



PLAPC
PARISI LAW ASSOCIATES, P.C.



**TOWN OF STURBRIDGE
PLANNING BOARD
DECEMBER 19, 2023**

**FRANCIS D. PARISI, ESQ.
PARISI LAW ASSOCIATES, P.C.
FPARISI@PLAPC.COM**

MEETING PURPOSE

2

APPLICATION FOR SPECIAL PERMIT, SITE PLAN REVIEW AND WAIVER (Planning Board) AND VARIANCE (Zoning Board of Appeals) FOR WIRELESS COMMUNICATIONS FACILITY

Applicant: Vertex Towers, LLC
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

Planning Board

11/08/23 Application Filed
12/02/23 Site Visit and Visibility Demonstration (redone 12/16/23)
12/19/23 Public Hearing

Zoning Board of Appeals

11/20/23 Application Filed
01/17/24 Public Hearing

REQUESTED RELIEF – PLANNING BOARD

3

§ 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.

REQUESTED RELIEF – ZONING BOARD

4

The Property is a large, approximately 22 acre substantially undeveloped parcel in the Rural Residential Zoning District. Section 300-14.2 Table of Standards requires 150' of frontage on a street. Although the Property has an existing driveway providing access from Stallion Hill Road to the bulk of the Property, the Property has only approximately 100' of frontage on Stallion Hill Road (which frontage was previously approved by the Planning Board). Note that, in 2021, the Property Owner received a determination from the Zoning Board, in connection with an application for an expansion of the existing structure on the property, that the application did not intensify the existing or create additional non-conformities. However, because the Applicant desires to expand the use of the Property, the Applicant respectfully requests that the ZONING BOARD grant a VARIANCE from Section 300-14.2 Table of Standards permit use of the Property as proposed.

Vertex Towers is a telecommunications infrastructure developer. We develop, manage and own telecommunications facilities in strategic locations across the country. The Vertex team has been working in the industry for over 20 years and has the experience and expertise to navigate the challenges of the most complex markets.

Vertex's on the ground experience and expertise allows us to identify the opportunities and locations where there is a need for new telecommunications facilities. Identifying where a new facility is needed is only half of the equation. Strict zoning ordinances and environmental regulations require that new telecommunication facilities take into consideration not only the needs of the wireless provider but also potential permitting obstacles and construction costs. The Vertex team has the experience necessary to identify, permit and construct the best site for the property owner, the wireless provider and the municipality.



6

Verizon Wireless provides digital voice and data communications services using 4th Generation (4G) voice and data services over LTE technology in the 700 MHz, Cellular (800 MHz), PCS (1900 MHz), and AWS (2100 MHz) frequency bands as allocated by the FCC, along with the CBRS band (3.5-3.7 GHz). It is also in the midst of deploying advanced 5th generation (5G) NR services in its cellular, C-band (3.7-3.98 GHz) and 28 GHz licensed frequency bands. These 4G and 5G networks are used to provide high-speed wireless connections used by mobile devices for fast web browsing, media streaming, video conferencing, and other applications that require broadband connections. The mobile devices that benefit from these advanced networks include typical smartphones, tablets, laptops, and Wi-Fi hotspots. With the continual advancement of its networks, Verizon Wireless customers will enjoy even faster connections to people, information, and entertainment in a day and age when reliable wireless connectivity is an indispensable part of daily personal and business life.

Application Package

7

- 1. Application for Special Permit, Site Plan Review and Waiver**
- 2. Filing Fees**
- 3. Abutters List**
- 4. Deed**
- 5. Letter of Authorization**
- 6. Project Narrative**
- 7. TOWAIR (FAA Analysis re No Hazard to Air Navigation / no FAA lighting required)**
- 8. Report of Site Acquisition Specialist**
- 9. Report of RF Engineer and RF Coverage Maps**
- 10. Removal Cost Estimate and draft Removal Bond**
- 11. Generator Specifications**
- 12. Site Plans**

WHY DO WE NEED ANOTHER CELL SITE?

8

Wireless communications is not just a public convenience; it is a public safety necessity.

- **There are now more wireless subscriptions than landline telephone subscriptions in the United States.**
- **More than 50% of American homes are “wireless only”**
- **More than 80% of 911 calls are made from mobile phones**
- **More and more workers are “telecommuting”**

Sturbridge has a verifiable “gap” in wireless coverage that limits its access to rapidly evolving wireless services.

A SIGNIFICANT GAP IN COVERAGE

9

Verizon Wireless currently operates wireless facilities similar to the proposed facility within Sturbridge and the surrounding cities/towns. Due in large part to the distances between the surrounding sites, the intervening topography, and volume of user traffic in the area, these facilities do not provide sufficient coverage to portions of Town. Specifically, Verizon Wireless determined that much of Sturbridge is without reliable service in the following areas and town roads², including but not limited to:

Route 20 (Main Street) Serves ~ 19,000 vehicles per day as measured between Arnold Road and Cedar Street (2022);

Holland Road

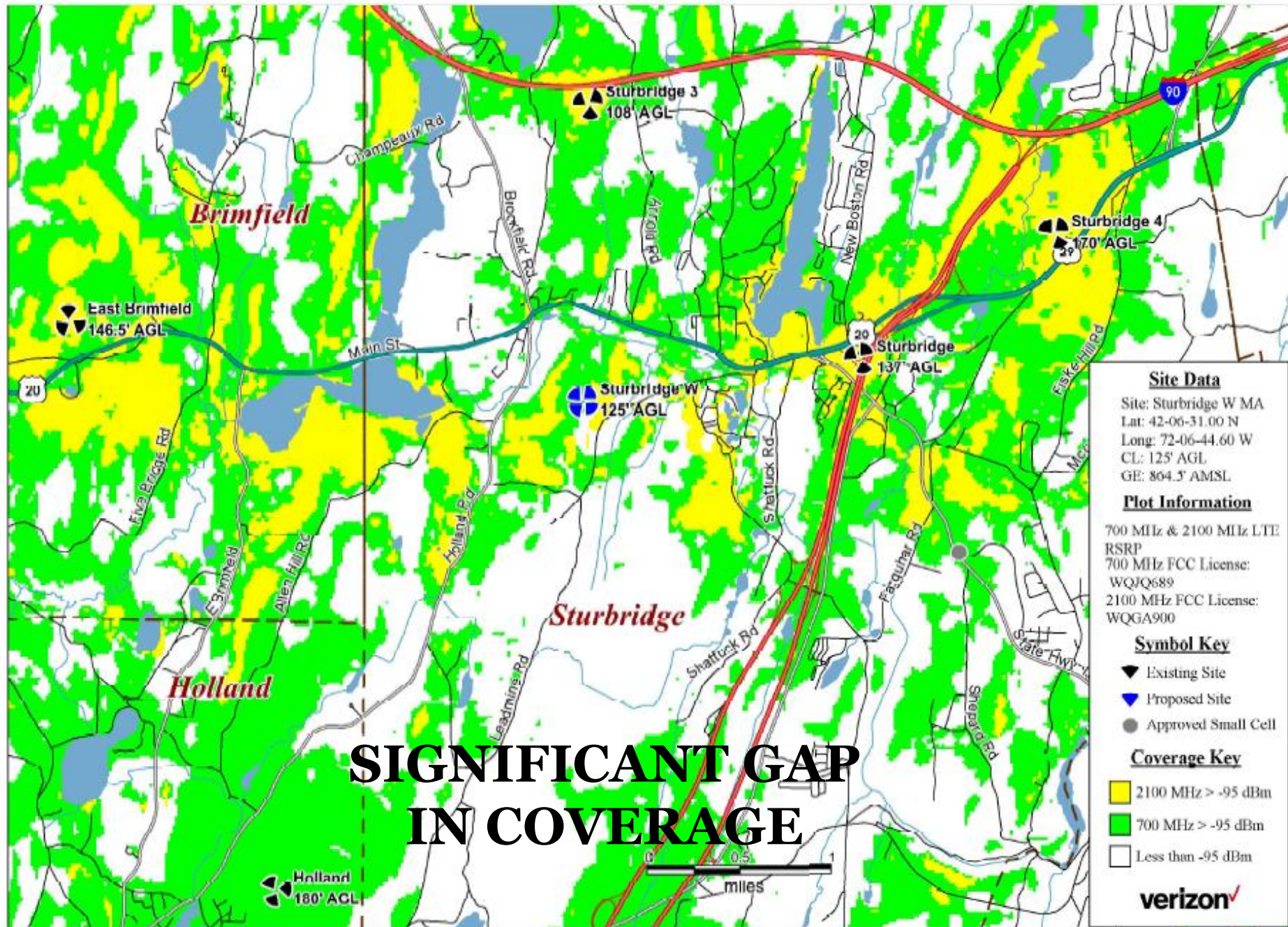
Route 148 (Brookfield Road)

Old Sturbridge Village

The surrounding roads, neighborhoods, businesses, and shopping areas in the proximity of the proposed site.

“The proposed site located at 92 Stallion Hill Road (“Sturbridge W MA”) is needed to fill in these targeted gaps in service, in order to improve network quality and reliability for Verizon Wireless subscribers traveling along these roads, as well as to the numerous residents, businesses, and visitors in this area.”

Report of RF Engineer



WHY HERE?

11

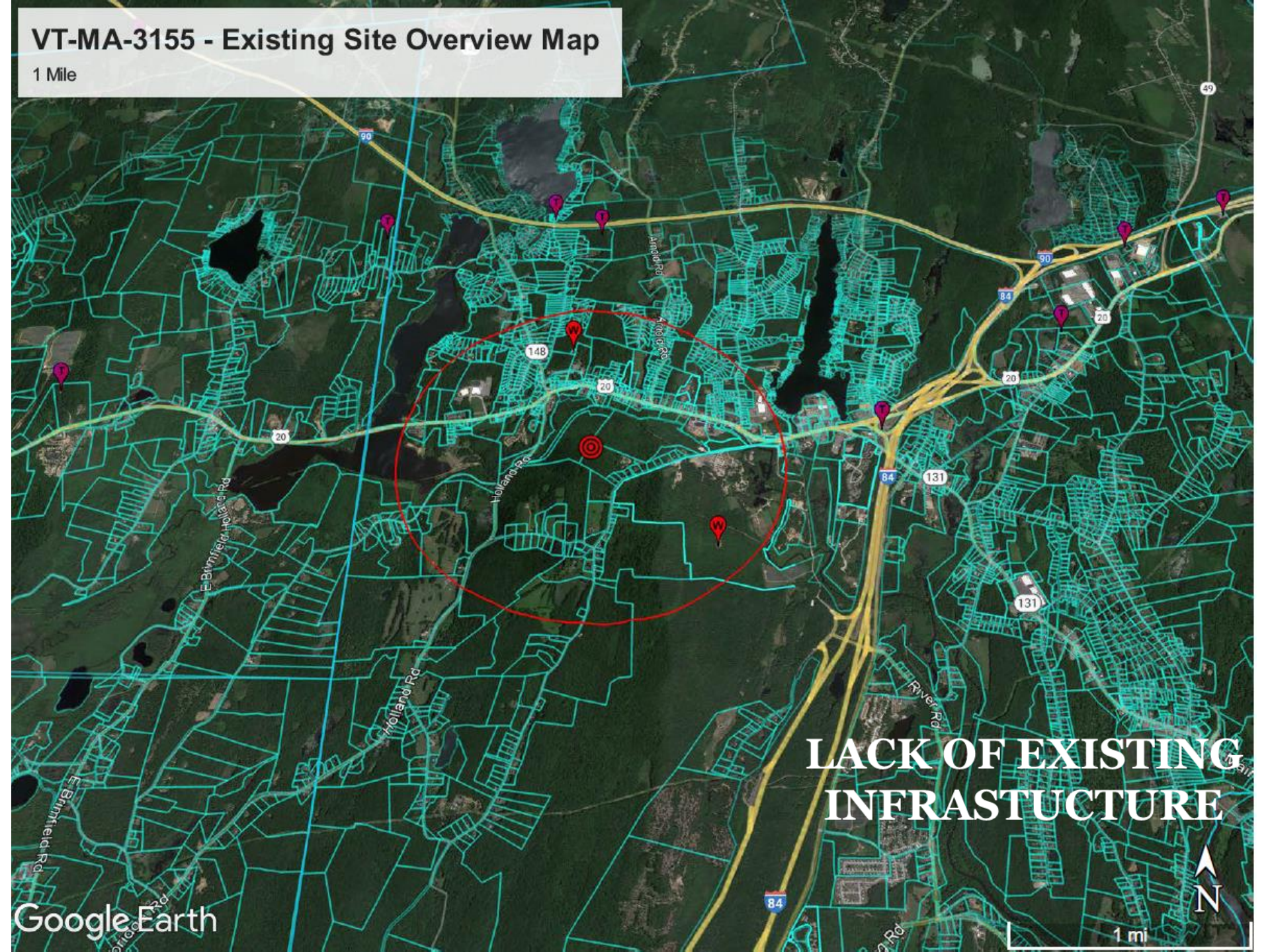
WHY 92 Stallion Hill Road?

Given the location (and lack) of existing wireless infrastructure, the topography and terrain, the lack of existing and suitable tall structures in and around the area, zoning and other land use restrictions (i.e. wetlands and conservation land), **“the proposed [facility] to be located at 92 Stallion Hill Road is the least intrusive and only available and viable alternative to adequately meet the coverage objective to fill this significant gap in coverage.”**

Report of Site Acquisition Specialist

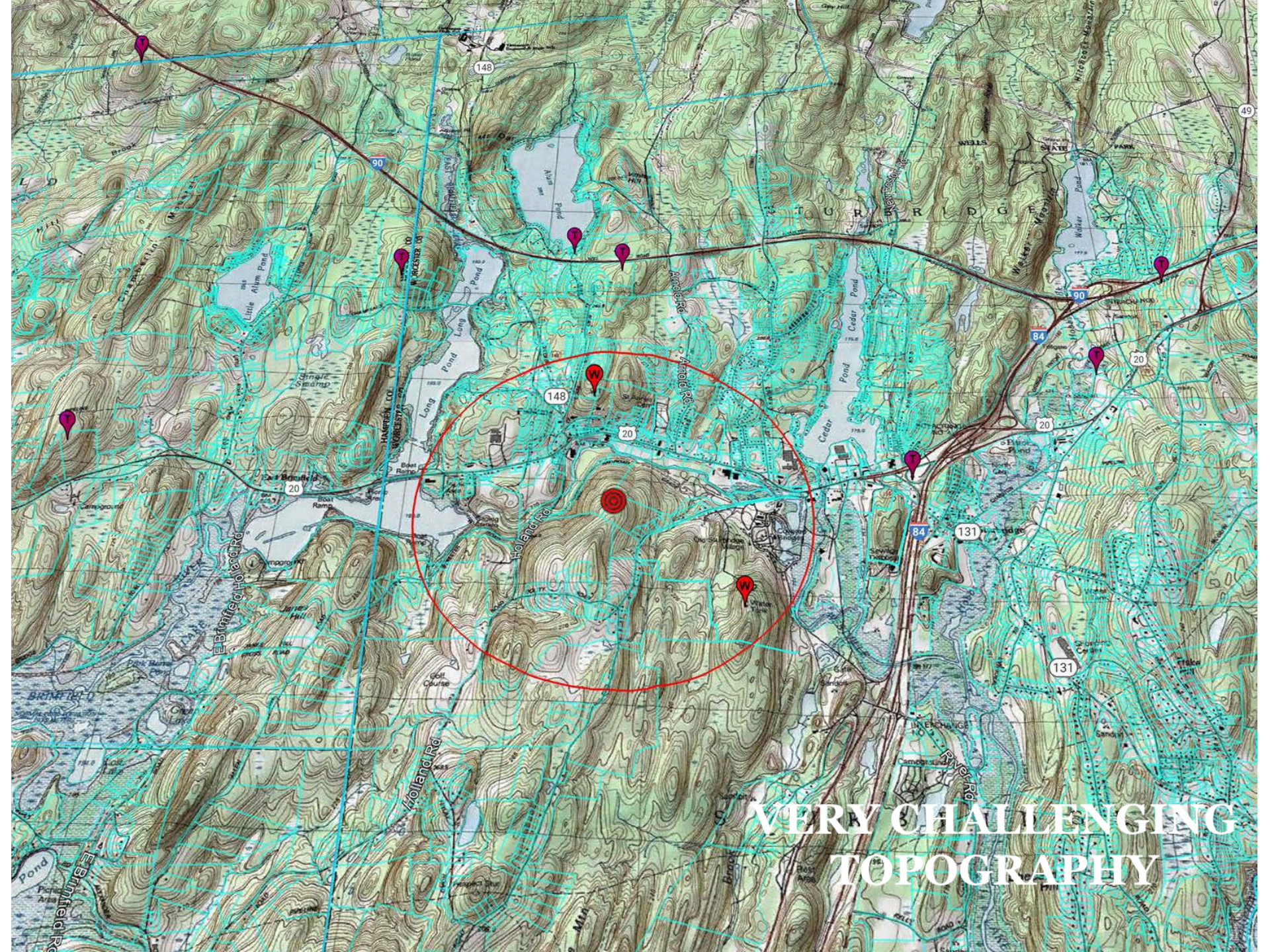
VT-MA-3155 - Existing Site Overview Map

1 Mile



**LACK OF EXISTING
INFRASTRUCTURE**



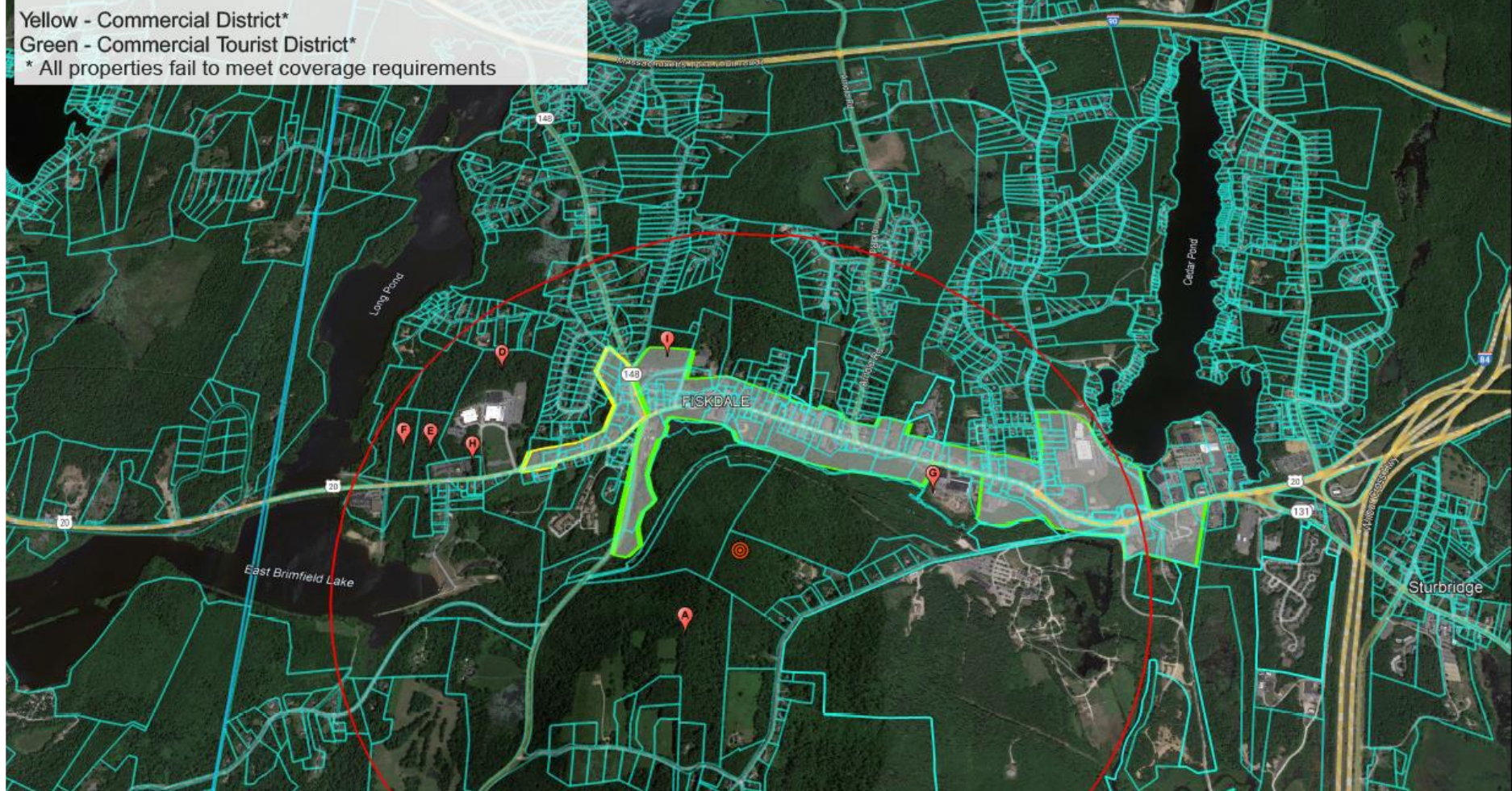


**VERY CHALLENGING
TOPOGRAPHY**

VT-MA-3155 - ASA Overview Map

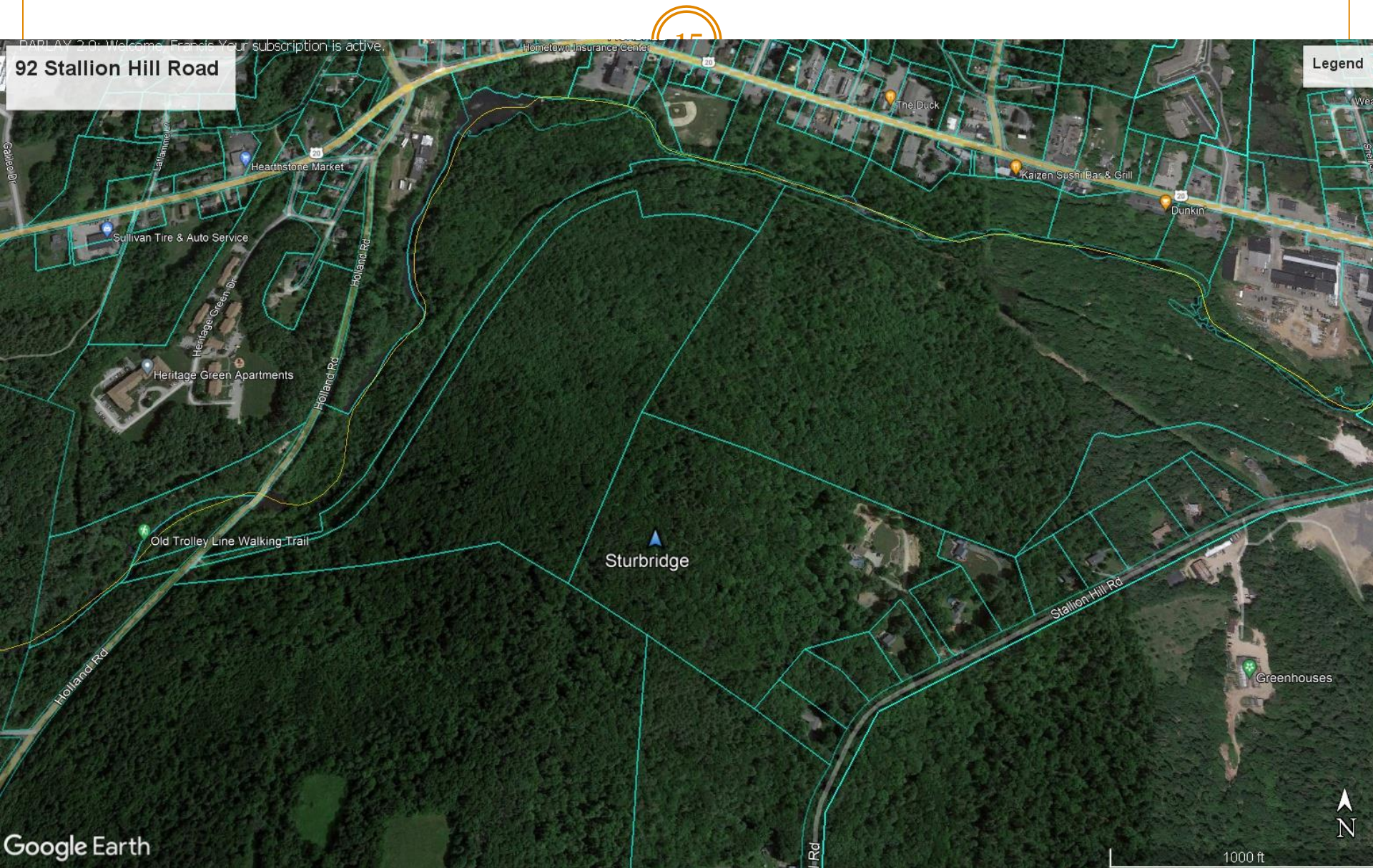
Yellow - Commercial District*
 Green - Commercial Tourist District*
 * All properties fail to meet coverage requirements

NO VIABLE ALTERNATIVES



ID	Address	Map	Lot	ACRES	Latitude	Longitude	Distance from Proposed Location	Comments
A	14 Douty Road	245	2717-14	106.3	42.106505	-72.118501	0.25	Parcel is restricted due to conservation covenant.
B	98 Holland Road	348	2744-98	51	42.1008405	-72.128519	1.03	Property is lower in elevations and does not provide needed coverage to the east.
C	50 Douty Road	245	2717-50	82.8	42.0979099	-72.1214759	0.96	Unable to access location on the parcel that was suitable for coverage. Landowner was unresponsive.
D	660 Main Street	415	2335-660	49.02	42.115835	-72.124644	0.83	Property is being redeveloped, which has caused no suitable spot for the tower on the property.
E	660 Main Street	415	2344-660	7.96	42.1145344	-72.1276931	0.87	Property is lower in elevations and does not provide needed coverage to the east.
F	698 Main Street	415	2343-698	8.96	42.114478	-72.128753	0.92	Property is lower in elevations and does not provide needed coverage to the east.
G	441 Main Street	415	2444-441	10.54	42.112545	-72.101801	0.53	Property is lower in elevations and does not provide needed coverage to the west.
H	882 Main Street	415	2344-882	4.28	42.113051	-72.128286	0.73	Property is lower in elevations and does not provide needed coverage to the east.
I	10 Clark Road	215	2318-10	15.5	42.118594	-72.115603	0.68	Due to the topography of the land, unable to locate a suitable spot for the tower.
WT	12 Clark Road	215	2318-12	0.42	42.119267	-72.1145513	0.7	The watertank is located 0.88 miles to a Communications tower to the North. This location is redundant, and does not provide required coverage to the south west. Has been ruled out by the Carriers.
WT	Old Sturbridge Village Rd	491	2455-01A	369	42.1012261	-72.100215	0.73	The watertank is located further east than the proposed site. Location is does not have required topography to cover the objective to the west.

92 Stallion Hill Road



92 Stallion Hill Road

Legend

Sturbridge

Greenhouses

1000 ft

Google Earth



348-02716-055
N/F
TOWN OF STURBRIDGE
308 MAIN STREET
STURBRIDGE, MA 01566

605-02454-052
N/F
TOWN OF STURBRIDGE
308 MAIN STREET
STURBRIDGE, MA 01566

SURVEY NOTES:

1. FIELD SURVEY DATE: 5-4-2023 & 5-5-2023
2. HORIZONTAL DATUM: NORTH AMERICAN DATUM OF 1983 (NAD83)
3. VERTICAL DATUM: NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD88)
4. OWNER: THE PAMELA A. SOPER 2009 IRREVOCABLE TRUST
PO BOX 134
STURBRIDGE, MA 01566
5. SITE NAME: STURBRIDGE MA VT-MA-31550
6. SITE ADDRESS: 92 STALLION HILL ROAD
STURBRIDGE, MA 01566
7. APPLICANT: VERTEX TOWERS, LLC
2 COMMERCIAL STREET
SHARON, MA 02067
8. JURISDICTION: TOWN OF STURBRIDGE
WORCESTER COUNTY
9. TAX ID: 605-02812-092
10. DEED REFERENCE: DEED BOOK 45302 PAGE 267
11. PLAN REFERENCE: PLAN BOOK 349 PAGE 12
PLAN BOOK 490 PAGE 94
PLAN BOOK 546 PAGE 114
PLAN BOOK 618 PAGE 77
12. THE HORIZONTAL DATUM AND VERTICAL DATUM WERE DERIVED FROM AN RTK GPS SURVEY.
13. ALL UNDERGROUND UTILITY INFORMATION PRESENTED HEREON WAS DETERMINED FROM SURFACE EVIDENCE ONLY. ALL UNDERGROUND UTILITIES SHOULD BE LOCATED IN THE FIELD PRIOR TO COMMENCEMENT OF ALL SITE WORK. CALL DIGSAFE 1-800-322-4844 A MINIMUM OF 72 HOURS PRIOR TO PLANNED ACTIVITY.
14. THE PROPOSED IMPROVEMENTS ARE LOCATED IN FLOOD ZONE "X" (AREAS OF MINIMAL FLOODING) AS SHOWN ON FLOOD INSURANCE RATE MAP COMMUNITY PANEL NUMBER 25027C 0926 E, EFFECTIVE DATE 7/4/2011.
15. FIELD SURVEY BY RTK GPS & EDM TOTAL STATION.
16. THIS IS NOT A BOUNDARY SURVEY.
17. ALL PROPERTY LINES SHOWN ARE FROM FIELD EVIDENCE, DEEDS & PLANS OF RECORD AND GIS DATA AND ARE APPROXIMATE ONLY.
18. NO WETLANDS FLAGS WERE OBSERVED DURING THE FIELD SURVEY.

PROPOSED CENTER OF
130' AGL MONOPOLE
LATITUDE: 42° 06' 31.0" N
LONGITUDE: 72° 06' 44.6" W
EXISTING GROUND
ELEV. = 868' (NAVD 88)
PROPOSED GROUND
ELEV. = 864.5' (NAVD 88)

605-02812-092
N/F
THE PAMELA A. SOPER
2009 IRREVOCABLE TRUST
P.O. BOX 134
STURBRIDGE, MA 01566

605-02813-078
N/F
CHRISTOPHER ALGER
78 STALLION HILL ROAD
FISKDALE, MA 01518

605-02812-084
N/F
JENNIFER W. HENNESSEY
94 STALLION HILL ROAD
FISKDALE, MA 01518

605-02812-094
N/F
BRIAN P. & LAURA L. ANDERSEN
94 STALLION HILL ROAD
FISKDALE, MA 01518

605-02812-096
N/F
MICHAEL W. & ANN E. ROCHE
104 STALLION HILL ROAD
FISKDALE, MA 01518

605-02812-100
N/F
MICHAEL W. & ANN E. ROCHE
104 STALLION HILL ROAD
FISKDALE, MA 01518

605-02822-104
N/F
MICHAEL W. & ANN E. ROCHE
104 STALLION HILL ROAD
FISKDALE, MA 01518

605-02521-118
N/F
ROGER D. & LAURIE RICHARD
118 STALLION HILL ROAD
FISKDALE, MA 01518

245-02717-014
N/F
PETER F. O'CONNELL
500 VICTORY ROAD
GURNEY, MA 02131

ABUTTERS & EXISTING CONDITIONS PLAN ①

SCALE: 1"=160' FOR 11"X17"
1"=80' FOR 22"X34"



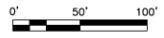
NOTES:

1. SOME EXISTING & PROPOSED INFORMATION NOT SHOWN FOR CLARITY.
2. UTILITIES SHALL EXTEND FROM THE EXISTING UTILITY POLE TO THE COMPOUND. FINAL ROUTE AND DESIGN TO BE COORDINATED WITH LOCAL UTILITY COMPANY & TO BE APPROVED BY LANDOWNER.
3. EXISTING UNDERGROUND UTILITIES SHOWN AS APPROXIMATE. UTILITY LOCATIONS & SERVICES PENDING LOCAL UTILITY REVIEW & APPROVAL AND FIELD VERIFICATION OF EXISTING UNDERGROUND UTILITIES.
4. MONOPOLE AND FOUNDATION DESIGN BY OTHERS.
5. THIS DOCUMENT IS FOR ZONING PURPOSES ONLY AND NOT FOR CONSTRUCTION.
6. LOAM & SEED TO MATCH EXISTING AREAS AFTER CONDUIT INSTALLATION.
7. OWNER OF RECORD: THE PAMELA A. SOPER
2009 IRREVOCABLE TRUST
PO BOX 134
STURBRIDGE, MA 01566
8. ALL UNDERGROUND UTILITY INFORMATION PRESENTED HEREON WERE DETERMINED FROM SURFACE EVIDENCE AND PLANS OF RECORD. ALL UNDERGROUND UTILITIES SHOULD BE LOCATED IN THE FIELD PRIOR TO COMMENCEMENT OF ALL SITE WORK. CALL DIG SAFE 1(800) 322-4844 A MINIMUM OF 72 HOURS PRIOR TO PLANNED ACTIVITY. ACCORDING TO FEDERAL EMERGENCY MANAGEMENT.
9. PROVIDE PULL BOXES AS REQUIRED BY CODE AND JOB CONDITIONS. ALL PULL BOXES UNDER TRAVELED WAY SHALL BE RATED FOR VEHICULAR TRAVEL.

ZONING DISTRICT	
RR - RURAL RESIDENTIAL	
SETBACKS	
SETBACK:	PROPOSED:*
FRONT	680'±
SIDE	301'±
REAR	338'±
* SETBACK DISTANCES ARE TAKEN FROM TOWER CENTER TO PROPERTY LINES.	
A.G.L. = ABOVE GROUND LEVEL	

SITE PLAN

SCALE: 1"=100' FOR 11"x17"
1"=50' FOR 22"x34"



1

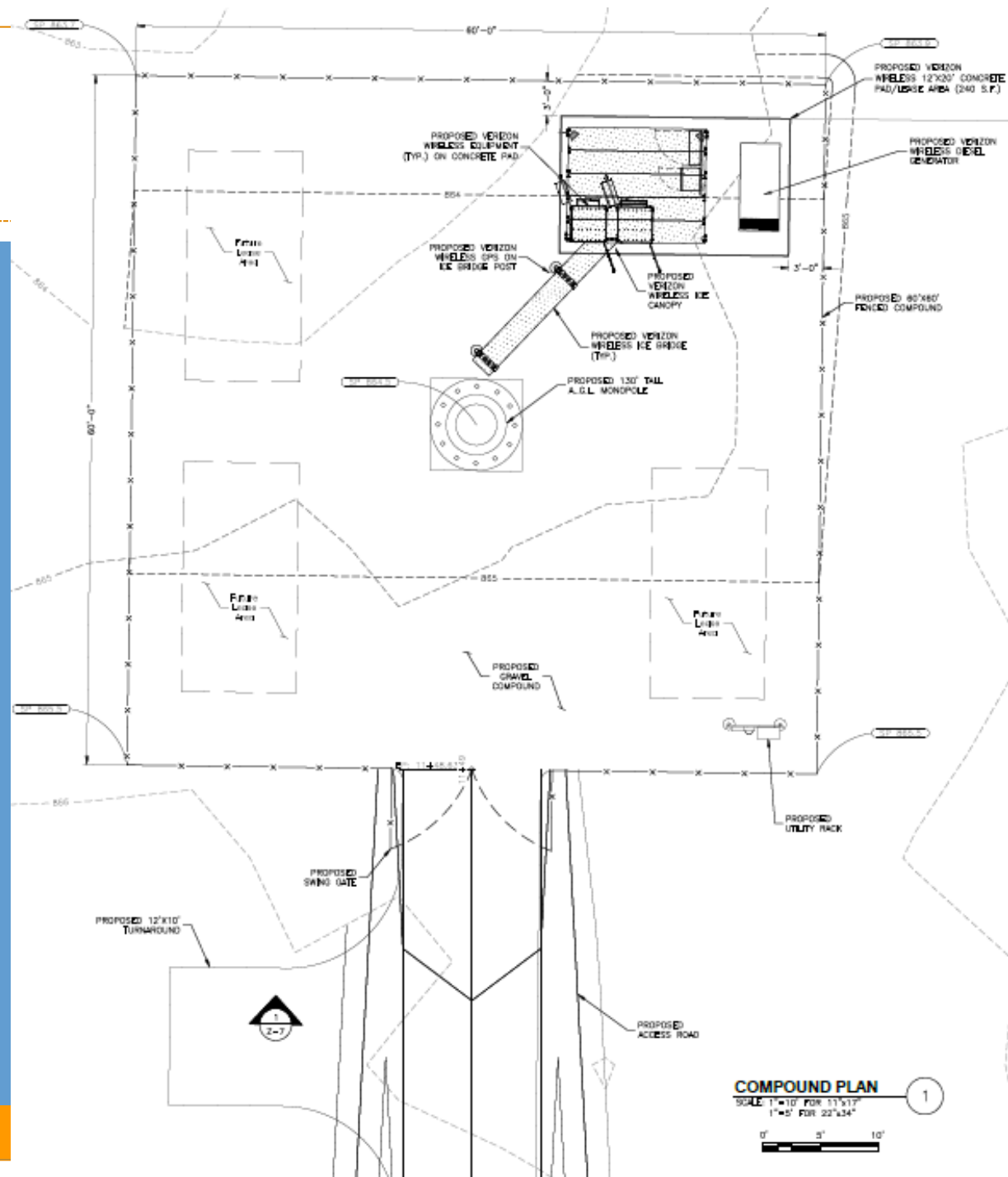
LEGEND	
	Existing Property Line
	LOCUS PROPERTY LINE
	Easement Line
	Existing Stone Wall
	OHW
	Existing Contour Line
	Existing Tree Line
	Existing Pipe Or Rod
	Existing Drill Hole
	Calculated Point
	Tower Control Point
	Existing Utility Point
	Existing Guy Pole
	Existing Guy Wire Anchor

COMPOUND PLAN

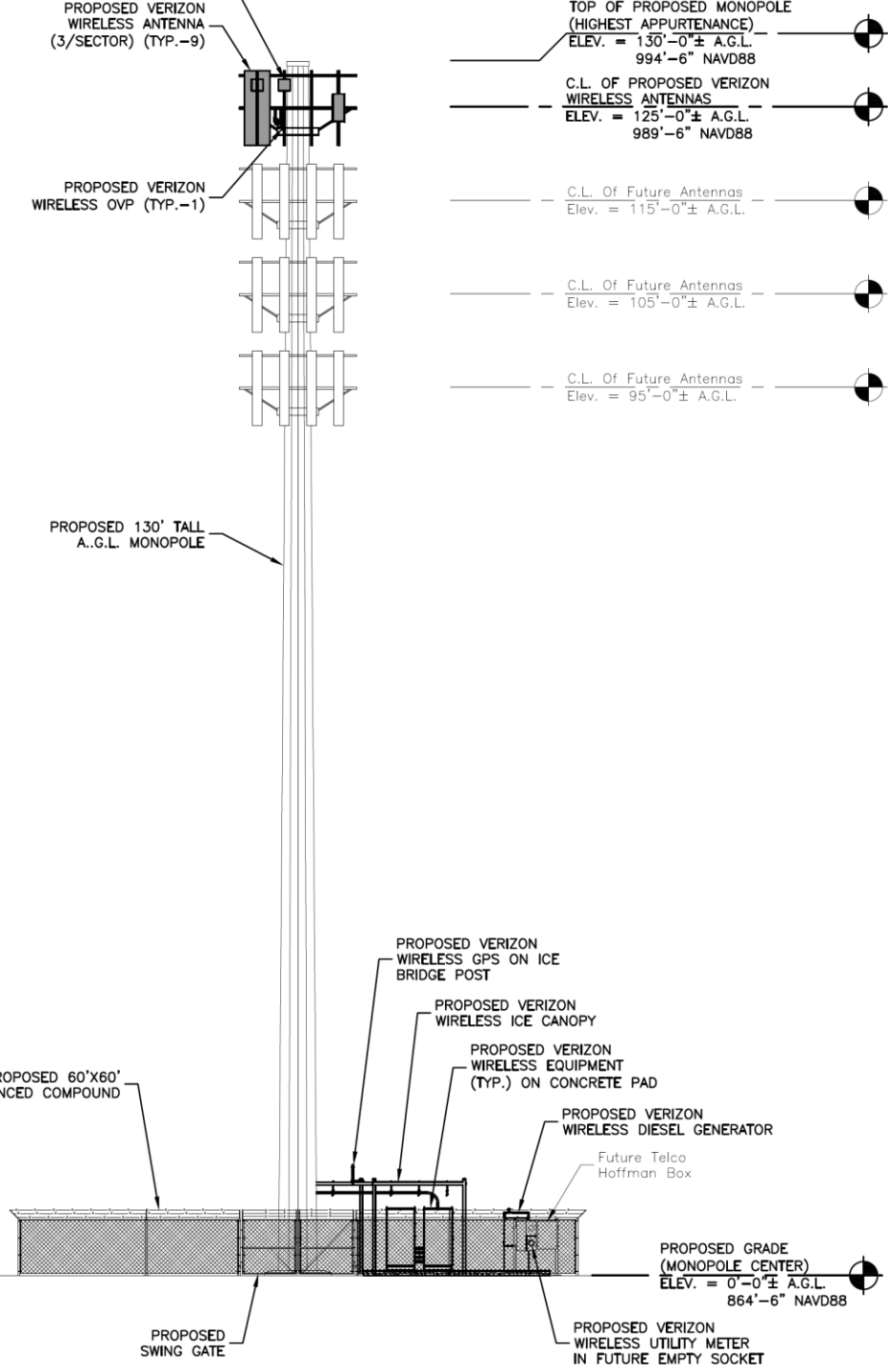
3600 sq ft fenced in compound containing ground-based telecommunications equipment in weather-proof cabinets

6' fence with barbed wire to prevent unauthorized
Ample temporary parking space for maintenance vehicles

Will utilize existing access driveway and cart path off Stallion Hill Road



COMPOUND PLAN
SCALE 1"=10' FOR 11'x17"
1"=5' FOR 22'x34'
0' 5' 10'



ELEVATION PLAN

19

Tower

Type: Monopole

Height: 130'

Designed to support:

- Verizon Wireless
- Other telecommunications companies including AT&T Wireless, T-Mobile / Sprint and DISH Networks
- Local public safety antennas

Construction & Design Standards:

- Telecommunications Industry Assn. (TIA)
- American Society of Safety Eng's (ASSE)
- American National Standards Ins. (ANSI)

Design Criteria:

Will satisfy county specific wind and ice loading standards

Exceeds all safety requirements under FCC regulations

20

The maximum permissible RF exposure limits adopted by the FCC for both general population/uncontrolled exposure and for occupational/controlled exposure incorporate a substantial margin of safety and have been established to be well below levels generally accepted as having the potential to cause adverse health effects. Even at the lowest heights on the tower, the highest emissions will be well under applicable FCC limits.

PHOTOS AND PHOTO SIMS

22

SITING CRITERIA FOR WIRELESS COMMUNICATIONS FACILITY

23

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.

COMPLIANCE WITH SITING CRITERIA FOR WIRELESS COMMUNICATIONS FACILITY

24

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.

ALLOWED IN RESIDENTIAL ZONE

25

(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.

AVERAGE TREE CANOPY WAIVER

26

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.

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.

COMPLIANCE WITH CRITERIA FOR SPECIAL PERMIT

28

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.

CRITERIA FOR SITE PLAN APPROVAL

§ 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.

COMPLIANCE WITH CRITERIA FOR SITE PLAN APPROVAL

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 deminimus 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 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 Telecommunications Act of 1996

31

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.

Law specifically preserves local zoning authority with respect to the siting of wireless service facilities, but it clarifies when the exercise of local zoning authority may be preempted by federal law.

- **SECTION 704 (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 Telecommunications Act of 1996

The Applicant's application is governed by the TCA which "imposes specific limitations on the traditional authority of state and local governments to regulate the location, construction, and modification of such facilities...47 U.S.C. § 332(c)(7)." *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 115-116 (U.S. 2005). Under this provision, local governments shall not take actions that "prohibit or have the effect of prohibiting the provision of personal wireless services," § 332(c)(7)(B)(i)(II), and any decision denying such a request must "be in writing and supported by substantial evidence contained in a written record," § 332(c)(7)(B)(iii). *Id.*

The TCA overrides boards that do not decide matters based upon the merits of local ordinances and, instead, yield inappropriately to ill-founded opposition. *Brehmer v. Planning Board of Town of Wellfleet*, 238 F.3d 117, 122 (1st Cir. 2001), citing *Roberts v. Southwestern Bell Mobile Sys., Inc.*, 429 Mass. 478, 709 N.E.2d 798, 806 (1999) ("Congress certainly intended to protect providers of [personal wireless] services from irrational or substanceless decisions by local authorities who might bend to community opposition to these facilities."). See also *Southwestern Bell Mobile Systems, Inc., d/b/a Cellular One v. Todd*, 244 F.3d 51, 57-58 (1st Cir. 2001) (TCA protects against overzealous or parochial regulation at the local level); *Town of Amherst v. Omnipoint Communications Enterprises, Inc.*, 173 F.3d 9 (1st Cir. 1999). Moreover, the TCA specifically states that "[n]o State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions" 47 U.S.C. § 332(c)(7)(B)(iv). The Board cannot rely upon generalities about visual impacts that are not "grounded in the specifics of the case." *New Cingular Wireless PCS LLC v. Town of Stow*, 2009 WL 2018450 (D. Mass. 2009) at *8 ("bare conclusory assertions" are not substantial evidence), citing *Todd*, 244 F.3d at 61. The Board cannot rely on generalized concerns that "refer to negative comments that are applicable to any tower regardless of location." *Todd*, 244 F.3d at 61 (visual impact). See also *SBA Towers, supra*; *Nextel Communications of the Mid-Atlantic, Inc. v. Town of Sudbury*, 2003 WL 543383 (D. Mass. 2003) (same) and cases cited.

Summary

33

Because the proposed facility meets all of the requirements for a SPECIAL PERMIT AND SITE PLAN APPROVAL for a Wireless Communications Facility under the Town's Zoning Bylaw other than those provisions for which WAIVER have been requested, and also meets all of the requirements for said WAIVER, 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 OF APPEALS GRANT THE REQUESTED SPECIAL PERMIT AND WAIVER and APPROVE THE SITE PLANS for the Facility as proposed, and the Town grant such other permits, relief or waivers deemed necessary under the current Bylaw and pending Bylaws amendments, if any, so that the Applicant may construct and operate the Facility as proposed.