



**APPLICATION FOR SPECIAL PERMIT, SITE PLAN REVIEW AND WAIVER
(Planning Board)
FOR WIRELESS COMMUNICATIONS FACILITY**

Applicant: Vertex Towers, LLC
Site Id: VT-MA-3155D
Property Address: 92 Stallion Hill Road, Sturbridge, MA 01566
Tax Assessor: 605-0281-092
Property Owner: Pamela Soper, Trustee of the Pamela A. Soper 2009 Irrevocable Trust
u/d/t dated July 10, 2009
Date: November 8, 2023

PROJECT NARRATIVE

INTRODUCTION

The Applicant Vertex Towers, LLC, a Massachusetts limited liability company (“Vertex”) is a telecommunications infrastructure developer. Vertex develops, manages and owns telecommunications facilities in strategic locations across the country. The Vertex team has been working in the industry since the industry was founded and has the experience and expertise to navigate the challenges of the most complex markets.

Vertex is sometimes herein referred to as the “Applicant”.

The Applicant’s proposed Wireless Telecommunications Facility is shown on plans submitted with this Application (the “Plans”). The Applicant proposes to construct a 130’ tall monopole-style tower at 92 Stallion Hill Road, Sturbridge, MA 01566, Tax Assessor’s Parcel 605-0281-092 (the “Property”) that will structurally accommodate at least 4 wireless broadband telecommunications carriers and associated antennas, electronic equipment and cabling; and fence in the base of the tower to accommodate ground based telecommunications equipment. As shown on the Plans that accompany this Application, Verizon Wireless will place panel style antennas and required electronic equipment at a height of approximately 125’ on the tower, it is anticipated that various telecommunications companies, including AT&T Wireless, T-Mobile / SprintPCS, Dish Networks and other wireless communications companies will place panel style antennas and required electronic equipment at heights of approximately 115’, 105’ and 95’ (centerline) on the tower, and each will place telecommunications equipment and backup batteries inside equipment shelter(s) and/or weatherproof cabinets to be located immediately adjacent to the base of the tower. Power/telephone cabinets will be installed just outside the fenced in compound. Applicant’s Wireless Communications Facility is similar to the other telecommunication facilities already located in the Town and the surrounding area and has been designed in accordance with the Town’s Zoning Bylaw in all respects.

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The Property is a large, approximately 22 acre substantially undeveloped parcel in the Rural Residential Zoning District.

§ 300-9.3.H(2) of the Town's Zoning Bylaw provides that

(2) A new wireless communication facility, which may extend up to 15 feet in height above the average tree canopy elevation, may be located in a Residential District pursuant to a special permit and site plan approval issued by the Planning Board in accordance with these bylaws, provided the Planning Board finds that the applicant has exhausted all reasonable alternatives for placing the facility in a nonresidential district and provided that any wireless communication facility placed in a residential district shall not present a dominant visual feature to residential users within the district, and may utilize significant wooded isolation, topographical isolation and/or or camouflage consistent with its surroundings, as determined acceptable by the Planning Board, to achieve this result.

In addition, § 300-9.3(H) of the Town's Zoning Bylaw provides that the

H. Average tree canopy elevation waiver. In the event that the Planning Board finds that application of the average tree canopy elevation requirement is impracticable because there exists no alternative site at which a wireless communication facility can be located to provide service in compliance with such requirement, the Planning Board may, at its discretion, grant a waiver to such requirement. The waiver may allow a wireless communication facility to extend up to 130 feet in height from grade, subject to all other applicable site plan approval and special permit criteria in these bylaws. To grant an average tree canopy elevation waiver, the Planning Board must also find that there are no alternative locations, including other parcels, where the grant of an average tree canopy elevation waiver would result in an outcome substantially more in keeping with the intent and purpose of the bylaw than at the proposed location.

For the reasons set forth herein, the Applicant respectfully requests a SPECIAL PERMIT, an AVERAGE TREE CANOPY ELEVATION WAIVER and SITE PLAN APPROVAL from the PLANNING BOARD.

THE PROJECT

Wireless telecommunications carriers are in the process of independently designing, constructing and upgrading wireless telecommunications networks to serve areas in and around the Town of Sturbridge. Such a network requires a grid of radio transmitting and receiving cell sites located at varying distances depending on the location of existing and proposed installations in relation to the surrounding topography. The radio transmitting and receiving facilities require a path from the facility to the user on the ground. This requires the antennas to be located in a location above the tree line where the signal is not obstructed or degraded by buildings or topographical features.

Once constructed, the Facility will be unmanned and will involve only periodic maintenance visits. The only utilities required to operate the facility are electrical power as well as telephone service which are currently available at the property. The traffic generated by the facility will be one or two vehicle trips per month by maintenance and technical personnel to ensure the telecommunications site remains in good working order. These visits will not result in any material increase in traffic or disruption to patterns of access or egress that will cause congestion hazards or cause a substantial change in the established neighborhood character. The Applicant's maintenance personnel will make use of the access roads and parking to be constructed at the Property. The proposed Facility will not obstruct existing rights-of-way or pedestrian access and will not change the daily conditions of access, egress, traffic, congestion hazard, or character of the neighborhood. The installation will not require the addition of any new parking or loading spaces.

The construction of the Applicant's Facility will enhance service coverage in the Town of Sturbridge and surrounding communities. The enhancement of service coverage in the Town of Sturbridge is desirable to the public convenience for personal use of wireless services and for community safety in times of public crisis and natural disaster. Wireless communications service also provides a convenience to residents and is an attractive feature and service to businesses. In addition, the requested use at this location will not result in a change in the appearance of the surrounding neighborhoods. The use is passive in nature and will not generate any traffic, smoke, dust, heat, glare, discharge of noxious substances, nor will it pollute waterways or groundwater. Once constructed, the facility will comply with all applicable local, state and federal safety regulations.

Moreover and most importantly:

1. The proposed Facility will promote and conserve the convenience and general welfare of the inhabitants of Sturbridge by enhancing telecommunications services within the Town.
2. The proposed Facility will lessen the danger from fire and natural disasters by providing emergency communications in the event of such fires and natural disasters.

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3. The proposed Facility will preserve and increase the amenities of the Town by enhancing telecommunications services.
4. The proposed Facility will facilitate the adequate provision of transportation by improving mobile telecommunications for business, personal and emergency uses.

Wireless service is important to public safety and convenience. As of the end of 2021 there were an estimated 457 million mobile wireless subscribers in the United States. See FCC's 2022 Communications Marketplace Report, p. 56 (December 31, 2022). There are now more wireless subscriptions than landline telephone subscriptions in the United States, and the number of landline telephone subscribers across the nation is declining each year while the number of wireless users increases. Moreover, it is forecasted that wireless connections will become more significant as network service providers facilitate increase connectivity directly between devices, sensors, monitors, etc., and their networks. *Id. at 56-57.*

For many Americans, wireless devices have become an indispensable replacement for traditional landline telephones. Even when Americans maintain both types of telephone service, Americans are opting increasingly to use wireless devices over their landline telephones. For Americans living in "wireless-only" homes and for those others while away from their homes, cell phones are often their only lifeline in emergencies. Over 97% of Americans now own a cellphone of some kind and more than 85% own smartphones; more importantly, more than 50 percent of American households are now wireless only for voice connectivity, and 15% of adults are "smartphone-only" internet users – meaning they own a smartphone, but do not have traditional home broadband service. <http://www.pewinternet.org/fact-sheet/mobile/> Approximately 80% of the millions of 911 calls made daily are placed from cell phones, and that percentage is growing. <https://www.ctia.org/the-wireless-industry/infographics-library>. The FCC's Phase II E911 rules require wireless service providers to transmit the location of a wireless 911 call, within certain parameters for accuracy. Under the FCC's rules, wireless providers are subject to increasingly stringent 911 location accuracy requirements almost every year through 2024. See <http://www.fcc.gov/guides/wireless-911-services>

**COMPLIANCE WITH SITING CRITERIA
FOR WIRELESS COMMUNICATIONS FACILITIES**

ARTICLE IX

Wireless Communications Facilities

§ 300-9.1. Purpose; applicability.

A. The purpose of this article is to establish a bylaw which regulates wireless communication facilities such that these services may be provided with minimal harm to the public health, safety and general welfare. This bylaw has been created to:

- (1) Protect the general public from hazards associated with wireless communication facilities.**
- (2) Minimize visual impacts from wireless communication facilities.**
- (3) Prevent adverse impact on local property values.**
- (4) Enable the responsible deployment of wireless communication facilities in the Town to promote public safety and quality of life.**

B. This article does not apply to satellite dishes and antennas for residential use.

The proposed Facility has been designed to fulfill the purpose and intent and specific requirements of the Town's Bylaw in all respects. The location of the proposed Facility is on a large substantially undeveloped and heavily treed lot. There are no other structures of sufficient height anywhere near the Property which would provide the requisite telecommunications coverage. The Facility as proposed meets all required height limitations and setback requirements, and has been sited in such a way as to minimize its visibility as much as possible and prevent adverse impacts on local property values. As a wireless infrastructure developer, Vertex encourages co-location and has relationships with all of the existing wireless telecommunications carriers licensed in this market and intends to provide space on the proposed Facility at commercially reasonable rates, which will minimize the total number of towers in the community. Once constructed, the proposed Facility will have no adverse impact on the Town's ecological, aesthetic, historical and recreational resources, and will facilitate the provision of telecommunications services throughout the Town and enhance the ability of wireless carriers to provide telecommunications services to the community quickly, effectively and efficiently.

§ 300-9.2. Definitions.

Intentionally omitted

§ 300-9.3. Use regulations.

No wireless communication facility shall be placed, constructed or modified except as set forth below:

A. Mounts attached to existing buildings or structures.

(1) Pursuant to site plan approval obtained in accordance with these bylaws, a wireless communication facility may employ an existing building or structure, provided that the mount shall not increase the height of the existing structure.

Not applicable.

(2) Pursuant to site plan approval and a special permit granted by the Planning Board in accordance with these bylaws, a mount attached to a building or structure (other than a tower) may extend above the height of that building or structure if the Planning Board finds that the mount is appropriately camouflaged and/or screened from view, or the mount is otherwise compatible with the context of the site on which it is located; provided that no such mount may extend more than 12 feet above the building or structure.

Not applicable.

B. Mounts of any type within the tree canopy.

(1) A new wireless communication facility, which may extend up to 15 feet in height above the average tree canopy elevation, may be located in the following zoning districts: Commercial, Commercial II, Commercial/Tourist, Special Use, General Industrial and Industrial Park, pursuant to a special permit and site plan approval issued by the Planning Board in accordance with these bylaws.

Not applicable.

(2) A new wireless communication facility, which may extend up to 15 feet in height above the average tree canopy elevation, may be located in a Residential District pursuant to a special permit and site plan approval issued by the Planning Board in accordance with these bylaws, provided the Planning Board finds that the applicant has exhausted all reasonable alternatives for placing the facility in a nonresidential district and provided that any wireless communication facility placed in a residential district shall not present a dominant visual feature to residential users within the district, and may utilize significant wooded isolation, topographical isolation and/or or camouflage consistent with its surroundings, as determined acceptable by the Planning Board, to achieve this result.

The Property is a large, approximately 22 acre substantially undeveloped parcel in the Rural Residential Zoning District. Accompanying this Application are a Report of Site Acquisition Specialist and related maps and charts indicating that there no alternatives to place the Facility in a non-residential district. The Facility as proposed meets all required

height limitations and setback requirements, and has been sited in such a way as to minimize its visibility as much as possible and prevent any visual impact on residential uses in the area. Given the significant wooded and topographical isolation, the Facility is camouflaged consistent with its surroundings. Accordingly, the Applicant respectfully requests a SPECIAL PERMIT, an AVERAGE TREE CANOPY ELEVATION WAIVER (as set forth below) and SITE PLAN APPROVAL from the PLANNING BOARD.

(3) Any new wireless communication facility located under this section shall be camouflaged in a manner that is compatible with its surroundings as determined by the Planning Board with reference to visual impact analysis and simulations.

The Property is a large, approximately 22 acre substantially undeveloped parcel and the Facility as proposed meets all required height limitations and setback requirements, and has been sited in such a way as to minimize its visibility as much as possible and prevent any visual impact on residential uses in the area. Given the significant wooded and topographical isolation, the Facility is camouflaged consistent with its surroundings.

C. A new wireless communication facility up to 130 feet in height from grade may be located in the Wireless Communication Overlay District pursuant to a special permit and site plan approval issued by the Planning Board in accordance with these bylaws. A freestanding monopole without camouflage may be allowed, at the Planning Board's discretion, in the overlay district under this section.

Not applicable. The proposed Facility will not be located in the Wireless Communication Overlay District.

D. No wireless communication facility shall be located in a local, state or national historic district unless the Planning Board finds that the wireless communication facility:

- (1) Is hidden or otherwise camouflaged to the satisfaction of the Planning Board;**
- (2) Cannot be located outside such district; and**
- (3) Is demonstrated to be compliant with the National Historic Preservation Act.**

Not applicable. The proposed Facility will not be located in a local, state or national historic district.

E. New lattice-style towers are not allowed in any district, unless the Planning Board makes a finding that the benefit of employing a particular such tower outweighs the detriments to the community.

Not applicable. The proposed Facility will not be a lattice style tower.

F. Whenever feasible, wireless communication facilities shall be located on existing structures, including but not limited to buildings, water towers, existing telecommunication facilities, utility and light poles and towers, and related facilities, provided that such installation preserves the character and integrity of those structures. In particular, applicants are urged to consider use of existing telephone and electric utility structures as sites for one or more wireless communication facilities. The applicant shall have the burden of proving that there are no feasible existing structures upon which to locate.

As is evidenced by the Report of Site Acquisition Specialist and the Report of a Radio Frequency Engineer and accompanying maps and attachments, there are no existing buildings or structures that would feasibly provide the requisite coverage.

G. Site-sharing. Carriers shall share wireless communication facilities and sites where feasible and appropriate, thereby reducing the number of stand-alone facilities. All applicants for a special permit for a wireless communication facility shall demonstrate a good faith effort to site-share with other carriers. In determining whether site-sharing is appropriate, the Planning Board may consider whether the addition of a wireless communication facility to a site with existing facilities may be more detrimental due to the density of use than beneficial due to reduction of multiple facility sites. In the event an applicant determines that site-sharing is not feasible, it shall submit a written statement of the reasons for the infeasibility to the permit granting authority in sufficient detail to allow the permit granting authority to properly assess such feasibility.

As is evidenced by the Report of Site Acquisition Specialist and the Report of a Radio Frequency Engineer and accompanying maps and attachments, there are no existing wireless communication facilities that would feasibly provide the requisite coverage. As a wireless infrastructure developer, Vertex designs its facilities to encourage co-location and has relationships with all of the existing wireless telecommunications carriers licensed in this market and intends to provide space on the proposed Facility at commercially reasonable rates.

H. Average tree canopy elevation waiver. In the event that the Planning Board finds that application of the average tree canopy elevation requirement is impracticable because there exists no alternative site at which a wireless communication facility can be located to provide service in compliance with such requirement, the Planning Board may, at its discretion, grant a waiver to such requirement. The waiver may allow a wireless communication facility to extend up to 130 feet in height from grade, subject to all other applicable site plan approval and special permit criteria in these bylaws. To grant an average tree canopy elevation waiver, the Planning Board must also find that there are no alternative locations, including other parcels, where the grant of an average tree canopy elevation waiver would result in an outcome substantially more in keeping with the intent and purpose of the bylaw than at the proposed location.

As a wireless infrastructure developer, Vertex designs its facilities to encourage co-location and, as required elsewhere by this Bylaw, has designed the Facility to be the minimum height and necessary to satisfy the coverage objective needs for multiple wireless carriers. As is evidenced by the Report of Site Acquisition Specialist and the Report of a Radio Frequency Engineer and accompanying maps and attachments, there are no existing wireless communication facilities or alternate locations which would provide the requisite coverage. Moreover, given the location of the Facility on a large, substantially undeveloped and extensively vegetated parcel with substantial setbacks from abutting properties and public rights of way, the grant of an average tree canopy elevation waiver would result in an outcome substantially more in keeping with the intent and purpose of the bylaw. Given its wooded and topographical isolation, the Facility is camouflaged consistent with its surroundings. Accordingly, the Applicant respectfully requests an AVERAGE TREE CANOPY ELEVATION WAIVER from the PLANNING BOARD.

I. The Town may retain a technical expert in the field of RF engineering to peer-review the applicant's claims and submittals and to provide advice on the need for the proposed facility and on any potential alternatives. The cost for such a technical expert will be borne by the applicant.

The Applicant agrees to comply with all reasonably and lawfully required procedural and other conditions generally and uniformly and lawfully imposed and applied by the Town with respect to the Facility and similar facilities.

J. In no case shall any facility of the type in § 300-9.3C above be located closer than one mile to any other such facility unless the Planning Board makes a finding that site-sharing on such facilities is infeasible or does not address the coverage objective of the applicant.

As is evidenced by the Report of Site Acquisition Specialist and the Report of Radio Frequency Engineer and accompanying maps and attachments, there are no existing wireless communication facilities within one mile of the proposed Facility.

K. All facilities shall be designed to be constructed at the minimum height necessary to accommodate the anticipated and future use.

As a wireless infrastructure developer, Vertex designs its facilities to encourage co-location and has designed the Facility to be the minimum height and necessary to satisfy the coverage objective needs for multiple wireless carriers.

L. In order to ensure public safety, the minimum distance from the base of any ground-mounted facility to any property line, road, habitable dwelling, business or institutional use,

or public recreational areas shall be 120% of the height of the facility, inclusive of any appurtenant devices. A fall zone shall be maintained around the facility as per the definition.

As is shown in the Site Plans, the proposed Facility will be amply set back more than 120% of the height of the Facility to any property line, road, habitable dwelling, business or institutional use, or public recreational areas.

M. Wireless communication facilities shall be painted or otherwise screened or camouflaged to minimize their visibility to abutters, adjacent streets and residential neighborhoods. Existing on-site vegetation shall be preserved to the maximum extent practicable for screening purposes. All towers and mounts shall be positioned and designed to minimize their visibility to residential abutters, adjacent streets and residential neighborhoods.

The proposed Facility will be located on a large, approximately 22 acre substantially undeveloped parcel, and will be screened or camouflaged by existing vegetation to minimize its visibility to abutters, adjacent streets and residential neighborhoods. Existing on-site vegetation shall be preserved to the maximum extent practicable for screening purposes. The Facility will be amply setback and therefore positioned and designed to minimize its visibility to residential abutters, adjacent streets and residential neighborhoods.

N. Equipment shelters. Equipment shelters for wireless communication facilities shall be designed consistent with their surroundings as determined by the context of their location, such as by requiring traditional colonial Sturbridge architectural styles and materials, with a pitched roof and wood clapboard or shingle siding or commercial or industrial styling where consistent with surrounding development; and/or screened by an effective year-round landscape buffer and/or natural fence, equal to the height of the proposed building or equipment compound and/or wooden fence.

The proposed Facility will be setback substantially from all abutting property lines and will be screened by an effective year-round landscape buffer.

O. Lighting shall be limited to minimal security lighting and that required by the Federal Aviation Administration (FAA) only. The Planning Board may require an applicant to consider alternatives that do not require FAA navigation lighting or painting.

As proposed, the Facility will not require FAA lighting or marking.

P. There shall be at least one parking space at each facility, to be used in connection with the maintenance of the facility and the site, and not to be used for storage of vehicles or other items.

There shall be one parking space at the Facility, to be used in connection with the maintenance of the Facility and the site, and will not to be used for storage of vehicles or other items.

Q. All outdoor wireless communication facilities and related equipment shall be surrounded by a security barrier.

As proposed, the Facility will be surrounded by a 6' chain link fence plus barbed wire to control unauthorized access to the tower.

R. No signage of any kind, including carrier identification signs, shall be mounted on telecommunications towers except signs less than 10 feet above ground that identify the tower, its owner, its emergency contact number and other relevant information and hazard communication signs.

Signage shall be limited to those needed at the base of the facility to identify the property and owners, and to comply with applicable safety standards, and will comply in all respects with this provision.

§ 300-9.4. Safety standards.

A. Applicants shall demonstrate their facilities are designed to operate in compliance with applicable federal and state requirements regarding human exposure to RFE (ref. 47 CFR 1.1307 et seq. and 105 CMR 122) and shall maintain compliance at all times.

As is evidenced by the Report of Site Acquisition Specialist and the Report of Radio Frequency Engineer, the proposed Facility has been designated to comply with all applicable requirements regarding RF exposure.

B. Applicants shall demonstrate compliance with National Environmental Policy Act and local environmental requirements.

The Applicant will provide a report demonstrate compliance with National Environmental Policy Act and local environmental requirements prior to the public hearing on this Application.

C. Equipment shelters and outdoor equipment for wireless communication facilities shall together not generate noise in excess of 50 Dba Le at the property line. Applicants must include a demonstration of how a proposed facility or modification, together with all existing facilities at the site, will comply with this requirement. The Town may hire an acoustical engineer to verify noise levels at the carrier's expense.

Attached are noise specifications for the generator to be deployed at the proposed Facility. Given the extensive setbacks and substantial vegetative buffer, the proposed Facility will comply with all applicable noise limitations.

§ 300-9.5. Review and approval procedures.

In addition to the usual procedures and information required to file for a special permit under § 300-18.2B(2) of this bylaw, the following shall also be required:

A. A report prepared by one or more suitably qualified RF engineers providing the following information:

(1) Demonstration that the proposed wireless communication equipment shall be installed, erected, maintained and used in compliance with all applicable federal, state and local regulations, including, but not limited to: the radio frequency emissions regulations established by the FCC, applicable regulations administered by the Federal Aviation Administration (FAA), Federal Communications Commission (FCC), MassDOT Aeronautics Division and the Massachusetts Department of Public Health.

(2) A description of the facility and the technical and other reasons for the proposed location, height and design, including reasons for not co-locating on other existing facilities or structures.

(3) A description of the capacity of the facility, including total the number and type of panels, antenna, other carriers' facilities and related gear that it can accommodate.

Accompanying this Application are detailed Site Plans, Report of Radio Frequency Engineer, Reports of Site Acquisition Specialist an attached maps, plots and other documentation providing all of the required information.

B. A locus plan at a scale of one inch equals 200 feet or other such scale as appropriate to the context of the parcel, which shall show all property lines, the exact location of the proposed facilities, streets, landscape features and all buildings within 500 feet of the facility shall be submitted.

Accompanying this Application are detailed Site Plans providing all of the required information.

C. A color photograph or rendition of the facility with its antennas and/or panels at the proposed site.

Following the visibility demonstration required by Section § 300-9.5.D below, the Application will provide color photosimulations of the Facility with its antennas and/or panels at the proposed site from several nearby vantage points.

D. A view test to be conducted utilizing balloons or other means to document the extent of visual impact. The Planning Board may require the applicant to conduct a publicly noticed

balloon test during the conduct of the public hearing. Photographs and photosimulations of the view test showing the impact of the proposed facility on abutting streets, adjacent property owners and residential neighborhoods shall be submitted.

The Applicant will conduct a Visibility Demonstration to illustrate the location and height of the proposed Facility by raising a balloon at and to the height of the proposed Facility. Said Visual Demonstration will be held on SATURDAY DECEMBER 2, 2023 from 9:00 am to 12:00 noon, weather and wind conditions permitting. In the event of inclement weather on the scheduled date, the Visual Demonstration will be rescheduled until the next weekend day, or each successive weekend day until wind and weather conditions permit a successful demonstration. The Applicant will provide notice to the Town and abutters within 300 feet and will place an advertisement in the same newspaper as the Town advertises public hearings. Photographs and photosimulations of the visibility demonstration showing the visibility, or lack of visibility, on abutting streets and nearby residential neighborhoods shall be submitted.

- E. The Town, acting through its Planning Board, may require the applicant to pay reasonable fees for review of the applicant's proposal by a radio frequency engineer or other qualified professionals.**

The Applicant agrees to comply with all reasonably and lawfully required procedural and other conditions generally and uniformly and lawfully imposed and applied by the Town with respect to the Facility and similar facilities

§ 300-9.6. Monitoring and maintenance.

- A. After the wireless communication facility is operational, the applicant shall submit, within 90 days of beginning operations, a verification of compliance of RFE emissions with applicable regulations employing methods appropriate to the circumstances as guided by FCC Office of Engineering and Technology Bulletin 65.**

The Applicant agrees to comply with all reasonably and lawfully required procedural and other conditions generally and uniformly and lawfully imposed and applied by the Town with respect to the Facility and similar facilities.

- B. The applicant shall maintain the wireless communication facility in good condition. Such maintenance shall include, but shall not be limited to, painting, structural integrity of the mount and any security barrier, and maintenance of the buffer area and landscaping.**

The Applicant agrees to comply with all reasonably and lawfully required procedural and other conditions generally and uniformly and lawfully imposed and applied by the Town with respect to the Facility and similar facilities.

§ 300-9.7. Modifications.

A. Except as otherwise directed by applicable federal and state regulation, including the 2012 Middle Class Tax Relief and Jobs Creation Act, Section 6409, a modification of a wireless communication facility will require a special permit and/or site plan approval as appropriate.

Not applicable. The Applicant is proposing a new wireless communication facility and not a modification of an existing facility.

B. The Town of Sturbridge takes notice of federal exceptions such as those included in the 2012 Middle Class Tax Relief and Jobs Creation Act, Section 6409, which requires that municipalities "may not deny and shall approve" applications for certain kinds of facility modifications. Applicants shall have the burden of demonstrating that their proposed facilities are not "substantial modifications" of "eligible facilities." The Planning Board, through regulation, may delegate preliminary review of Section 6409 applications to staff to facilitate prompt evaluation of the applicability of Section 6409 and determination whether the applicant:

- (1) May be relieved of Planning Board review;**
- (2) May be required to demonstrate Section 6409 applicability to the Planning Board; or**
- (3) May not be eligible for Section 6409 relief and is required to file a full application with the Planning Board.**

Not applicable. The Applicant is proposing a new wireless communication facility and not a modification of an existing facility.

§ 300-9.8. Abandonment and discontinuance.

A. At such time that the licensed carrier plans to abandon or discontinue operation of a wireless communication facility, such carrier will notify the Town by certified U.S. mail of the proposed date of abandonment or discontinuance of operations.

The Applicant agrees to comply with all reasonably and lawfully required procedural and other conditions generally and uniformly and lawfully imposed and applied by the Town with respect to the Facility and similar facilities.

B. Such notice shall be given no less than 30 days prior to abandonment or discontinuance of operations. In the event that a carrier fails to give notice, the wireless communication facility shall be considered abandoned upon such discontinuance of operations.

The Applicant agrees to comply with all reasonably and lawfully required procedural and other conditions generally and uniformly and lawfully imposed and applied by the Town with respect to the Facility and similar facilities.

C. Upon abandonment or discontinuance of use, the carrier shall physically remove the wireless communication facility within 90 days from the date of abandonment or discontinuance of use. "Physically remove" shall include, but shall not be limited to:

- (1) Removal of antennas, mount, equipment shelters and security barriers from the subject property.**
- (2) Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.**
- (3) Restoring the location of the wireless communication facility to its natural condition, except that any landscaping and grading shall remain in the "after" condition.**

D. The applicant shall provide the Town with written authority from the owner or owners of record for the subject property where the facility is located to bind successors and assigns to allow the Town to enter onto the subject property to physically remove the facility in the event that the carrier fails to remove the facility in accordance with the requirements of this Zoning Bylaw. The Planning Board shall require the applicant to post a bond at the time of construction to cover the costs for the removal of the wireless communication facility in the event the Town must remove the facility.

The Applicant agrees to comply with all reasonably and lawfully required procedural and other conditions generally and uniformly and lawfully imposed and applied by the Town with respect to the Facility and similar facilities. An estimate of the cost to remove the facility prepared by a licensed professional engineer and a draft removal bond has been provided. A fully executed original bond will be provided to the building inspector prior to the issuance of a building permit.

§ 300-9.9. Exceptions.

A. Amateur radio towers used in accordance with the terms of any amateur radio license issued by the Federal Communications Commissions shall be exempt from the provisions of this bylaw, provided that:

- (1) The tower is not used or licensed for any commercial purpose; and**
- (2) The tower must be removed if use is discontinued for one year.**

B. Facilities used for the purposes set forth in MGL c. 40A, § 3 shall also be exempt.

Not applicable.

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§ 300-9.10. Severability.

In the event that one or more of the provisions of this Zoning Bylaw are deemed invalid by a court of competent jurisdiction, then all remaining provisions shall remain in full force and effect.

No response required.

**COMPLIANCE WITH CRITERIA
FOR SPECIAL PERMIT**

§ 300-18.2.

B. (2) Special permits.

(a) Application for special permits for the use of land or buildings as set forth in Part 2, Article IV, or elsewhere in this bylaw may be made to the Board of Selectmen, the Zoning Board of Appeals or the Planning Board as indicated. If no permit granting authority is mentioned, the Zoning Board of Appeals shall be the permit granting authority. The special permit granting authority may authorize the issuance of said special permit in accordance with MGL c. 40A, §§ 9 and 17, provided all the requirements are met and provided that:

[1] Such use is not detrimental to the permitted uses in the zone in which it is located.

[2] The nature of the operations shall be such that it will not be hazardous or create any danger to public health and safety.

[3] The use shall be consistent, insofar as practicable, with the Comprehensive Plan for the future development of the area.

[4] Provision for roads and parking areas shall be laid out so as to prevent traffic hazards and nuisances.

[5] The location, nature and height of buildings, walls, fences and landscaping shall be such that the use will not hinder or discourage the appropriate development of adjacent land or adversely affect the character of the zone in which it is located.

[6] If the rights authorized by a special permit are not exercised within three years of the date of grant, such special permit shall lapse. Any subsequent special permit must adhere to current bylaws then in effect.

The proposed use is passive in nature and will not generate any traffic, noise, smoke, dust, heat, glare or discharge of noxious substances, nor will it pollute waterways or groundwater. There will be only a de minimus increase in impervious surfaces, and removal of surface waters will not adversely affect neighboring properties or the public storm drainage system. The proposed Facility will be located on a large, approximately 22 acre substantially undeveloped parcel, and will be screened by existing vegetation to minimize its visibility to abutters, adjacent streets and area residential neighborhoods.

Once constructed, the Facility will be unmanned and will involve only periodic maintenance visits. The traffic generated by the facility will be one or two vehicle trips per month by maintenance and technical personnel to ensure the telecommunications site remains in good working order. These visits will not result in any material increase in traffic or disruption to patterns of access or egress that will cause congestion hazards or cause a substantial change in the established neighborhood character. The Applicant's maintenance personnel will make use of the existing access driveway off Stallion Hill Road which will be extended to the base of the Facility. The proposed Facility will not obstruct existing rights-of-way or pedestrian access and will not change the daily conditions of access, egress, traffic, congestion hazard, or character of the neighborhood. The installation will not require the addition of any new parking or loading spaces. As has been discussed throughout this Project Narrative, the proposed Facility has been designed to be compatible with the neighborhood character as much as possible.

The Facility will enhance service coverage in the Town and surrounding communities. The enhancement of service coverage in the Town is desirable to the public convenience for personal use of wireless services and for community safety in times of public crisis and natural disaster. Wireless communications service also provides a convenience to residents and is an attractive feature and service to businesses. In addition, the requested use at this location will not result in a change in the appearance of the surrounding neighborhoods. Signage shall be limited to those needed at the base of the facility to identify the property and owners, and to comply with applicable safety standards. Once constructed, the Facility will comply with all applicable local, state and federal safety regulations.

COMPLIANCE WITH CRITERIA FOR SITE PLAN REVIEW

§ 300-19.1. Purpose and intent; administration.

A. The purpose of the site plan review hereby established is to protect the safety, public health, convenience and general welfare of the current and future inhabitants of the Town by providing a comprehensive review of plans for those uses and structures that have a significant impact upon the character of the Town; upon traffic, utilities, property values and sanitation. Factors to be considered are the placement of buildings, utilities, surface and ground water drainage, wetlands, water supply, parking, loading, landscaping, lighting, dust, noise control, access to the development, acceptable sanitary conditions and provision for open space. It is intended to ensure that the design and layout of those developments or uses so subject to this procedure in this bylaw will constitute suitable development and will not result in a detriment to the neighborhood or to the environment. It is also intended hereby to assist those wishing to build projects in the Town, by providing them with the necessary information about all of the Town's requirements affecting their project prior to the start of any construction or the issuance of any permits.

The proposed Facility has been designed to fulfill the purpose and intent and specific requirements of the Town's Site Plan Review Bylaw in all respects. The location of the proposed Facility is on a large substantially undeveloped and heavily treed lot. The Facility as proposed has been sited in such a way as to minimize its visibility as much as possible and prevent adverse impacts on abutting properties. The proposed use is passive in nature and will not generate any traffic, noise, smoke, dust, heat, glare or discharge of noxious substances, nor will it pollute waterways or groundwater. There will be only a de minimus increase in impervious surfaces, and removal of surface waters will not adversely affect neighboring properties or the public storm drainage system.

Once constructed, the Facility will be unmanned and will involve only periodic maintenance visits. The traffic generated by the facility will be one or two vehicle trips per month by maintenance and technical personnel to ensure the telecommunications site remains in good working order. These visits will not result in any material increase in traffic or disruption to patterns of access or egress that will cause congestion hazards or cause a substantial change in the established neighborhood character. The Applicant's maintenance personnel will make use of the existing access driveway off Stallion Hill Road which will be extended to the base of the Facility. The proposed Facility will not obstruct existing rights-of-way or pedestrian access and will not change the daily conditions of access, egress, traffic, congestion hazard, or character of the neighborhood. The installation will not require the addition of any new parking or loading spaces. As

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has been discussed throughout this Project Narrative, the proposed Facility has been designed to be compatible with the neighborhood character as much as possible.

B. The site plan review is to be administered by the Planning Board for the Town of Sturbridge.

The Applicant has applied to the Planning Board for Site Plan Review.

C. It is further the intent of the site plan review that any final site plan filed with the Planning Board shall receive the approval of said Board if the plan conforms to the standards established herein and to the reasonable rules and regulations of the Planning Board made in conformity with this bylaw. It is to be noted, however, that where maximums are stated in this bylaw, the Planning Board acting hereunder may deny granting the maximum (e.g., height, maximum lot coverage, etc.), in view of the criteria and standards set hereby. Similarly, where minimums are stated in this bylaw, the Planning Board acting hereunder can make increased requirements (e.g., parking spaces, screening, landscaping, etc.) if in its opinion in applying the criteria and standards set hereby, the proposed plan warrants exceeding such minimums.

Acknowledged.

§ 300-19.5. Criteria for approval.

A. In reviewing a site plan application, the Planning Board shall take into consideration the health, safety and welfare of the public in general and the immediate neighborhood in particular, and may prescribe reasonable conditions and safeguards to ensure the accomplishment of the following general objectives:

(1) That the subject and adjoining premises are protected against serious detriment by provisions for the safe carrying and discharge of surface water drainage, buffers against light, sight, sound, dust and vibration, and that the development of the site will preserve sensitive environmental features such as steep slopes, wetlands and large rock outcroppings, public scenic views and historically significant features and the quality of light and air;

The location of the proposed Facility is on a large substantially undeveloped and heavily treed lot. The Facility as proposed has been sited in such a way as to minimize its visibility as much as possible and prevent adverse impacts on abutting properties. The proposed use is passive in nature and will not generate any traffic, noise, smoke, dust,

heat, glare or discharge of noxious substances, nor will it pollute waterways or groundwater. There will be only a de minimus increase in impervious surfaces, and removal of surface waters will not adversely affect neighboring properties or the public storm drainage system.

(2) That there are provisions for convenience and safety of vehicular and pedestrian movement within the site and on adjacent streets, by the provision of pedestrian access ways that are adequate in number, width, grade, alignment and visibility, by appropriately locating driveway openings in relation to traffic, access by emergency vehicles, and, when necessary, compliance with other regulations for the handicapped, minors and the elderly, and by the provision of an adequate amount of and safe configuration of off-street parking and loading spaces in relation to the proposed uses of the premises to prevent on-street and off-street traffic congestion;

Once constructed, the Facility will be unmanned and will involve only periodic maintenance visits. The traffic generated by the facility will be one or two vehicle trips per month by maintenance and technical personnel to ensure the telecommunications site remains in good working order. These visits will not result in any material increase in traffic or disruption to patterns of access or egress that will cause congestion hazards or cause a substantial change in the established neighborhood character. The Applicant's maintenance personnel will make use of the existing access driveway off Stallion Hill Road which will be extended to the base of the Facility. The proposed Facility will not obstruct existing rights-of-way or pedestrian access and will not change the daily conditions of access, egress, traffic, congestion hazard, or character of the neighborhood. The installation will not require the addition of any new parking or loading spaces.

(3) That there is a harmonious relationship of structures and open spaces to the natural landscape, existing buildings and other community assets in the area and that the project will be in harmony with the surrounding neighborhood; and that the general landscaping of the site complies with the purpose and intent of this bylaw; that existing trees are preserved to the maximum extent possible; that refuse and storage areas are suitably screened during all seasons from the view of adjacent residential areas and public rights-of-way;

The proposed Facility will be located on a large, approximately 22 acre substantially undeveloped parcel, and will be screened or camouflaged by existing vegetation to minimize its visibility to abutters, adjacent streets and residential neighborhoods. Existing on-site vegetation shall be preserved to the maximum extent practicable for screening purposes. The Facility will be amply setback and therefore positioned and designed to minimize its visibility to residential abutters, adjacent streets and residential neighborhoods.

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(4) That lighting of the site shall be adequate at ground level for the protection and safety of the public in regard to pedestrian and vehicular circulation; that the glare from the installation of outdoor lights and illuminated signs is properly shielded from the view of adjacent property and public rights-of-way;

No lighting is proposed or required.

(5) That all utility systems are suitably located, adequately designed and properly installed to serve the proposed uses, and to protect the property from adverse pollution and that there is the provision of adequate methods for disposal of wastes;

The proposed Facility will utilize existing utility service on the property, which will be extended along the access driveway to the base of the Facility. The proposed Facility will be unmanned and not require water or sanitary services, and will not generate any waste.

(6) Mitigation of adverse impacts on the Town's resources, including the effect on the water supply and distribution system, sewage collection and treatment systems, fire protection and streets.

The proposed Facility will be unmanned and not require water or sanitary services or other town services.

B. Compliance with all provisions of the Zoning Bylaws. The Planning Board may require such appropriate conditions, limitations and safeguards that it determines are necessary to assure the project meets the criteria of Subsection A(1) through (6) above.

Acknowledged.

THE TELECOMMUNICATIONS ACT OF 1996

In 1996, the U.S. Congress enacted the Telecommunications Act of 1996, Pub. L. No. 104-104, § 704; 110 Stat. 56 (1996) (the “TCA” or the “Telecommunications Act”). The intent of the TCA as enacted by Congress was to institute a framework to promote competition and innovation within the telecommunications industry. Although this law specifically preserves local zoning authority with respect to the siting of wireless service facilities, it clarifies when the exercise of local zoning authority may be preempted by federal law. Section 704 of the TCA provides, in pertinent part, that

(7) PRESERVATION OF LOCAL ZONING AUTHORITY-

(A) GENERAL AUTHORITY- Except as provided in this paragraph, nothing in this Act 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.

(B) LIMITATIONS-

(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof--

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

The intent of the TCA enacted by the U.S. Congress was to institute a framework to promote competition and innovation within this telecommunications industry. Under its respective licenses from the FCC, wireless telecommunications carriers are obligated to provide a reliable “product” [i.e. telecommunications service] to the population in western Massachusetts, which includes the Town of Sturbridge. Likewise, consumer expectations for increasingly robust and reliable service requires competing service providers to identify and remedy existing gaps in reliable network coverage, or gaps that result from increasing subscriber voice and data traffic beyond the limits of existing network infrastructure. A carrier’s failure to remedy network gaps in a timely fashion can result in a significant loss of subscribers to competing telecommunications carriers. As demonstrated in the Application and supplemental materials provided by the Applicant, the proposed Facility and corresponding relief requested are necessary to remedy a gap in reliable service coverage within the existing network infrastructure. In Daniels v. Town of Londonderry, 157 N.H. 519 (2008), the New Hampshire Supreme Court upheld the grant of use and area variances for the construction of a cell tower in an agricultural-residential zone, noting that the Londonderry ZBA correctly treated the TCA as an “umbrella” that preempted local law under certain circumstances.

In a growing number of cases, federal courts have found that permit denials violate the TCA, even if such denials would be valid under state law. For example, in Omnipoint Communications v. Town of Lincoln, 107 F. Supp. 2d 108 (D. Mass. 2000), the court found that denial of a variance for a location outside of the town's wireless overlay district violated the TCA and ordered the variance to issue despite an Ordinance provision prohibiting use variances. The court in Nextel Communications v. Town of Wayland, 231 F. Supp. 2d 396 (D. Mass. 2002) reached the same result. In that case, the court stated: "Although the Board's statement [regarding its lack of authority to issue a use variance] may be correct statement in Massachusetts regarding variances, it is not controlling in the special case of Telecommunications facilities...Under the Telecommunications Act, the Board cannot deny the variance if in so doing it would have the effect of prohibiting wireless services." Wayland at 406-407. Most notably, in Omnipoint Holdings, Inc. v. Town of Cranston, No. 08-2491 (1st Cir. Nov. 3, 2009), the United States Court of Appeals for the First Circuit affirmed a judgment of the United States District Court for the District of Rhode Island, which found that the Cranston Zoning Board of Review violated the TCA by effectively prohibiting the provision of wireless services in Cranston when it denied an application for a special use permit and variance to construct a wireless facility in a residential area. The Court noted that "[t]he effective prohibition clause does not stand alone; it is also part of the TCA's larger goal of encouraging competition to provide consumers with cheaper, higher-quality wireless technology.... As cell phone use increases, carriers need to build more facilities, especially in populated areas, to continue providing reliable coverage, and local regulations can present serious obstacles." Cranston, p. 25. More recently, in New Cingular Wireless, LLC v. Town of Manchester, Case No. 11-cv-334-SM (USDC D. NH Feb. 28, 2014), the United States District Court for the District of New Hampshire indicated that the Town of Manchester impermissibly denied a variance to construct a telecommunications tower in a (non-permitted) residential zone, in that the tower addressed significant coverage gaps and provided competitive and reliable wireless services and there was no feasible alternative. The Court noted that the Town must consider the public benefits of wireless services in determining whether to grant a zoning variance for a tower. Id.

The Applicant has investigated alternative sites in and around the defined geographic area within which its engineers determined that a facility must be located to fill the gap in service coverage and to function effectively within the wireless network of existing and planned facilities. No existing structure or property in or near the vicinity of the proposed Facility is feasible to accommodate the wireless network requirements. The proposed Facility is on large substantially undeveloped parcel and provides a substantial vegetative buffer. The wireless communications systems being developed by the various telecommunications carriers operating in the Sturbridge area have been designed employing the most sophisticated radio frequency engineering methods available. Radio frequency engineers determine the placement of network points-of-presence using computer engineering models that simultaneously evaluate topography and population patterns to identify specific geographic areas to be serviced by each antenna facility in the network. As a result of this modeling, combined with actual coverage data provided by existing "on air" facilities, the carriers' radio frequency engineers have identified a limited geographic area as a necessary location for a communications facility to remedy an existing gap in reliable service coverage in the general vicinity of the Property. Without the requested relief, there would remain

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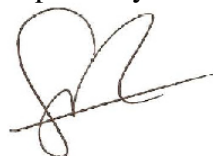
a substantial “gap” in reliable service coverage in the carriers’ respective networks. Radio frequency coverage maps confirm that a telecommunications facility located at the Property is required to remedy the existing gap in the wireless network coverage in the area. The requested height has been determined by engineers to be the minimum height necessary to connect coverage from the proposed Facility with coverage from adjacent cell sites in the carriers’ respective networks (i.e. to remedy the existing “gap” in service and to effect reliable handoffs between adjacent cell sites as a subscriber travels through the area).

Accordingly, denial of a permit to construct the Facility would prevent the Applicant from eliminating an existing gap in reliable service coverage, resulting in a potential loss of subscribers for the carriers and the inability to effectively compete for subscribers with other FCC licensed competitors in the market, contrary to the intent of the Ordinance and the U.S. Congress in enacting the TCA.

SUMMARY

Because the proposed facility meets all of the requirements for a Wireless Communications Facility under the Sturbridge Zoning Bylaw other than those provisions for which waivers have been requested, and pursuant to §704(a) of the Federal Telecommunications Act of 1996 which provides, among other things, that wireless facilities may not be prohibited in any particular area and that any denial of zoning relief must be based upon substantial evidence, the Applicant respectfully requests that the PLANNING BOARD GRANT a SPECIAL PERMIT and an AVERAGE TREE CANOPY ELEVATION WAIVER and APPROVE THE SITE PLANS as proposed (with such if necessary), and the Town grant such other permits, relief or waivers deemed necessary by the Town under the current Bylaw and pending Bylaws amendments, if any, so that the Applicant may construct and operate the Facility as proposed.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'F. Parisi', written over a horizontal line.

Francis D. Parisi, Esq.
Parisi Law Associates, P.C.
225 Dyer Street
Providence, RI 02903
(401) 447-8500 cell
fparisi@plapc.com