



Phillips Lytle LLP

Via E-Mail and Hand Delivery

January 13, 2022

Village of Muttontown Board of Trustees
One Raz Tafuro Way
Syosset, NY 11791
Attn: Dr. James Liguori, Mayor

Village of Muttontown Site and
Architectural Review Board
One Raz Tafuro Way
Syosset, NY 11791
Attn: Vinny Scialli, Chairperson

Village of Muttontown Planning Board
One Raz Tafuro Way
Syosset, NY 11791
Attn: Richard Murcott, Chairperson

Village of Muttontown Building Inspector
One Raz Tafuro Way
Syosset, NY 11791
Attn: Leslie O'Neill, Building Department
Clerk

Re: New Cingular Wireless PCS, LLC d/b/a AT&T
Application for Special Use Permit
One Raz Tafuro Way
Syosset, NY 11791
SBL: 25-46-102; 25-46-107; 25-46-109; 25-46-113

Dear Dr. Liguori, Members of the Village of Muttontown Board of Trustees,
Chairperson Murcott, Members of the Village of Muttontown Planning Board,
Chairperon Scialli, Members of the Village of Muttontown Site and Architectural
Review Board, and Clerk O'Neill:

As you know, we represent New Cingular Wireless, PCS, LLC d/b/a AT&T ("**AT&T**" or "**Applicant**") with respect to the proposed development of a new wireless telecommunications facility ("**Project**") consisting of an approximately 160' tall monopine with faux foliage extending to a total height of 165' tall and associated ground-based equipment ("**Proposed Facility**") to be located within an equipment compound ("**Equipment Compound**"), on a portion of an approximately 8.74 acre area of land consisting of four separate parcels (SBL: 25-46-102; 25-46-107; 25-46-109; 25-46-113), located at One Raz Tafuro Way ("**Site**") in the Village of Muttontown ("**Village**"), Nassau County ("**County**"). The Site is owned by the Village and is the location of

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Village Hall, as well as other associated Village offices. In order to facilitate the Project, the Village has entered into a lease for a portion of the Site with AT&T.

Pursuant to the Code of the Village of Muttontown (“**Code**”) and the Zoning Map adopted thereunder, the Site is located in the Residence E-3 District (“**E-3 District**”). Code § 190-3. In order to site, erect, construct, or maintain a wireless telecommunications service facility within the Village, including within the E-3 District, a special use permit (“**SUP**”) from the Village of Muttontown Board of Trustees (“**Board of Trustees**”) is required. Code § 190-75; *see* Code § 190-10(H).

AT&T previously, on October 12, 2021, submitted an application for a SUP to the Village of Muttontown Board of Trustees (“**Board of Trustees**”) along with an application for a building permit (these applications collectively “**Prior Application**”) from the Village of Muttontown Site and Architectural Review Board (“**SARB**”). Following submission of such application, AT&T made substantial revisions to its application materials, withdrew the Prior Application, and, by letter dated October 12, 2021, submitted a new, revised application for: (1) a SUP from the Board of Trustees in accordance with Code § 190-75; (2) modifications of bulk requirements from the Village of Muttontown Planning Board (“**Planning Board**”) in accordance with Code § 190-9; and (3) a building permit from the SARB in accordance with Code § 190-50 (“**Application**”). In response to the Application, the Village, by letter dated October 29, 2021 (“**Village Comment Letter**”), provided certain comments on the Application. Thereafter, by letter dated December 7, 2021, AT&T provided a response to the Village Comment Letter and submitted additional documentation as requested by the Village (“**Application Supplement**”). No further comments were received from the Village and, by letter dated December 22, 2021, we wrote to the Village confirming its timing obligations pursuant to state and federal law (“**Shot Clock Letter**”). Subsequently, in a call on January 7, 2021, the Village’s counsel informed AT&T that the Village had some follow up questions regarding the Project and requested that those questions be addressed in writing (“**Village Clarification Request**”).

On behalf of the Applicant, and as set forth more fully below, we submit this letter in response to the Village Clarification Request.



PROJECT DETAILS

Applicant: New Cingular Wireless PCS, LLC

Applicant Address: One AT&T Way
Bedminster, NJ 07921

Attorney Contact: Phillips Lytle LLP
Attention: Kaitlin N. Vigars, Esq.
30 S. Pearl Street
Albany, New York 12207
(518) 618-1221
E-mail: kvigars@phillipslytle.com

Project Location: One Raz Tafuro Way
Syosset, New York 11791

Parcel ID: Tax Section 25, Block 46, Lot 102
Tax Section 25, Block 46, Lot 107
Tax Section 25, Block 46, Lot 109
Tax Section 25, Block 46, Lot 113

Property Owner: Village of Muttontown
One Raz Tafuro Way
Syosset, New York 11791

Zoning District: E-3 Residence District

APPLICANT'S RESPONSE TO THE VILLAGE CLARIFICATION REQUEST

The Village Clarification Request seeks further information regarding items initially raised in the Village Comment Letter and discussed in the Application Supplement. *See Exhibit A.* Specifically, the Village has requested: (1) confirmation of the height of the Proposed Facility; and (2) information regarding how the Applicant plans to address



any contaminated soil on the Site. For your reference, each of the items raised by the Village Clarification Request is included herein in bold with the Applicant's response thereto included in italics.

1. Confirm the total height of the Proposed Facility.

APPLICANT'S RESPONSE: As stated in the Application and discussed in the Application Supplement, the height of the Proposed Facility is 160 feet, with certain appurtenances extending past the top the Proposed Facility for a total height of 165 feet. We note this is reflected: (1) on Sheet A-2 of the Site Plan, which is provided with the Application as Exhibit C; (2) detailed in the Radio Frequency Report provided with the Application as Exhibit G, which explains that this height is necessary to provide adequate service in the Village and surrounding area and remedy an existing coverage gap; (3) and further explained in the alternatives analysis provided with the Application Supplement as Exhibit C, which explains the dearth of other options available to remedy this significant coverage gap. Additionally, as also explained in the Application and the Application Supplement, this height is necessary to incorporate stealth technology to disguise the Proposed Facility as a monopine and minimize the visual impact of the Proposed Facility. Specifically, this height will accommodate faux foliage that will be installed on the Proposed Facility and extend past the top of the monopole approximately 5 feet to form a soft triangular shape and mimic the appearance of an evergreen tree. Accounting for the inclusion of this faux foliage, the total height of the Proposed Facility will be 165 feet and, as noted in the Application Supplement, we previously amended the request for waiver contained in the Application to seek a waiver of the Code's height requirement to allow the Proposed Facility at a height of 165 feet, which reflects the total height of the Proposed Facility, including monopine foliage.

2. Address whether any excavated material will be contaminated and, if so, provide a plan for disposing of contaminated materials.

APPLICANT'S RESPONSE: The Village Comment Letter requested certain additional information regarding excavated soils and whether such soils would be removed from the Site. As explained in the Application Supplement, it is generally AT&T's practice to spread any excavated material on site and, consistent with such typical practice, AT&T intends to spread all material excavated in conjunction with the Project on the Site. AT&T has previously hired a third party consultant to study the environmental conditions on the Site. Pursuant to such



investigation, no evidence of contamination was observed at the Site and there was otherwise no indication that any historical contamination had occurred at the Site.

SHOT CLOCK ANALYSIS PURSUANT TO THE TELECOMMUNICATIONS ACT OF 1996 ("TCA")

As noted in the Application, the Application Supplement, and the Shot Clock Letter, the TCA requires, among other things, that municipalities act on an application for the development of a wireless telecommunications facility "within a reasonable period of time . . . taking into account the nature and scope of such request." 47 U.S.C. § 332(c)(7)(B). Pursuant to the TCA's implementing regulations, the presumptively reasonable timeframe for processing applications that do not involve collocation on an existing structure is 150 days. 47 C.F.R. § 1.6003(c)(1)(iv). This 150 day shot clock begins running on the day that the application is submitted. *Id.* at § 1.6003(e). Where a municipality timely provides an applicant with proper written notice that its application is incomplete, the shot clock will be tolled until the applicant submits the documents and information identified by the municipality as necessary to render the application complete. *Id.* at § 1.6003(d)(2). The shot clock begins to run again once an applicant provides its response to the notice, and will only be tolled again if, within 10 days of when the applicant provides the supplemental filing, the reviewing municipality notifies the applicant that its supplemental filing was insufficient to render the application complete. *Id.* at § 1.6003(d)(3). In order to toll the shot clock, any additional comments made during this subsequent 10 day period must be directly related to the initial notice of incompleteness. *Id.* at § 1.6003(d)(3)(iii).

The Proposed Facility is subject to the 150 day shot clock set forth in the TCA's implementing regulations. This shot clock began to run on October 12, 2021, when the Application was submitted to the Village and was thereafter tolled on October 30, 2021, the day after the Village provided the Village Comment Letter. *Id.* at § 1.6003(d)(2)(i). At the time that the Village provided the Village Comment Letter, 18 days of the shot clock had elapsed and there were 132 days remaining on the shot clock. The shot clock began to run again on December 7th, 2021, when the Application Supplement was provided to the Village which responded to all comments provided. More than 10 days passed following the submission of the Application Supplement and no further



comments were received from the Village within this ten day period. Although the Village did subsequently provide the Village Clarification Request, such request came more than ten days after the submission of the Application Supplement – and as such, did not toll the shot clock. *Id.* at § 1.6003(d)(3). Accordingly, as discussed in the Shot Clock Letter, **the shot clock expiration is set and will expire on April 18, 2022**, at which time the Village is required to issue all determinations on the approvals requested in the Application.

In order to assist the Village in meeting its obligations under the shot clock, AT&T will continue to work with the Village and stands ready to appear at public hearings at any time, including any special meetings that may be necessary to comply with the requirements of the TCA and shot clock codified thereunder. Additionally, in the spirit of cooperation, we note that if the Village reasonably requires any additional information, AT&T will endeavor to provide such information promptly. However, as discussed above, any future request will not toll the shot clock.

NEW YORK STATE VILLAGE LAW TIMING OBLIGATIONS

As previously noted in the Shot Clock Letter, state law establishes certain timing requirements that are applicable to any application for zoning approvals. As relevant to the Application, N.Y. Village Law § 7-725-b(6) states that a Village board reviewing an application for special use permit must hold a public hearing on any application for SUP within 62 days of receipt thereof. Accordingly, in accordance with the timing requirements established by state law, the Village must immediately schedule a public hearing on the Application. *See* N.Y. Village Law § 7-725-b(6).

CONCLUSION

The Proposed Facility will fill a significant existing coverage gap in the Village, providing much needed wireless coverage. Coverage provided by the Proposed Facility will serve an important safety function as it will provide Village residents with a reliable form of communication, which includes communication to first responder agencies in the event of an emergency and communication on AT&T's emergency first



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responder network, FirstNet. Accordingly, the Proposed Facility is an important public safety and infrastructure improvement that will benefit the Village and its residents.

We trust that the information contained herein is sufficient to address the Village's additional comments on the Application. This information is provided in the spirit of cooperation and to assist the Village in proceeding with its review of the Application as required by state and federal law. On behalf of the Applicant, and in order to meet the timing requirements established by state and federal law, we respectfully request that: (1) the Board of Trustees, Planning Board and SARB place the Application on the agendas of their next regularly scheduled meetings; (2) the Board of Trustees schedule a public hearing on the Application at its earliest convenience; and (3) the Board of Trustees initiate coordinated review of the Application pursuant to SEQRA.

Thank you for your consideration of this matter. We look forward to an opportunity to appear before the Village to discuss the Application. In the meantime, if you have any questions regarding the Project or the Application please contact me directly.

Very truly yours,

Phillips Lytle LLP

By /s/ *Kaitlin N. Vigars*

Kaitlin N. Vigars

KNV

cc: Keith Corbett, Esq. (via email)
Kimberly R. Nason, Esq. (via email)
Victoria Brennan (via email)
Joe D'Alto (via email)