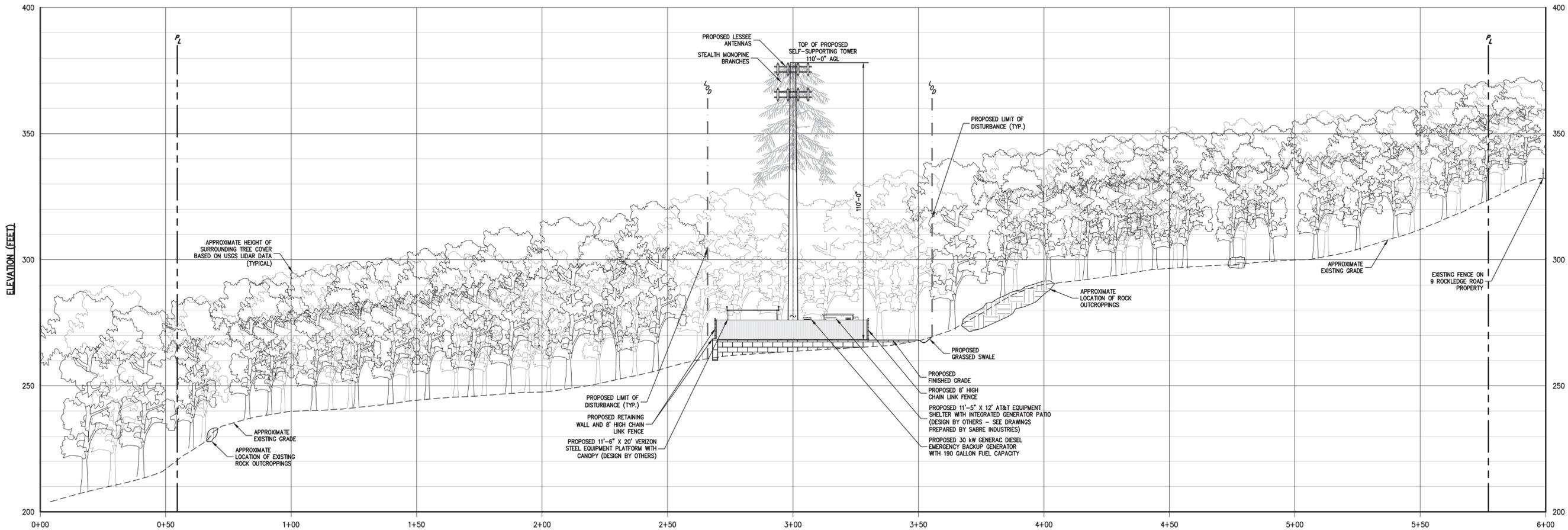
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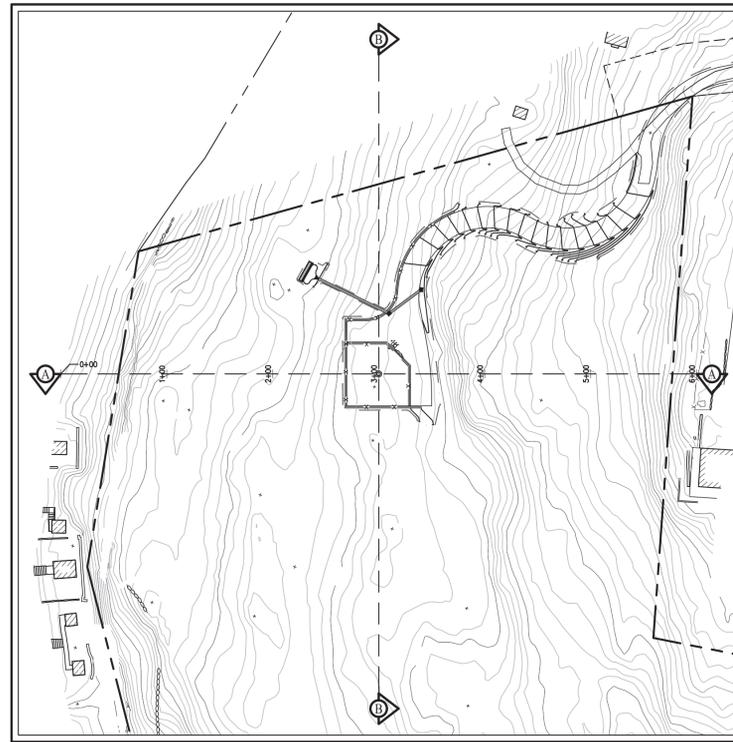
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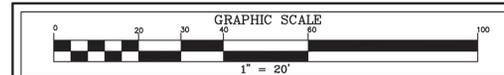


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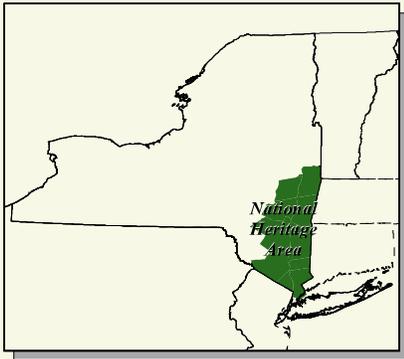
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**EXHIBIT W.**

**Hudson River Valley National Heritage Area Map,  
prepared by Saratoga Associates.**

# Hudson River Valley National Heritage Area



**LEGEND**

- Hudson River Valley National Heritage Area
- 22nd Congressional District within the HRVNHAA \*\*
- County Boundary
- Interstate Highway
- Parkway
- Lake or River

JUNE 14, 2001

**THE SARATOGA ASSOCIATES**  
LAW OFFICES OF JAMES J. SHREVE, JAMES J. SHREVE, DANIEL J. AND FLANNERY J. O'NEILL  
 500 STATE STREET • SUITE 1000 • ALBANY, NY 12207 • 518-486-1000

\*\* NOTE: The Hudson River Valley National Heritage Area comprises the counties of Albany, Rensselaer, Columbia, Greene, Ulster, Dutchess, Orange, Putnam, Westchester and Rockland, New York and the Village of Waterford in Saratoga County, New York. However, cities, towns, and villages located within the 22nd Congressional District of New York are included only if their local government agrees by resolution to be included, and submits the resolution to the Secretary of the Interior, and to the management entities. This congressional district includes all municipalities in Greene and Columbia counties and some in Rensselaer and Dutchess counties. A total of seventy-five (75) municipalities within the National Heritage Area's boundaries are located within the 22nd Congressional district. As of March 1, 2001, 34 of these communities had decided to participate in the programs to be offered.

**EXHIBIT X.**  
**NYS Coastal Area and SASS.**

# Village of Nelsonville

Franson Affidavit  
in Support of the  
Village of Nelsonville

## Exhibit X NYS Coastal Zone Area and SASS

### Legend

★ Proposed Cell Tower

### Buffers

⊞ 1/2 Mile

▭ 1 Mile

▭ 2 Mile

— Coastal Boundary

▨ Scenic Areas of Statewide Significance

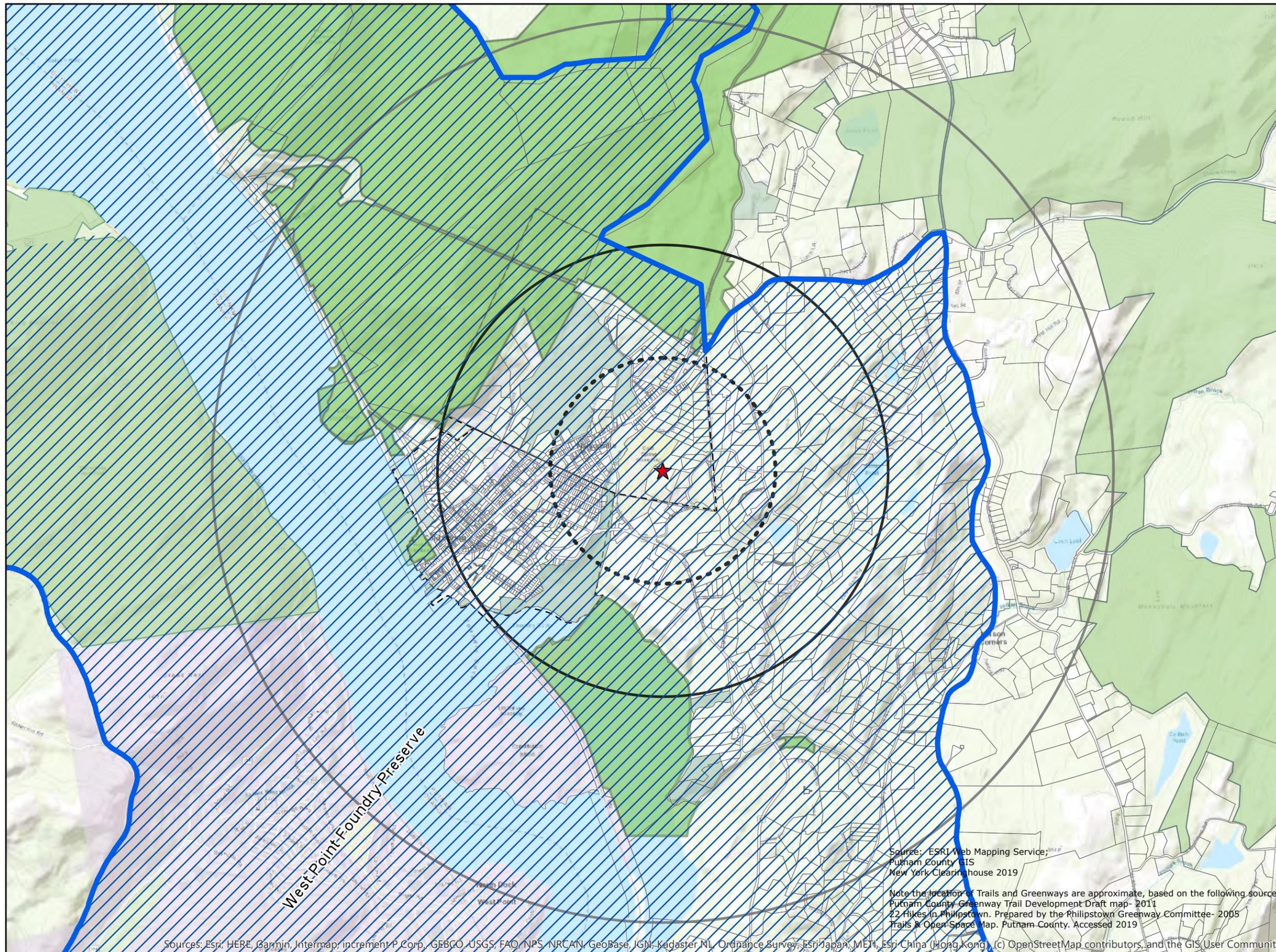
▭ Local Recreation

▭ State Park

▭ State Park Preserve



0 0.2 0.3 0.7 Miles



Source: ESRI Web Mapping Service,  
Putnam County GIS  
New York Clearinghouse 2019

Note the location of Trails and Greenways are approximate, based on the following sources:  
Putnam County Greenway Trail Development Draft map- 2011  
22 Hikes in Philipstown. Prepared by the Philipstown Greenway Committee- 2005  
Trails & Open Space Map. Putnam County. Accessed 2019

Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

# **EXHIBIT Y.**

## **FEAF Excerpts**

- Y1 FEAF Part 1 July 2017 Excerpt.**
- Y2 FEAF Part 1 August 2017 Excerpt.**
- Y3 Visual EAF Addendum.**

**B. Government Approvals**

**B. Government Approvals, Funding, or Sponsorship.** (“Funding” includes grants, loans, tax relief, and any other forms of financial assistance.)

Government Entity	If Yes: Identify Agency and Approval(s) Required	Application Date (Actual or projected)
a. City Council, Town Board, or Village Board of Trustees <input type="checkbox"/> Yes <input type="checkbox"/> No		
b. City, Town or Village Planning Board or Commission <input type="checkbox"/> Yes <input type="checkbox"/> No		
c. City Council, Town or Village Zoning Board of Appeals <input type="checkbox"/> Yes <input type="checkbox"/> No		
d. Other local agencies <input type="checkbox"/> Yes <input type="checkbox"/> No		
e. County agencies <input type="checkbox"/> Yes <input type="checkbox"/> No		
f. Regional agencies <input type="checkbox"/> Yes <input type="checkbox"/> No		
g. State agencies <input type="checkbox"/> Yes <input type="checkbox"/> No		
h. Federal agencies <input type="checkbox"/> Yes <input type="checkbox"/> No		
<p>i. Coastal Resources.</p> <p><i>i.</i> Is the project site within a Coastal Area, or the waterfront area of a Designated Inland Waterway? <input type="checkbox"/> Yes <input type="checkbox"/> No <span style="float: right;">* <input type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p style="text-align: right;">*According to the NYSDEC EAF Mapper</p> <p><i>ii.</i> Is the project site located in a community with an approved Local Waterfront Revitalization Program? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><i>iii.</i> Is the project site within a Coastal Erosion Hazard Area? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>		

**C. Planning and Zoning**

**C.1. Planning and zoning actions.**

Will administrative or legislative adoption, or amendment of a plan, local law, ordinance, rule or regulation be the only approval(s) which must be granted to enable the proposed action to proceed?  Yes  No

- **If Yes**, complete sections C, F and G.
- **If No**, proceed to question C.2 and complete all remaining sections and questions in Part 1

**C.2. Adopted land use plans.**

a. Do any municipally- adopted (city, town, village or county) comprehensive land use plan(s) include the site where the proposed action would be located?  Yes  No

If Yes, does the comprehensive plan include specific recommendations for the site where the proposed action would be located?  Yes  No

b. Is the site of the proposed action within any local or regional special planning district (for example: Greenway Brownfield Opportunity Area (BOA); designated State or Federal heritage area; watershed management plan; or other?)  Yes  No

If Yes, identify the plan(s):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

c. Is the proposed action located wholly or partially within an area listed in an adopted municipal open space plan, or an adopted municipal farmland protection plan?  Yes  No

If Yes, identify the plan(s):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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Government Entity	If Yes: Identify Agency and Approval(s) Required	Application Date (Actual or projected)
a. City Council, Town Board, <input type="checkbox"/> Yes <input type="checkbox"/> No or Village Board of Trustees		
b. City, Town or Village Planning Board or Commission <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Site Plan Approval from Village Planning Board	
c. City Council, Town or Village Zoning Board of Appeals <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Special Permit from Village Zoning Board	
d. Other local agencies <input type="checkbox"/> Yes <input type="checkbox"/> No		
e. County agencies <input type="checkbox"/> Yes <input type="checkbox"/> No		
f. Regional agencies <input type="checkbox"/> Yes <input type="checkbox"/> No		
g. State agencies <input type="checkbox"/> Yes <input type="checkbox"/> No		
h. Federal agencies <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Existing FCC Licenses	
i. Coastal Resources. <ul style="list-style-type: none"> <li>i. Is the project site within a Coastal Area, or the waterfront area of a Designated Inland Waterway? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</li> <li>ii. Is the project site located in a community with an approved Local Waterfront Revitalization Program? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</li> <li>iii. Is the project site within a Coastal Erosion Hazard Area? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</li> </ul>		

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If Yes, identify the plan(s):

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**617.20**  
**Appendix B**  
**State Environmental Quality Review**  
**VISUAL EAF ADDENDUM**

This form may be used to provide additional information relating to Question 11 of Part 2 of the Full EAF.

(To be completed by Lead Agency)

Visibility	Would the project be visible from:	Distance Between Project and Resource (in Miles)				
		0-¼	¼-½	½-3	3-5	5+
1.	No Response - West Point Foundry Preserve	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
•	A parcel of land which is dedicated to and available to the public for the use, enjoyment and appreciation of natural or man-made scenic qualities?		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
•	An overlook or parcel observation, enjoyment and appreciation of natural or man-made scenic qualities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
•	A site or structure listed on the National or State Registers of Historic Places?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
•	State Parks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
•	The State Forest Preserve?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
•	National Wildlife Refuges and State Game Refuges?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
•	National Natural Landmarks and other outstanding natural features?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
•	National Park Service lands?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
•	Rivers designated as National or State Wild, Scenic or Recreational?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
•	Any transportation corridor of high exposure, such as part of the Interstate System, or Amtrak?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
•	A governmentally established or designated interstate or inter-county foot trail, or one formally proposed for establishment or designation?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
•	A site, area, lake, reservoir or highway designated as scenic?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
•	Municipal park, or designated open space?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
•	County road?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
•	State road?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
•	Local road?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2. Is the visibility of the project seasonal? (i.e., screened by summer foliage, but visible during other seasons)

Yes       No

3. Are any of the resources checked in question 1 used by the public during the time of year during which the project will be visible?

Yes       No

**DESCRIPTION OF EXISTING VISUAL ENVIRONMENT**

4. From each item checked in question 1, check those which generally describe the surrounding environment.

	*1/4 mile	Within *1 mile
Essentially undeveloped	<input type="checkbox"/>	<input type="checkbox"/>
Forested	<input type="checkbox"/>	<input type="checkbox"/>
Agricultural	<input type="checkbox"/>	<input type="checkbox"/>
Suburban Residential	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Industrial	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Commerical	<input type="checkbox"/>	<input type="checkbox"/>
Urban	<input type="checkbox"/>	<input type="checkbox"/>
River, Lake, Pond	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Cliffs, Overlooks	<input type="checkbox"/>	<input type="checkbox"/>
Designated Open Space	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Flat	<input type="checkbox"/>	<input type="checkbox"/>
Hilly	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mountainous	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>

No Response No Response → X

**NOTE:** add attachments as needed

5. Are there visually similar projects within:

\*1/2 mile  Yes  No    1 mile  Yes  No    2 miles  Yes  No    3 miles  Yes  No

\*Distance from project site is provided for assistance. Substitute other distances as appropriate.

**EXPOSURE**

6. The annual number of viewers likely to observe the proposed project is 5,609,320?

**NOTE:** When user data is unavailable or unknown, use best estimate.

Number of viewers based on NYS Route 9D AADT (15,368) x 365 days.

**CONTEXT**

7. The situation or activity in which the viewers are engaged while viewing the proposed action is:

**FREQUENCY**

Activity	Daily	Weekly	Holidays/ Weekends	Seasonally
Travel to and from work	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Involved in recreational activities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Routine travel by residents	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
At a residence	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
At worksite	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other _____	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Reset