

**VILLAGE OF HIGHLAND FALLS  
COUNTY OF ORANGE  
STATE OF NEW YORK**

**RESOLUTION NO. \_\_\_\_\_,  
November 7, 2022**

**RESOLUTION RATIFYING AND CONFIRMING APPROVAL OF LEASE  
AGREEMENT BETWEEN VILLAGE OF HIGHLAND FALLS AND VERIZON  
WIRELESS OF THE EAST d/b/a VERIZON WIRELESS TO PLACE A SMALL CELL  
TELECOMMUNICATIONS FACILITY AT  
15 DREW AVENUE**

**WHEREAS**, on August 16, 2021, the Village Board unanimously adopted a Resolution which (i) adopted a Determination of No Significance (i.e., Negative Declaration) pursuant to Article 8 of the Environmental Conservation Law (“SEQRA”); and (ii) approved of a Lease Agreement between the Village Board and Verizon Wireless and directed the Village Mayor to execute the required lease documents to effectuate the Lease Agreement; and

**WHEREAS**, the Lease Agreement was fully executed on November 19, 2021; and

**WHEREAS**, subsequent to the August 16, 2021 Resolution, the New York State Historic Preservation Office (“SHPO”), by notice dated January 5, 2022, confirmed that the proposal will not adversely impact any historic properties in the Area of Potential Effects; and

**WHEREAS**, a balloon test and Visual Resource Evaluation (“VRE”) was prepared by Tectonic Engineering and Surveying, which confirmed that the proposed Verizon Wireless communications facility will not result in any significant aesthetic impacts to the surrounding community; and

**WHEREAS**, the SEQRA regulations found at 6 NYCRR Part 617.3(a) require that no agency shall carry out, fund, or approve an action until it has complied with the requirements of SEQRA; and

**WHEREAS**, 6 NYCRR 617.6(a) requires that when an agency receives and application for approval of action it must: (1) determine whether the action is subject to SEQRA, (2) determine whether the action involves a federal agency, (3) determine whether other agencies are involved, (4) make a preliminary classification of the action, (5) determine whether a short or full EAF will be used to determine the significance of the action, and (6) determine whether the action is located in an Agricultural District; and

**WHEREAS**, the approval of the lease and ultimate construction of the facility constitutes an “Action” (6 NYCRR 617.2(b)) subject to SEQRA as the Village Board is approving and authorizing the project (6 NYCRR 617.3(a)); and

**WHEREAS**, in this case there are no other involved agencies with discretionary approval authority as defined in SEQRA (6 NYCRR 617.2(c) & (t)); and

**WHEREAS**, as the action is not specifically listed on the Type II (exempt) list (6 NYCRR 617.5) and is not on the Type I list (6 NYCRR 617.4), the action is by default deemed “Unlisted”; and

**WHEREAS**, the Village Board recognizes that 6 NYCRR 917.4(b)(9) provides that any unlisted action that exceeds 25 percent of any threshold in such section which is located wholly or partially within, or substantially contiguous to, any historic building, structure, facility, site or district listed on the National Register of Historic Places shall be treated as a Type I action under SEQRA; and

**WHEREAS**, the Property is not located wholly or partially within or substantially contiguous to any historic building, structure, facility site or district listed on the National Register of Historic Places; and

**WHEREAS**, an EAF was previously prepared and submitted to the Village Board and continues to be appropriate for the evaluation of this matter; and

**WHEREAS**, based upon a review of available mapping, the action is not in an Agricultural District certified under the Agriculture and Markets Law; and

**WHEREAS**, the Village Board has independently considered the: (1) information provided in the EAF; (2) additional materials submitted subsequent to the August 16, 2021 Resolution, including the VRE and SHPO’s January 5, 2022 notice of no effect; (3) its consultants comments; and (4) comments from the public; and

**WHEREAS**, pursuant to Local Law No. 3 of the Year 2020, wireless communications facilities proposed to be located on property owned by the Village of Highland Falls is exempt from regulation under the Village Zoning Law, but shall be required to obtain a building permit from the Highland Falls Building Department to the extent required; and

**WHEREAS**, a copy of the draft of this Resolution, the EAF, the VRE, SHPO’s no effect letter and all other relevant materials have been posted to the Village’s website more than 24 hours in advance of consideration of such materials.

**NOW, THEREFORE, BE IT RESOLVED**, that the Village Board hereby ratifies, confirms and re-determines that:

1. the approval of the proposed project constitutes an Unlisted action which is subject to SEQRA;
2. the action does not involve other agencies that have the ability to issue discretionary determinations (approvals) for the project;

3. Verizon Wireless currently possesses the required general market Federal Communications Commission (“FCC”) Licenses that permit Verizon Wireless to install and operate general radio communications infrastructure in the County of Orange, including Highland Falls;
4. the proposed action is not located in an Agricultural District and, while it is located within 500 feet of lands within an Agricultural District, it will not have any ascertainable significant impact on any farm or farming operations;

**BE IT FURTHER RESOLVED**, that the Village Board, as provided at 6 NYCRR Part 617.6(b)(4), hereby ratifies and confirms that coordinated review of the proposed action is not necessary, and the Village Board shall and can proceed as it is the only involved agency; and

**BE IT FURTHER RESOLVED**, that the Village Board ratifies and confirms its declaration as lead agency with respect to SEQRA review of the proposed action; and

**BE IT FURTHER RESOLVED**, that based upon its review of the project and the EAF, and review by the Village Designated Engineer, and upon comparison with the Criteria for Determining Significance found at 6 NYCRR Section 617.7(c), the Village Board hereby ratifies, finds and confirms that the leasing of a portion of the Property to Verizon Wireless and the proposed construction of small cell telecommunications facility at 15 Drew Avenue constitutes an action which will not have a significant adverse environmental impact on the environment and, therefore, does not require preparation of Draft Environmental Impact Statement; and

**BE IT FURTHER RESOLVED**, that the determinations set forth herein are ratified and confirmed in part, upon the following facts and conclusions:

#### **SEQRA Status**

This matter is an unlisted action under SEQRA as it does not qualify as any of the actions on the Type II list that are not subject to review (6 NYCRR 617.5) and does not fit within the description of any of the actions identified on the Type I list (6 NYCRR 617.4). The site is not identified by Orange County as being in a certified agricultural district (6 NYCRR 617.4(b)(8)). Even if it were, nothing in the application exceeds 25 percent of any threshold established elsewhere in that section (Id.). Thus, the action is properly characterized as an Unlisted action under SEQRA.

#### **Introduction**

The purpose of the communications facility is to provide an adequate and safe level of emergency and non-emergency Verizon Wireless communications services to portions of the Village of Highland Falls that are currently not adequately served. The proposed facility is defined as a “small wireless facility” under applicable federal regulations and includes the installation and operation of an antenna attached to a wooden utility pole, the total height of which will not exceed 50’.

#### **Impact on Land**

This project will result in a small to negligible impact on land. The project site is located on a developed parcel which is in municipal use. Ingress, egress and utility services (power and telephone/fiber) will originate from Drew Avenue. Utilities will be installed underground in a trench.

The small wireless facility will be unmanned and visited for routine maintenance purposes approximately 3-4 times per year by Verizon Wireless (only as needed). As such, this project will not have any impact on existing water and sewage services. In addition, neither pedestrian nor vehicular access will be significantly impacted. Adequate parking is provided for infrequent maintenance visits.

### **Impact on Water**

The small wireless facility will not result in any significant impact upon (a) any water body, protected or non-protected, (b) surface or groundwater quality or quantity, or (c) drainage flow or patterns, inclusive of surface water runoff. There are no regulated wetlands located near the work.

### **Impact on Air**

This project will not result in any significant impact on air quality. The small wireless facility does not involve or concern any air quality issues, permit or otherwise. As previously mentioned, this small wireless facility will be unmanned, and visited for routine maintenance purposes approximately 3-4 times per year by Verizon Wireless (only as needed). Therefore, no significant traffic-based impact(s) exist.

### **Impact on Plants and Animals**

The small wireless facility will not result in any significant impacts on threatened/non-threatened or endangered/non-endangered species of plants or animals. The land upon which the small wireless facility will be developed is fully developed and built out and includes an existing parking lot.

### **Impact on Agricultural Land Resources**

The small wireless facility will have no impact on agricultural land resources as the property is built out and not currently used for agricultural purposes. In addition, the property is not listed as being a farm operation within an agricultural district certified under the Agriculture and Markets Law, Article 25-AA, Section 303 and 304.

### **Impact on Aesthetic Resources**

To access potential aesthetic resources, the Village Board required Verizon Wireless to conduct a publicly noticed balloon test, during which a brightly colored weather balloon was flown at the height of the proposed utility pole for several hours. Photographs were taken from various locations within the Village to determine whether, and to what extent, the proposed structure would

be visible. To memorialize the balloon test, Verizon Wireless' consultant prepared a VRE, which includes actual photographs and simulations of the proposed structure.

Based on the result of the VRE, the proposed small wireless facility will not result in any significant adverse visual impacts. The facility is relatively short in height and existing vegetation and buildings around the site will serve to generally buffer and shield the facility from view.

#### **Impact on Historic and Archeological Resources**

As part of the review of the proposal, SHPO has examined, in detail, the project and has determined that the small wireless facility will not result in any significant impacts on site(s) or structure(s) of historic, prehistoric or paleontological importance. SHPO has also determined that there will not be any direct effects or visual effects on historic properties.

#### **Impact on Open Space and Recreation**

The small wireless facility will not result in any significant impact on the quantity or quality of existing or future open spaces or recreational opportunities given the small size of the facility and its placement on a large lot in municipal ownership and use.

#### **Impact on Critical Environmental Areas**

This project will not impact any Critical Environmental Area(s). According to the NYSDEC website, there are no Critical Environmental Areas in the immediate vicinity.

#### **Impact on Transportation**

This project will not result in any significant impact on existing transportation systems. The small wireless facility will be unmanned and visited by Verizon Wireless approximately 3-4 times each year for Verizon Wireless (only as needed) for maintenance and inspection purposes. There will be a slight increase in vehicle trips during the approximately one month construction time frame associated with work vehicles and delivery trucks. The amount of additional vehicles is comparable to the amount associated with the construction of a single family home. Drew Avenue and the surrounding roads are well maintained and will have no difficulty handling this small number of additional trips.

#### **Impacts on Energy**

The small wireless facility will not result in any significant impacts on the community's sources of fuel or energy supply. First, an adequate source of power exists at the existing service lines in the vicinity of the project. Second, it is estimated that the small wireless facility will require approximately the same number of kW hours of power as a 3-4 bedroom house per year to operate, an impact which is not considered to be significant and which will not cause the need for any major electrical upgrades.

### **Noise and Odor Impacts**

This project will not result in any significant environmental impact due to objectionable odors, noise or vibration. Any such impact(s) will be temporary and minor in nature and confined to the construction phase. A backup generator is not proposed.

### **Impact on Public Health**

The small wireless facility will not adversely impact the public health and safety.

Without limitation to this evaluation, the Village is prohibited by the Telecommunications Act of 1996 from regulating 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 USC 332 [c] [7] [B] [iv]. Due to the height of the antennas, the facility (a) will comply by a wide margin with the requirements of the Federal Communications Commission (FCC) concerning radio frequency (RF) emissions (i.e., operate at a composite ground level below 1% of the applicable FCC exposure limits); and (b) be categorically excluded from local regulation under applicable federal law.

The Village Board is aware of the Decision of the United States Court of Appeals for the District of Columbia Circuit in *Environmental Health Trust, et al. v Federal Communications Commission*, decided August 13, 2021 (No. 20-1025) in which the District Court held that the FCC did not provide a reasoned explanation for its determination not to alter its prior health and safety guidelines relative to exposure to radiofrequency radiation unrelated to cancer. The *EHT* decision did not: (i) determine that exposure to radiofrequency signals results in harmful biological effects; or (ii) enjoin or otherwise prohibit the continued deployment of new wireless communications facilities. Instead, the *EHT* decision simply remanded the matter back to the FCC so that it could provide a reasoned explanation.

Based on the above, the Village Board is not prohibited from proceeding with the small wireless facility.

### **Impact on Growth and Character of Community or Neighborhood**

This project will result in a negligible impact on the character of the existing community. Although a variety of land uses exist in the general vicinity, the impact on such uses (if any) is typically visual in nature when considering a telecommunications facility. As previously stated, visibility of the small wireless facility will be minor or insignificant in nature and scope.

### **NEGATIVE DECLARATION**

After reviewing the Short EAF submitted herewith, together with the additional documentation received from SHPO, the VRE and the information provided by the Village Designated Engineer, the Village Board of the Village of Highland Falls hereby concludes and ratifies its prior decision that an Environmental Impact Statement (EIS) will not be required for the public utility small cell facility proposed because (a) this Action will result in no adverse environmental impacts, or (b) the identified adverse environmental impacts will not be significant (*see* 6 NYCRR § 617.7(a)(2)).

**AND,**

**BE IT FURTHER RESOLVED,** that the Village Board of the Village of Highland Falls, based upon (i) its thorough review of the Short EAF, Parts 1 and 2, along with any and all other documents prepared and submitted with respect to this proposed action and its environmental review, and (ii) its thorough review of the potential relevant areas of environmental concern to determine if the proposed action may have a significant adverse impact on the environment, including the criteria identified in 6 NYCRR 617.7(c), hereby ratifies its negative determination of environmental significance (“Negative Declaration”) in accordance with SEQRA for the above referenced proposed action, and determines and ratifies that an Environmental Impact Statement is not appropriate or required; and

**BE IT FURTHER RESOLVED,** that this Determination of No Significance shall be considered a Negative Declaration made pursuant to Article 8 of the Environmental Conservation Law; and

**BE IT FURTHER RESOLVED,** the Village Clerk is authorized and directed to file this Resolution as is required by law and do all that is necessary in order to fully effectuate the determinations contained herein.

**IT IS FURTHER RESOLVED,** that the Village Board hereby ratifies its prior approval and decision to enter into the Lease Agreement and Memorandum of Lease based on all of the available information received to date including the SHPO determination of no effect.

**IT IS FURTHER RESOLVED,** that because the proposed facility is exempt from regulation under the amended Zoning Law, the Village Board hereby ratifies its prior approval and authorization of the construction of the small wireless facility pursuant to §240-29(V)(2.1)(A)(2) of the Village Code.

**IT IS FURTHER RESOLVED,** that the Village Board hereby ratifies and determines that the use of the Property as a Senior Center is not a park, playground or similar property as referenced in §240-29(V)(2.1)(A) of the Village Code, which do not qualify for the zoning exemptions contained therein. The Village Board confirms that the use of the Senior Center is not used by the public for recreational purposes as that term is used in the Village Code.

**IT IS FURTHER RESOLVED,** that the Village Board’s August 16, 2021 Resolution regarding this matter, as amended by this Resolution, is ratified and confirmed.

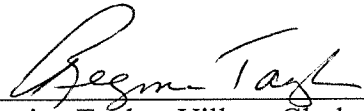
MOTION BY: Trustee DiSalvo

Voting: Trustee Aylward  
Trustee DiSalvo  
Trustee Guerrero  
Trustee Phillips  
Mayor D'Onofrio

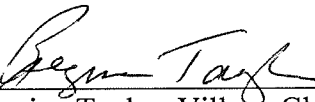
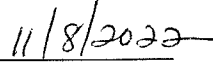
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SECONDED BY: Trustee Phillips

The resolution was duly adopted on November 7, 2022.

  
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Regina Taylor, Village Clerk  
Village of Highland Falls

I, **Regina Taylor**, Village Clerk of the Village of Highland Falls, do hereby certify that the attached Resolution is a true and accurate copy of the original on file at the office of the Village Clerk of the Village of Highland Falls, 303 Main Street, Highland Falls, New York, 10928

   
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Regina Taylor, Village Clerk  
Village of Highland Falls