

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

**RESOLUTION AND FINDINGS AND DETERMINATION OF GOVERNMENTAL  
IMMUNITY FROM ZONING PURSUANT TO SECTION 240-29(V)(2.1)(C) OF THE  
VILLAGE CODE**

Introduction

**WHEREAS**, Verizon Wireless of the East LP d/b/a Verizon Wireless (“Verizon Wireless”) desires to install and operate a new personal wireless service facility on property owned by the Town of Highlands (“Town”) located at 1530 Route 9W in the Village of Highland Falls (the “Property”). The proposed facility includes the installation of a new 65’ monopole antenna support structure and related antennae and equipment (the “Facility”).

**WHEREAS**, by Resolution dated August 8, 2022, the Town of Highlands Town Board resolved to request the Village of Highland Falls Board of Trustees to: (i) complete the “balancing of interests” analysis required by §240-29(V)(2.1)(C) of the Village of Highland Falls Code; and (ii) review the matter under the New York State Environmental Quality Review Act and its implementing regulations (“SEQRA”) and conduct a coordinated review involving all involved agencies including the Town of Highlands Town Board. According to the Town’s Resolution, upon completion of the Village Board of Trustees’ review under SEQRA and if the Board of Trustees agrees to grant the project governmental immunity from local zoning regulations pursuant to §240-29(V)(2.1)(C) of the Village of Highland Falls Code, the Town of Highlands Town Board will execute the negotiated Land Lease Agreement (“Lease”) with Verizon Wireless.

**WHEREAS**, Verizon Wireless has provided certain documentation (detailed below) in support of its proposal to install and operate the Facility and in support of the request for governmental immunity, which has been reviewed by the Village’s Radio Frequency expert consultant who independently confirmed that the Facility is necessary to close significant existing gaps in service in the local area and to relieve substantial network capacity issues related to the increased demand and use of Verizon Wireless’ wireless network in the Village of Highland Falls. The Facility will provide new coverage to an area within the Village of Highland Falls that currently lacks adequate wireless service, which inadequacy the Verizon Wireless facility will remedy. This will result in significant benefits to Verizon Wireless customers, including emergency personnel and first responders (i.e. police, fire and ambulance) who regularly use secure wireless communications provided by the Verizon Wireless network to serve the community.

**WHEREAS**, the Facility (referred to by Verizon Wireless as the “Highland Falls” site) is one of three (3) sites planned by Verizon Wireless for the Village of Highland Falls. The other two (2) sites are at various stages of development and will serve the central and northern portions of the Village. This site will serve the southern portion of the Village as illustrated in the Engineering Necessity Case prepared by Verizon Wireless’ RF Engineer and confirmed upon independent review by the Village’s radio frequency expert consultant.

## County of Monroe Balancing Test

**WHEREAS**, in 1988, the New York State Court of Appeals issued a decision in the case of *Matter of Monroe v. City of Rochester*, 72 N.Y. 2d 338, in which the Court established a “balancing of interests” test to allow local municipalities to determine whether certain municipal projects on public property qualify for immunity from local zoning requirements. The Court in *Monroe* established a nine (9) part test to determine whether a qualified project was immune from zoning. The test established by the *Monroe* Court is often referred to as the “balancing of interests” test.

**WHEREAS**, section 240-29(V)(2.1)(C) of the Village of Highland Falls Code has incorporated the *Monroe* balancing of interest test relative to proposed wireless communications facilities on municipally-owned property and provides that:

“[a]ny municipal corporation seeking approval to place a wireless communications facility within municipal boundaries of the Village of Highland Falls shall be subject to review by the Planning Board and full compliance with these regulations, unless exempted by resolution of the Village of Highland Falls Board of Trustees after conducting a “balancing of the interest” analysis as set forth in *Matter of County of Monroe v. City of Rochester*, 72 N.Y.2d 338 [1988].”

(Emphasis provided).

**WHEREAS**, in making the findings and determinations set forth herein, the Board of Trustees has reviewed the following information in connection with the proposed Facility:

1. Detailed site plans;
2. Completed Full Environmental Assessment Form;
3. Engineering Necessity Case prepared by Verizon Wireless’ RF Design Engineer;
4. Visual Resource Evaluation prepared by Tectonic Engineering, which was prepared based on a publicly noticed balloon test and reviewed by SHPO;
5. Section 106 Notification of SHPO/THPO “No-Effect” determination;
6. Site Compliance Report prepared by SiteSafe; and
7. Town of Highlands Resolution dated August 8, 2022.

**NOW, THEREFORE, BE IT RESOLVED**, that the Village of Highland Falls Board of Trustees makes the following findings and determinations with respect to the *County of Monroe* balancing of interests test relative to the Facility.

The nine (9) factors identified by the *Monroe* Court are discussed below as they relate to the Facility proposed by Verizon Wireless and the Town of Highlands.

1. *The nature and scope of the instrumentality seeking immunity.*

The Town is a political subdivision of the State of New York and is tax-funded and self-governing with elected officials. The Town provides emergency/first responder services for such things as fires, accidents, medical emergencies, crimes and natural disasters. The Town is a governmental entity that provides an essential public service to the residents of the Town of Highlands and/or Village of Highland Falls. Reliable and substantial wireless service is an important tool for first responders.

Verizon Wireless is a public utility for purposes of zoning under the *Cellular Telephone Company v. Rosenberg* case decided by the New York State Court of Appeals in 1993. The *Rosenberg* Court confirmed that wireless companies such as Verizon Wireless provide an essential service similar to other established public utilities (i.e. land line telephone, electricity, etc.).

Verizon Wireless provides commercial wireless services to the general public and individuals involved with public safety and emergency response agencies. Many public safety and emergency personnel rely on Verizon Wireless service as a result of the fact that the service is secure/encrypted, which is useful for confidential or sensitive communications during certain emergency situations. Additionally, Verizon Wireless has implemented a public safety private core network which offers public safety customers preemption and mobile broadband priority service at no additional charge during emergency situations. Verizon Wireless' public safety private core provides traffic segmentation, priority and preemption, improved security and enhanced service management and control. Verizon Wireless has the ability to reallocate network resources from commercial data/internet users to first responders in the unlikely event that network capacity is reached, during times of extreme emergencies.

The Village of Highland Falls is a political subdivision of the State of New York and is located within the boundaries of the Town of Highlands. Like the Town, the Village provides emergency services involving police, fire and ambulance protection to its residents and visitors.

The Facility involves installation of a new communications tower structure on a portion of property currently owned by the Town as a Department of Public Works ("DPW") facility. The proposed Facility will provide needed wireless service in the southern portion of the Village that currently does not exist.

2. *The encroaching government's legislative grant of authority* – The Village of Highland Falls is located within the Town of Highlands in the County of Orange. The Property, although owned by the Town and used as a DPW facility, is located in the Village. Because the Property is located in the Village, the Town does not have authority over the land use and zoning of the Property. That function is held by the Village. The Facility is, therefore, subject to the Village of Highland Falls zoning law unless waived by the Village Board of Trustees pursuant to Village Code §240-29(V)(2.1)(C).

Section 240-29(V)(2.1)(C) of the Village Code authorizes the Village of Highland Falls Board of Trustees to consider the factors set forth in *County of Monroe* and make the

determination as to whether this application is exempt from local zoning regulations. Section 240-29(V)(2.1)(C) of the Highland Falls Code provides specifically that:

“[a]ny municipal corporation seeking approval to place a wireless communications facility within the municipal boundaries of the Village of Highland Falls shall be subject to review by the Planning Board and full compliance with these regulations unless exempted by resolution of the Village of Highland Falls Board of Trustees after conducting a "balancing of the interest" analysis as set forth in Matter of County of Monroe v City of Rochester, 72 N.Y.2d 338 [1988].

(Emphasis supplied.)

The Town of Highlands agrees that the Village of Highland Falls is the appropriate agency to consider and apply the balancing of interests test to the Facility proposed by Verizon Wireless.

3. *The kind of function or land use involved* – The proposed land use is not an intensive use and will not require municipal services as part of its general operations. The Facility will serve the public interest, in that it will offer the general public a wireless communications alternative particularly well suited for responding to accidents and natural disasters and for reporting medical emergencies and other dangers such as potential criminal activity. Moreover, federally licensed wireless services have been deemed to be essential public services by both New York State and Federal Courts. Under existing Federal guidance, wireless communications base stations such as that proposed have also been deemed to be infrastructure critical to national security. Having redundant and reliable wireless service is not a mere convenience, but rather a necessity.

As such, the Village Board of Trustees finds that the Facility at the Town DPW Property will serve a beneficial public safety purpose not currently being served.

4. *The effect local land use regulation would have upon the enterprise concerned* – Local regulations, if applied, would not be more protective of Village land use policies or the environment, especially when compared to the Village’s urgent need for substantially improved wireless service within the Village. For instance, the Village of Highland Falls previously determined that wireless service is so critically important to the community that it has waived zoning for any new facilities located on Village of Highland Falls property to encourage and streamline the deployment of new wireless communications facilities in the Village. For example, Section 1, Legislative Findings, Purpose and Intent of Local Law No. 3 of Year 2020 provides that:

“The Board of Trustees of the Village of Highland Falls hereby finds and determines that the current inability of the Village to achieve reliable wireless communications within the Village is a danger to public health and

safety. The risk to people's lives was underscored when a health emergency arose during a Board of Trustees meeting (sic) within Village Hall and cellular telephone service was not available to call first responders. The Board of Trustees determined that expanding wireless capabilities throughout the Village, and especially on those properties owned by the Village, must be undertaken without delay by exempting Village property from the requirements normally associated with commercial wireless expansion."

Treating the Facility proposed for Town-owned Property in a manner similar to how wireless communications facilities located on Village-owned properties are treated (i.e., immunity from zoning) is consistent with the Village's desire to have safe, reliable and substantial wireless service deployed in the Village without delay.

The Facility is consistent with the existing DPW use of the Property located along a major transportation corridor within the Village (Route 9W). Additionally, the Facility has been carefully designed by a qualified radio frequency engineer. The layout of the proposed site has also been properly planned with regard to the safety of vehicles and pedestrians, as well as those on neighboring properties and streets. In this regard, the application of the Village Code (i.e., the need for Planning Board approval) would not alter or change the proposed use and/or its design.

Verizon Wireless has submitted various documents in support of its proposal including:

1. A Full Environmental Assessment Form;
2. Detailed site plans;
3. A comprehensive Engineering Necessity Case;
4. A Visual Resource Evaluation;
5. Confirmation that the NYS Historic Preservation Office ("SHPO") has agreed that the proposed Facility will not adversely impact existing historic properties; and
6. An expert report which confirms that the proposed Facility will fully comply with existing Federal Communications Commission ("FCC") exposure thresholds.

These materials have been carefully reviewed by the Village's independent radio frequency expert consultant, who has confirmed that there is a need for a new facility at the proposed location. Additionally, SHPO has reviewed the proposed Facility, including the detailed Visual Resource Evaluation, and confirmed that the Facility will not adversely impact historic properties. Based on the information provided, including the Visual Resource Evaluation and SHPO's "No-Effect" notice, the Board of Trustees finds that the Facility at such location is the least intrusive alternative. Moreover, imposing local land use regulations on the proposed Facility would not change or alter the overall design of this essential public service, nor would it impose any additional requirements not currently incorporated into the overall purpose.

5. *Alternative locations for the Facility in less restrictive zoning areas do not exist* – The proposed Facility is located on lands that are currently used as a local DPW facility by the Town. The Property does not have an existing tower structure or buildings tall enough to accommodate the needs of Verizon Wireless, nor are there any existing towers or tall structures within the search area (i.e., the geographical area within which the new facility must be located). Moreover, the proposed tower height has been kept to a minimum necessary to provide the needed service while minimizing visual impacts. The proposed location is appropriate since it will remedy a significant gap in wireless service in the southern portion of the Village, while representing only a minimal intrusion on the community because it is located on an existing DPW site.

One of the purposes of the Facility is to provide new coverage/service to nearby residential areas located to the east and north of the Facility. This is illustrated on pages 16-17 and 20-21 of the Engineering Necessity Case provided by Verizon Wireless. To do so, and taking into account how a new site would fit within the existing network (i.e. capacity issues) as well as existing topography of the surrounding area, the location of the new site needs to be located in the search area shown on the aforementioned pages of the Engineering Necessity Case. The DPW site is located on the western edge of the search area. In theory, the site could be located in other portions of the search area. However, if Verizon Wireless were to move the site towards the center portion of the search area, the site would be closer to residential neighborhoods. Moving the site further to the north would encroach upon Roe Park. Neither of these options are desirable.

Locating the communications Facility at the proposed DPW Property will mitigate impacts in that the Facility will be located on a government-owned property which is currently dedicated to public use and a sufficient distance from the nearby residential neighborhoods or Roe Park to eliminate any potential visual impacts to such areas. The height of the proposed structure has also been kept to a minimum to mitigate potential visual impacts to the greatest extent feasible. After careful evaluation, the Village Board of Trustees finds that the Town's DPW Property represents the least intrusive and most appropriate alternative for the proposed Facility.

6. *The impact upon legitimate local interests* – The Applicant has demonstrated a need for this Facility to (i) fill significant gaps in service; and (ii) provide capacity relief to the existing wireless network in the target area. The Village's radio frequency expert consultant has confirmed the need for the site to serve the southern portion of the Village. The Facility has been designed and will be constructed in accordance with all applicable structural requirements of the Building Code of New York State (to the extent applicable), and all other applicable local, state, and federal codes and regulations. The proposed communications Facility will have a harmonious relationship with the existing and planned development of contiguous lands and adjacent neighborhoods and would have no material adverse effect upon the desirability of adjacent and nearby property for development. Wireless communications service is essential in modern day life. With the majority of 911 emergency calls generated from wireless phones and the current trend to terminate landline telephone service in favor

of wireless service, it is imperative to ensure that safe and appropriate wireless service exists within the areas of the Village for its residents. The proposed Facility will assist with achieving such goal while minimizing potential adverse impacts.

7. *Alternative methods of providing the proposed improvement* – After careful investigation, there are no appropriate existing tall structures within the search area capable of accommodating the Verizon Wireless antennas at the required height. The Verizon Wireless Radio Frequency Design Engineer has confirmed that a new tower structure is required to resolve the significant coverage gaps and capacity issues. The proposed location of the Facility is the most preferred alternative for a new tower structure. It utilizes municipally owned property that is currently used as a DPW site, which is located away from existing residential neighborhoods and along a major transportation corridor (i.e. Route 9W). The proposed Facility has also been specifically designed to work with the proposed Verizon Wireless site to the north at the Village Hall. Alternative means to resolve the existing coverage and capacity issues are not feasible or practicable. The proposed Facility is, therefore, consistent with the existing use of the Property. The least intrusive structure has been proposed.
8. *The extent of the public interest to be served by the improvements* – As demonstrated by the supporting materials, Verizon Wireless’ RF Design Engineer has demonstrated that there are significant gaps in coverage and/or capacity issues in the surrounding area and that construction of the 65’ monopole as proposed will provide safe, adequate and substantial Verizon Wireless coverage in this portion of the Village of Highland Falls. The conclusions reached by the Verizon engineer were reviewed at length and confirmed by the Village’s independent radio frequency expert consultant. With the addition of the DPW facility to the two facilities located on municipal property in the Village (the Village Hall roof and Drew Avenue utility pole sites), reliable wireless service will be available to all sections of the Village, providing wireless access to not only Village and Town residents and the general public, but also to first responders and those public safety officials who rely on Verizon Wireless’ public safety private core network during national disasters and other emergencies.

In addition to demonstrating the need for the Facility at this location, Verizon Wireless has provided a Site Compliance Report for the Facility prepared by SiteSafe, which report has been signed and stamped by a NYS Licensed Professional Engineer. Significantly, the Site Compliance Report confirms that the proposed Facility will fully comply with existing FCC rules and regulations governing human exposure to RF electromagnetic fields. In fact, the Site Compliance Report provides that:

“...with the proposed Verizon Wireless antenna configuration in service, the composite exposure from this facility in all areas of ground level will be below 1% of the General Public MPE limit, or over 100 times less than the maximum allowed exposure in publicly accessible areas.”

Site Compliance Report, §1.

In light of this information, and in recognition of the fact that the Telecommunications Act of 1996 prohibits local municipalities from denying an application for a wireless communications facility based on radio frequency emissions in situations where – as here – the applicant has demonstrated compliance with applicable FCC emission requirements, the Village Board of Trustees finds that review by the Consolidated Planning Board and public input on this issue, or other issues involving visual impacts, etc., will not significantly alter the design or location of the proposed Facility.

- 9. *Intergovernmental participation in the project development process and an opportunity to be heard* – The Village of Highland Falls Board of Trustees reviewed the current proposal at meetings open to the public. The Applicants have also had several meetings with the representatives of the Town to discuss lease negotiations and Facility design. The Board of Trustees has retained and relied upon the Village Engineer and an independent qualified radio frequency expert consultant to review the proposed Facility.

Based on careful consideration of all nine factors that comprise the balancing of interests test and all information available to date with respect to the Facility, the Village of Highland Falls finds that the application of the *County of Monroe* “balancing of interests” test is appropriate for this Facility.

**NOW, THEREFORE, BE IT FUTHER RESOLVED** that the Village Board of Trustees resolves to grant immunity to the Facility proposed by Verizon Wireless and the Town of Highlands from the applicable requirements of the Village Code, including 240-29(V) and all related requirements, and that by such finding, the proposed Facility is determined to be immune from any further land use and zoning review.

MOTION BY: \_\_\_\_\_ Voting: Trustee Aylward \_\_\_\_\_  
Trustee DiSalvo \_\_\_\_\_  
Trustee Guerrero \_\_\_\_\_  
Trustee Phillips \_\_\_\_\_  
SECONDED BY: \_\_\_\_\_ Mayor D’Onofrio \_\_\_\_\_

The resolution was duly adopted on \_\_\_\_\_, 2022

\_\_\_\_\_  
Regina Taylor, Village Clerk  
Village of Highland Falls

VILLAGE CLERK CERTIFICATION OF FILING ON NEXT PAGE

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, NY 10928.

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Regina Taylor, Village Clerk  
Village of Highland Falls